

**MINUTE ITEM**

This Calendar Item No. 49 was approved as Minute Item No. 49 by the California State Lands Commission by a vote of 2 to 0 at its 10-30-07 meeting.

**Minute Item  
49**

**10/30/07**

**CALIFORNIA STATE LANDS COMMISSION**

**Calendar Item 49:** A presentation was made to the Commission asking for their consideration of a resolution supporting S.1870 and H.R. 2421, which would uphold federal protection for waters of the United States, including tributaries, wetlands, headwaters and streams. The item was approved as presented by a 2-0 vote (Garamendi and Chiang)

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**49**

10/30/07  
P. Thayer

Consider a resolution proposed by the Controller supporting S.1870 (Feingold) and H.R. 2421 (Oberstar), which would affirm federal protections for waters of the United States, including wetlands, tributaries, headwaters and streams, through the Clean Water Act.

**CALIFORNIA STATE LANDS COMMISSION  
(PARTY)**

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**CALIFORNIA STATE  
LANDS COMMISSION**

JOHN GARAMENDI, *Lieutenant Governor*  
JOHN CHIANG, *Controller*  
MICHAEL C. GENEST, *Director of Finance*



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**PROPOSED**

**RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION  
SUPPORTING S. 1870 (FEINGOLD) AND H.R. 2421 (OBERSTAR),  
AFFIRMING FEDERAL PROTECTIONS FOR WATERS OF THE UNITED  
STATES, INCLUDING WETLANDS, TRIBUTARIES, HEADWATERS  
AND STREAMS, THROUGH THE CLEAN WATER ACT**

**WHEREAS**, the California State Lands Commission has jurisdiction over the state-owned tide and submerged lands below the mean high tide line out to three miles from the coast as well as the lands underlying California's bays, lakes, and rivers; and

**WHEREAS**, the Commission is charged with managing these lands pursuant to the Public Trust Doctrine, common law that requires these lands to be used for commerce, fishing, navigation, recreation, and environmental protection; and

**WHEREAS**, the Commission has acquired thousands of acres of valuable wetlands and lands to be restored to wetlands such as Bolsa Chica and the Cosumnes River wetlands; and

**WHEREAS**, the Commission is gravely concerned about the adverse effects greenhouse gases and climate change will have on the environmental, economic, and public value of the state lands it holds in trust; and

**WHEREAS**, wetlands have been identified as significant storehouses of carbon, possibly storing as much as 40% of global terrestrial carbon; and

**WHEREAS**, the drainage and degradation of wetlands releases large quantities of carbon dioxide (the gas that accounts for at least 60% of global warming) as well as other greenhouse gases contributing to climate change; and

**WHEREAS**, there are approximately 100 million wetland acres remaining in the continental United States, which are decreasing about 60,000 acres annually; and

**WHEREAS**, if wetlands are functioning properly, they provide not only protection against global warming, but also water quality protection, fish and wildlife habitat, natural floodwater storage, reduction in the erosive potential of surface water, and popular recreational uses; and

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**WHEREAS**, wetlands have been used to manage wastewater: as the water passes through the wetlands, suspended particles settle; pollutants are broken down by plants, microorganisms, and sediment; nutrients are absorbed; and pathogens die off; and

**WHEREAS**, wetlands are among the most biologically productive ecosystems, essential to the survival of more than one-third of the threatened and endangered species in the United States; and

**WHEREAS**, wetlands provide public use benefits, supplying opportunities for enjoying nature, hiking, biking, bird watching, hunting, fishing, and scientific study, which in the aggregate, generate several billions of dollars annually in the United States; and

**WHEREAS**, in 1972, Congress passed the Clean Water Act ("the Act") to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The Act contains Section 404, which established a permit program involving the Environmental Protection Agency and the U.S. Army Corps of Engineers ("the Corps") to regulate discharges of pollutants (e.g. waste discharge and dredged and fill materials) into waters of the United States; and

**WHEREAS**, in 1977, the Corps issued final regulations on the permit program and explicitly included in its definition of "waters of the United States" any "isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of the tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce."; and

**WHEREAS**, in 2001 and compounded by a joint decision in 2006, the United States Supreme Court, first in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)* and then in *Rapanos v. United States*, issued decisions that reduced the jurisdictional scope of the Clean Water Act, undermining decades of clean water protection, and jeopardizing the future of wetlands and other waters of the United States; and

**WHEREAS**, the opinions of the split court in *Rapanos* have created great confusion as to the actual scope of the Clean Water Act, making implementation of the Act resource intensive and subject to litigation; and

**WHEREAS**, the Clean Water Restoration Act of 2007, introduced by Senator Feingold through S. 1870, and Congressman Oberstar through H.R. 2421, seeks to end jurisdictional confusion left in the wake of the *Rapanos* case by codifying the Corps' definition of "waters of the United States," which federal agencies have used to enforce the Clean Water Act for over 30 years;

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***THEREFORE BE IT RESOLVED BY THE CALIFORNIA STATE LANDS COMMISSION***, that it supports the Clean Water Restoration Act of 2007 (S. 1870 and H.R. 2421), which would affirm federal protections for waters of the United States, including wetlands, tributaries, headwaters and streams, through the Clean Water Act; and be it further

***RESOLVED***, That the Commission's Executive Officer transmit copies of this resolution to the President and Vice President of the United States, to the Governor of California, to the Majority and Minority Leaders of the United States Senate, to the Speaker and Minority Leader of the United States House of Representatives, to the Chairs and Ranking Minority Members of the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, to each Senator and Representative from California in the Congress of the United States, to the U.S. Army Corps of Engineers, and to the Environmental Protection Agency.