



June 2, 2010

The Honorable John Cornyn  
United States Senate  
517 Hart Senate Office Bldg.  
Washington, DC 20510

Dear Senator Cornyn:

We are concerned about the continued expansion of federal powers over those that are properly within the remit of states.

HR 5088 has recently been referred to the House Committee on Transportation and Infrastructure. This bill represents yet another attempt by the federal government to grow its powers beyond those defined by the Constitution.

HR 5088 seeks to increase the Environmental Protection Agency's (EPA) regulatory capacity over all waterways in the United States. The Clean Water Act only permits the EPA to regulate "navigable waterways"—a term that has been strictly interpreted by recent Supreme Court decisions. The bill, however, would remove the term "navigable" from the definition of the types of waterways EPA may regulate, thus abrogating the Supreme Court's rulings and providing EPA preeminent regulatory authority over all bodies of water in the United States, including those waterways that are entirely within our state, intermittently dry creeks, and lakes unconnected to larger water systems.

These changes are unnecessary: Texas has a regulatory agency that oversees the state's water and waterways. The Texas Commission on Environmental Quality (TCEQ) maintains "Texas Surface Water Quality Standards," which establish explicit goals for the quality of streams, lakes, and bays throughout the state. The standards meet federal requirements, as they are written by the TCEQ in accordance with both the Clean Water Act and Texas Water Code.

Further, state law already requires TCEQ to regulate water quality in non-navigable waterways. TCEQ must specify procedures for developing site-specific standards for small unclassified water bodies: "The commission (TCEQ) by rule shall set water quality standards for the water in the state [water is defined as all groundwater including navigable or nonnavigable waterways.]... The commission has the sole and exclusive authority to set water quality standards for all water in the state." (TWC Chapter 26)

The standards are developed to maintain the quality of surface waters in Texas so that they maintain public health, promote enjoyment and protect aquatic life, consistent with the sustainable economic development of the state. Per Texas Water Code, “The commission shall consider the existence and effects of nonpoint source pollution, toxic materials, and nutrient loading in developing water quality standards and related waste load models for water quality.” (TWC Chapter 26)

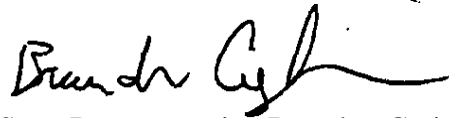
Please oppose HR 5088. The bill would undermine the state’s authority to regulate its own bodies of water and is unnecessary given that Texas already regulates all water in the state, including non-navigable waterways, in compliance with current EPA water regulations.

We thank you for your commitment to the State of Texas and sincerely appreciate your hard work on behalf of the citizens of Texas.

Sincerely,



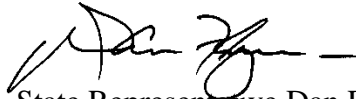
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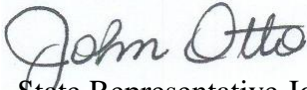
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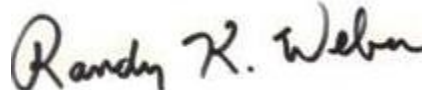
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