Congress of the United States
House of Representatives
Washington, DC 20515

December 11, 2009

The Honorable James L. Oberstar
Chairman, Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Oberstar:

Since the passage of the Clean Water Act in 1972, Congress and the Supreme Court have grappled with various interpretations of the language in an effort to restore and maintain the chemical, physical, and biological integrity of our nation's waters. This letter is to inform you of our concerns regarding the anticipated reintroduction of the Clean Water Restoration Act, which would greatly expand the jurisdiction of the Clean Water Act. We understand that this legislation is a priority for you and we look forward to working with you to find a solution that works for all stakeholders.

As many of our constituents come from multi-generational farm families and have been impacted by regulatory decisions, we view this legislation in the context of all other laws, regulations, and judicial opinions that affect their livelihoods and our communities. For instance, the Endangered Species Act (ESA), the Central Valley Project Improvement Act (CVPIA), the San Joaquin River Restoration Act, and various judicial opinions interpreting these laws have all been used as tools to take more and more water from farmers. Unfortunately, the environment does not always improve as a result, and in many instances, we have actually seen a decrease in the overall ecosystem, despite these efforts.

This is why we are greatly concerned about the anticipated introduction of the Clean Water Restoration Act. As we understand it, the impetus for this legislation stems from the Supreme Court's interpretation of the Corps of Engineers' jurisdiction under the Clean Water Act in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (SWANCC) and *Rapanos v. United States*. From our perspective, these decisions provided important limits to federal jurisdiction to situations that truly involved a federal nexus to "navigable" waterways. We understand that the intent of the legislation is to provide clear guidance to federal regulators. However, we feel that the language in the Clean Water Restoration Act does not "fix" the predicament and instead unnecessarily exacerbates the problem for water users and farmers by significantly expanding federal jurisdiction.

The Clean Water Restoration Act, as introduced in the 110th Congress and recently in the Senate, replaces "navigable waters of the United States" with "waters of the United States." Removing the word "navigable" from the CWA broadens the scope of Congressional control over our state's waters and wetlands, which in turn will result in the federalization of local land and water use planning. This change will also eliminate any notion that Congress originally intended the Act apply to some water bodies and not to others, while also explicitly asserting federal authority over every conceivable type of water body and wet area *"to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress..."* (emphasis added). Furthermore, the extension of jurisdiction to "activities affecting these waters" is a blank check for greater levels of regulation over everyday standard operating procedures and an open invitation to litigants who will seek to use the Act to constrain any number of activities not currently subject to federal regulation.

Our farmers engage in many activities for their livelihood that could be regulated and rendered impossible by this expansion of the Clean Water Act. For example, the Act could be used to regulate many of the irrigation tasks that are vital to food production in the Central Valley and elsewhere. Farmers must also maintain the flexibility to dig and remove temporary ditches, upgrade irrigation ditches with piping, and add fertilizer to irrigation waste in order to maximize production on the few remaining resources left to them. All of these activities would be regulated under the Clean Water Restoration Act.

Our constituents, farmers and non-farmers alike, depend on clean water and we support policies to address violations of the law, but we cannot support a federal takeover of agriculture and other activities. It is critical that any bill you introduce does not go beyond the original intention of the Act and does not inhibit the ability of farmers in our Districts to irrigate their crops in the way they have done for generations. We will continue to advocate for solutions to water quality problems in the Sacramento-San Joaquin River Delta and the San Joaquin Valley. We look forward to your cooperation on this issue.

If you have any questions or would like more information, please do not hesitate to contact us.

Sincerely,

JIM COSTA
Member of Congress

DENNIS CARDOZA
Member of Congress