



The Truth About The Clean Water Restoration Act *Why Opponents' Arguments Don't Hold Water*

*As Congress considers legislation to affirm the **original** intent of the Clean Water Act, opponents of the bill are making arguments about impacts on agriculture, the scope of the law's protections and more. Below are answers to some of the most commonly used critiques of the Clean Water Authority Restoration Act (CWRA -HR 2421).*

Argument #1: The Clean Water Authority Restoration Act (CWRA) goes too far – even protecting bird baths, mud puddles, and ditches.

Fact: CWRA does not add any new protections to waters, nor would it protect any waters that were not long-protected under the Clean Water Act (CWA). The Act was never construed so broadly as to protect bird baths, mud puddles or ditches. The bill would simply reaffirm the historic scope of the Act as it has been understood by the Congress, the courts, regulators and the public since it was passed in 1972.



Argument #2: CWRA will interfere with existing agricultural activities.

Fact: CWRA specifically includes a “savings clause” that will preserve all existing exemptions, including those for ongoing farming and silvicultural activities. Section 6 of H.R. 2421 contains eight such clauses, including an exemption “relating to discharges of dredged or fill materials for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches and maintenance of drainage ditches.”

Argument #3: Major delays in permitting will result from confusion created by CWRA. This will hinder economic activities.

Fact: As public officials have testified before Congress, recent Bush Administration interpretation of Supreme Court rulings is causing confusion, delay and cost overruns. Every potential activity affecting waters or wetlands must now undergo an analysis to determine whether the particular body of water is protected by federal or state laws. Under current rules, applicants must complete a 12-page form. To figure out that form, applicants have to study an 86-page instruction booklet. The Corps of Engineers says that this increases the time it takes to get a permit by up to three months. CWRA cuts the red tape and eliminates this onerous process.

In the District of the bill's prime author, Minnesota Congressman Jim Oberstar, St. Louis County officials estimate that permitting delays caused by the recent policies will stall road construction projects by a full construction season, costing taxpayers an additional \$1 to \$2 million each year due to inflation. Oberstar says the permitting backlog will delay construction projects ranging from new homes to shopping centers. Additionally, it will cause taxpayers to spend even more to

upgrade and maintain roads and bridges. “All the delay means the cost of materials goes up. We’ve seen a 30 percent increase in the cost of cement, steel and aggregate over the past five years and it’s accelerated even more in the first six months of this year. This delay, following the Supreme Court decisions, is driving up the cost of highway construction and maintenance, delaying projects and delaying hiring and job opportunities,” said Oberstar.

Argument #4: CWRA intrudes on the powers of state and local governments within their traditional scope of responsibility.

Fact: CWRA does not affect local government authority. Since the 1970s, the delineation of federal, state and local government authority for wetland conservation has been clear. More than 30 states have opposed the recent rollbacks in Clean Water Act jurisdiction, something not likely to happen if they believed their powers were being compromised.

Argument #5: The waters in question are isolated. Concern about pollution of downstream waters is a ‘red herring.’

Fact: From a scientific standpoint, there are few, if any, “isolated” waters. The so-called isolated waters targeted for exclusion from protection are virtually all linked -- either through subsurface flows, groundwater connections, sheet flow, or other connections -- to other waters.

Argument #6: The wetlands and streams involved are insignificant.

Fact: A wide range of waters are jeopardized by recent policy. Some of the waters at risk include ephemeral streams that are primarily fed by rainfall or snowmelt, and wetlands that only remain “wet” for a limited part of the year. However, these small streams and wetlands are some of the most critical for absorbing floodwaters, filtering pollution, providing critical wildlife habitat, and providing base flow and recharge in both arid and non arid regions alike. In fact, the EPA recently stated that some 90% of surface water protection areas critical for providing safe drinking water for some 110 million Americans contain start reaches, intermittent or ephemeral streams. The Clean Water Act was intended to protect these waters from the beginning.

Argument #7: Some members of Congress say they don’t want to sponsor a bill that overturns a Supreme Court ruling.

Fact: The Clean Water Restoration act does not overturn recent rulings by the Supreme Court or lower courts. CWRA merely reaffirms the intent of the original Clean Water Act, is grounded in constitutional law and does not directly deal with the content of recent court decisions.

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