

ORAL TESTIMONY

Statement by the

**NATIONAL CATTLEMEN'S BEEF ASSOCIATION,
PUBLIC LANDS COUNCIL and
ARIZONA CATTLE GROWERS' ASSOCIATION**

With regard to

The Clean Water Restoration Act

Submitted to the

United States House of Representatives - Committee on Small Business

The Honorable Nydia M. Velazquez, Chairwoman

The Honorable Sam Graves, Ranking Member

By

Jim Chilton

July 22, 2009

**Oral Testimony before the Committee on Small
Business, U.S. House of Representatives
James K. Chilton, Jr.
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I am testifying on behalf of the Arizona Cattle Growers' Association, the National Public Lands Council, the National Cattlemen's Beef Association and my family.

My name is Jim Chilton and I am a 5th generation Arizona rancher. Like many western ranches, our ranch includes private property, state school trust land, three federal grazing permits and a small private land farm.

HR 2421 vastly expands the Corps of Engineers and EPA regulatory jurisdiction and will result in limitless control over all water in the nation and the dramatic expansion of bureaucracy. Ultimately, bureaucrats would control not only water, but citizens' lives and land use in all watersheds. It will affect me directly by increasing the cost of every action I take to improve our ranching operation.

The federal government already has a backlog of 15,000 to 20,000 existing 404 permit requests, why create 10's of thousands more? As the United States Supreme Court has recognized, "The average applicant for an individual Clean Water Act permit spends 788 days and \$271,596 in complying with the current process and the average applicant for a nationwide permit currently spends 313 days and \$28,915 - not counting the substantial costs of mitigation or design changes." Rapanos, 447 U.S. at 719 (plurality opinion)

Prior to the Supreme Court's Rapanos decision, I applied for a 404 permit to construct a normal dirt ranch road across a dry wash. I had to hire an attorney and environmental consultants which cost about \$40,000. The process took over a year before we abandoned the project.

We later abandoned another needed improvement that would have required culverts in two other dry washes on an existing road on our private land. We were again told that we would need a 404 permit since both washes had sand in the bottom greater than one foot wide and that the cumulative impact

would be slightly more than 1/10th of an acre in a 100-acre pasture.

I asked, how can these two dry washes impact a navigable stream since the nearest navigable stream is the Colorado River about 275 miles away? The two small dry washes run into the yellow jacket wash which runs into Arivaca wash which then runs into Brawley wash which sinks into the desert sand and disappear 40 miles from where I wanted to install two culverts. It was ridiculous how I could have affected a United States water?

The Clean Water Act of 1972 should not be expanded to include “activities affecting water.” What life activity does not affect water? It would open the door to lawsuits regarding every human use. The citizen’s suit provision would allow radical environmentalists to stop or seriously delay any farmer’s or rancher’s improvement project anywhere in the nation due to the proposed expansion of jurisdiction.

Another potential problem with the permit process is that a federal officer could harbor negative feelings about livestock raising. A rogue Corps officer could

dilly, dally and delay forever in approving a needed permit. Worse, a Corps employee may arbitrarily demand over the top environmental mitigation in exchange for a permit. An overboard demand is generally known as “greenmail.”

If any non-navigable water actually needs to be protected by federal law, the specific water that needs protection needs to be identified and then a rational and practical solution should be found for the specific problem at that location.

Livestock producers agree that we need to continue to protect the quality of our Nation’s surface water, but no expansion of federal jurisdiction is necessary to accomplish this goal.

HR 2421 pushes federal regulation to an extreme perhaps not matched in our nation’s history.

The Act must remain as is and be limited to navigable waters as defined in the Supreme Court’s Rapanos decision.