July 12, 2007

Honorable Members of Congress:

The purpose of the Clean Water Act can be summed up in two words: clean water. In survey after survey the public has identified clean water as their number one environmental concern. In recognition of the public’s absolute reliance on clean water, the Association of State Wetland Managers urges passage of the Clean Water Restoration Act of 2007 (H.R.2421) to restore the scope of the Clean Water Act (CWA).

The United States Supreme Court decisions in SWANCC and Carabell/Rapanos have removed isolated wetlands together with the small streams, wetlands and headwater areas that do not meet a legally defined “significant nexus” test from Clean Water Act jurisdiction. This complex legal test, while intended to protect navigable waters, creates significant administrative hurdles, including longer waits for permit applicants, increased workloads for states implementing shared permitting authority, more detailed federal agency review, and delays and uncertainty in project planning. More importantly the new legal test does not protect the integrity of the nation’s waters as a whole. Traditionally navigable waters are, in fact, only a very small fraction of all the waters of the United States, and a Clean Water Act focused only on those waters will not provide clean water for the nation.

Wetlands and smaller streams -- including those that do not flow year round -- are critical to the integrity of our nation’s waters. They are:

- **Vulnerable to pollution.** They intercept 40% of the point source discharges requiring individual permits in the lower 48 states.
- **Critical to our drinking water supplies.** They are the source of drinking water for an estimated 110 million Americans.
- **Critical to reducing water levels during floods and hurricanes like Katrina.**
- **Vital for fish.** These waters provide food, habitat and water for trout, sturgeon, salmon and other important recreational and commercial fish and shellfish species.
- **Critical to migratory birds.** Wetlands and small streams provide essential habitat for many of the nation’s waterfowl, songbirds and shorebird populations.
- **Important to global warming.** Wetlands store carbon estimated to be equal to 40% of the world’s atmospheric carbon. In addition wetlands and headwater streams will provide important refuges and migration routes for species attempting to adapt to global climate change.
- **Essential to the economy.** A healthy economy relies on clean, plentiful water supplies. Eliminating and altering wetlands and headwater streams both degrade water quality and reduce base flow. This increases the cost of providing water for communities and agriculture.
ASWM supports passage of legislation to restore the scope of the whole Clean Water Act. The definition of waters addressed by the United States Supreme Court in SWANCC and Carabell/Rapanos applies to the whole Clean Water Act, not just the Section 404 (dredge and fill permit) program. The outcome of restricting federal jurisdiction for water quality standards development, implementation, and pollutant load calculation, point source permits and other portions of the Clean Water Act is unknown and troubling. One possible outcome will be tougher limits for point source discharge permits for navigable waters and their tributaries because reducing jurisdiction will reduce the ability to solve pollution runoff problems in headwaters. ASWM is concerned that restricting federal jurisdiction will place an unfair burden for reducing pollution on municipalities, individuals and companies along traditionally navigable waters and their tributaries. Polluters in upstream areas of a watershed should be held accountable for their actions as well.

The findings and the savings clause in H.R. 2421 have been included to eliminate the threat of future constitutional challenges in the courts and retain the existing exemptions from regulation. The savings clause maintains the extensive exemptions from regulation for agriculture, silviculture and other activities that are already in place.

Federal/State/Tribal partnerships are key to providing clean water to the nation. The Clean Water Act provides a framework for partnerships for national water programs. It ensures that water traveling across state boundaries meets minimum water quality standards. It offers real opportunities for states and tribes to take a leadership role in carrying out provisions of the Clean Water Act by delegating permit programs to the states and tribes, and by providing funding to support programs that protect water quality. Under the Clean Water Act, states and tribes may assume responsibility for implementing federal programs and may also develop more protective measures to ensure clean, sustainable water. Limiting the scope of Clean Water Act programs to only a fraction of the nation’s waters will erode the effectiveness of these partnerships.

Over the past 30 years numerous federal, state and tribal partnerships have been developed as part of the Clean Water Act to protect and preserve our nation’s water resources. Passage of the Clean Water Restoration Act of 2007 can ensure that such partnerships continue to provide clean water by protecting the physical, chemical and biological integrity of the full reach of our nation’s waters.

Sincerely,

Peg Bostwick
Chairman
Association of State Wetland Managers, Inc.