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September 8, 2014

Dear Representative:

On behalf of our one million members, the National Association of REALTORS® strongly urges you to support H.R. 5078, the “Waters of the United States’ Regulatory Overreach Protection Act.

In 1972, Congress amended the Clean Water Act and built a partnership with the States to protect the Nation’s water bodies. Recognizing the primary role of the States in preventing water pollution and planning land use, Congress restricted the federal government’s authority to the “navigable waters” defined as “waters of the United States.” For years, federal agencies pushed and tested this boundary until their regulatory definition was based on migratory birds or any hydrologic connection. Twice, the Supreme Court rejected these all-inclusive theories and returned the proposal to the agency in order to articulate a principle that limits federal jurisdiction and is directly tied to navigable water quality.

The Environmental Protection Agency and Army Corps of Engineers must believe that the third time is a charm because they are back and re-proposing to regulate all waters that have more than a “speculative or insubstantial nexus.” Rather than defining these terms or articulating any kind of limiting principle, the agencies simply shift the burden to property owners to prove they are not near regulated waters. Because the agencies felt that the U.S. waters determination process is too costly and time consuming for the federal government, their idea is for individual home owners to go through a lengthy federal negotiation over what’s regulated or not and spend tens of thousands of dollars on permits which will only complicate and confuse home sales in many parts of the country.

These agencies claim that everyone – including States and industry – requested this regulation and that “clarifying” virtually all waters are federally controlled will provide needed “certainty.” Yet, we’re not aware of a single state or sector of the economy requesting a federal takeover of all waters of the U.S. While purporting to “save small businesses time and money,” the agencies opted not to convene a panel under the Regulatory Flexibility Act which seeks to find ways to increase certainty and reduce burden on small businesses while still protecting the environment. The agencies also assert that they have the science to back up their proposal this time, but they continue to rely on the same old science that the Supreme Court did not find persuasive the first two times. Their own Science Advisory Board has yet to report back and the agencies still push forward.

H.R. 5078 would prevent these federal agencies from moving forward with a misguided, unjustified rule and send them back to the drawing board to consult with the states and stakeholders. The bill does not roll back existing environmental protections or prevent the agencies from regulating where they find some common ground with the States and provide a legal, policy and scientific basis for their regulatory decisions. It simply acknowledges that the administrative process for this rulemaking was flawed and that opportunities for meaningful input, data and consultation will lead to better rulemaking and could dramatically strengthen environmental protections while minimizing unnecessary red tape and burden.

Please support H.R. 5078: the U.S. Waters Regulatory Overreach Protection Act. We look forward to working with you and the Congress to protect high value water bodies and wetlands while minimizing unnecessary red tape and permitting burden on the real estate market and the rest of the economy.

Sincerely,



Steve Brown  
2014 President, National Association of REALTORS®

