THE TRUTH ABOUT THE CLEAN WATER RESTORATION ACT:
DON'T BE MISLED. CLEAN WATER AND WETLANDS ARE TOO IMPORTANT

When Congress passed the Clean Water Act in 1972, it intended the act to "protect and maintain the chemical, physical, and biological integrity of the Nation's waters." Many of our nation's waters have lost protection following the *SWANCC* and *Rapanos* U.S. Supreme Court rulings because they are considered non-navigable, ephemeral, or otherwise geographically isolated.

The geographically isolated wetlands of the Prairie Pothole Region are among the estimated 20 million wetland acres that have lost protection. These wetlands serve vital functions, providing habitat for breeding waterfowl, flood storage, and groundwater recharge. About 60% of stream miles in the United States flow intermittently and are at risk of losing Clean Water Act protection. EPA estimates that these small streams provide some of the drinking water for more than 110 million Americans. Intermittent and ephemeral streams provide habitat and drinking water, and are some of the most at-risk ecosystems in the nation. Impacts to these small streams have a multiplied downstream affect. These at risk wetlands and streams are the duck factories and fish nurseries for many watersheds around the nation.

Only about 2% of our nation's waters would be protected if the Act applied only to actually navigable waters. The other 98% would no longer be protected by the Clean Water Act from pollution and destruction. The Clean Water Restoration Act (S. 787) would restore protection to these critical waters, reaffirming Congress' original intent to protect *all* important waters.

Opponents of protecting clean water continue to recycle outlandish claims about what the Clean Water Restoration Act would do. Sportsmen's groups welcome the opportunity to set the record straight.

The truth is…The term "navigable" in the Clean Water Act has historically been interpreted broadly and has not limited the water bodies protected by the Act. Contrary to the claims of Clean Water Restoration Act opponents, removing the term "navigable" from the Act does not expand Clean Water Act jurisdiction to gutters or insignificant accumulations of water.

The goal of the Clean Water Act is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters," not to float boats. Congress borrowed the term "navigable waters" from earlier statutes, but completely redefined the term for the purpose of the 1972 Act. The House Public Works Committee stated: "The Committee fully intends the term 'navigable waters' be given the broadest possible constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes."

Before the recent Supreme Court decisions, state officials, regulated industry, and the public widely understood that the term "navigable" did not limit the water bodies protected by the law. This approach made complete sense. Small streams and wetlands play a vital role by filtering the water that eventually flows into larger rivers and lakes. If "non-navigable" headwaters are allowed to be polluted, water quality in navigable downstream waters will suffer. Congress recognized this basic fact when it passed the law in 1972, and agencies' regulations broadly protected waters of the U.S., not just waters capable of supporting

navigation. But the recent narrowly-divided Supreme Court decisions have created confusion and imposed new limits on broad protection of waters.

The Clean Water Restoration Act reaffirms the broad protections that existed for almost three decades before 2001 based on longstanding agency regulations. The Clean Water Act historically did not apply to gutters or insignificant accumulations of water, and the Clean Water Restoration Act declares its intent to restore geographical jurisdiction to that which existed before the 2001 Supreme Court ruling.

The truth is… The Clean Water Restoration Act does not expand federal jurisdiction to man-made ditches. Man-made ditches and altered stream channels were already commonly protected against unregulated pollution by the Clean Water Act before 2001. Such ditches, common in some parts of the country, typically connect streams and function as tributaries to downstream waters. Because they can transport pollutants downstream, including to downstream waters that serve as sources of drinking water, waste discharges from most point sources into ditches should be and historically have been regulated.

For example, in 1974 a federal court ruled non-navigable, artificial canals in Florida to be "waters of the United States." In 1977, EPA confirmed the Arlington Canal, an earthen irrigation ditch flowing roughly parallel to Arizona's Gila River, to be a "waters of the United States." In 2006 before the Supreme Court in *Rapanos*, the Bush administration staunchly defended the protection of the entire tributary system, ditches included: "[t]he Corps has not drawn a distinction between man-made channels or ditches and natural channels or ditches. And, of course, it would be very absurd for the Corps to do that since the Erie Canal is a ditch."

Nevertheless, the Clean Water Restoration Act explains that Congress's intent is only to cover water bodies protected prior to the 2001 *SWANCC* decision. If a water body was not subject to the Clean Water Act historically, such as certain ditches excavated in dry land, it would not be covered as a result of the Restoration Act.

The truth is… The Clean Water Restoration Act preserves all existing agricultural exemptions and does not expand regulation of normal, on-going agricultural or forestry activities. The Restoration Act specifically includes a "savings clause" that preserves all existing exemptions. The same Clean Water Act exemptions that agricultural producers have enjoyed since 1977 will remain in place under the Restoration Act, such as exemptions for:

- Established, normal farming activities
- Agricultural return flows
- Maintenance of drainage ditches
- Construction and maintenance of irrigation ditches
- Construction and maintenance of farm or stock ponds
- Construction and maintenance of farm roads

The truth is… Permitting delays and litigation are caused by the recent Supreme Court decisions and agency guidance, not the Clean Water Restoration Act. The Corps and EPA admit the system is now more complicated, confusing, and time-consuming. To enforce the Clean Water Act, the Corps and the EPA are now required to undertake time-consuming and expensive jurisdictional determinations. By reaffirming the historic scope of the Clean Water Act and returning regulatory conditions to those prior to the rulings, the Restoration Act can eliminate this confusion, speed permitting, and reduce delays rather than create them.

The truth is… Contrary to claims of Clean Water Act opponents, the Clean Water Restoration Act respects States' authority over water resources and States overwhelmingly support a strong Clean Water Act. More than 40 states have publicly opposed rolling back Clean Water Act protections. Many state water protection programs actually depend on Clean Water Act regulations, and many states prohibit their own laws from being stricter than federal law. Some of the same industry groups claiming that regulation should be left to the states have been working to thwart state protections for waters and wetlands. The Clean Water Restoration Act does not expand historic jurisdiction, and does not interfere with states' rights over water.

Bottomline…the Clean Water Restoration Act will provide clarity and consistency in regulation, as well as insurance that the chemical, physical and biological integrity of our nation's waters will be protected for the benefit of all Americans.

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