

## **Congress Should Clarify, Not Expand, Clean Water Act**

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Legislation known as the Clean Water Restoration Act (CWRA) has been introduced by Senator Feingold (D-WISCONSIN), supposedly to “clarify” the Clean Water Act (“Act”). The reach and scope of the Act has kept courtrooms busy, largely because the regulatory landscape is muddled, despite recent U.S. Supreme Court decisions and guidance issued by federal government agencies.

CWRA supporters believe the new law is necessary based on their view that jurisdiction under the Act has been reduced by recent Supreme Court decisions. Some even hysterically suggest that, without CWRA, we are sure to see a reoccurrence of those days, decades past, when polluted urban rivers burst into flames.

In reality, the reach of the Act has been expanded over the decades through citizen lawsuits and ever-broadening interpretations by federal agencies and the courts. By and large, the jurisdiction asserted by federal agencies remains extensive and goes well beyond what was intended when the Act became law in 1972.

Farmers, ranchers and others in the regulated community raised major concerns about the introduced version of CWRA, which proposed to change the fundamental test for jurisdiction under the Act. Currently, “navigable” waters are subject to the Act. Under CWRA, “waters of the United States” would be subject to the Act. This new test for jurisdiction could (and almost certainly will) be interpreted to mean ANY surface water, regardless of location. Thus, the bill radically increases the reach of the Act to well beyond the scope of the current law. This reality flies in the face of arguments made by bill proponents, who claim that they are only seeking to “restore” the law to the way it was prior to the recent Supreme Court cases.

In response to these concerns, Senator Boxer (D-CALIFORNIA) worked with other Senators to develop a “compromise” bill which was passed in June by a key Senate committee on a split vote. Unfortunately, the compromise failed to attend to the issues raised by Western farmers and ranchers.

Despite assurances to the contrary, many exemptions that currently apply to agriculture are not provided under the CWRA compromise. Indeed, the “compromise” could be read to extend jurisdiction to virtually all agricultural irrigation facilities and practices, subjecting them to standards the facilities cannot be operated to meet. Such a jurisdictional extension will paralyze the ability of all water users – including municipal water managers - to efficiently operate and maintain their facilities.

I strongly urge Western senators to look closely at the history of jurisdiction under the Act. Clearly, it has expanded significantly over the past three decades, not narrowed. The CWRA should be opposed because it unnecessarily and unjustifiably expands federal jurisdiction over intrastate waters, and would have significant adverse impacts upon agricultural and municipal water providers.

CWRA will likely come to the Senate floor some time this fall. Tell your Senators to oppose the so-called compromise and to question the claims made by bill supporters that the concerns of farmers and ranchers were addressed. They were not. The bill would be a terrible law.