

Water bill draws intense fire

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WASHINGTON -- Depending on your viewpoint, a new bill would restore clean water protections that worked beautifully for 35 years until a court ruling threatened them -- or would massively overreach by requiring a federal permit for every puddle.

Supporters and opponents of the Clean Water Restoration Act clashed sharply at a Wednesday hearing, with neither side giving ground. Some governors of both parties, including Montana's, support the bill, while a Montana cattlemen's group and a Wyoming senator slammed it.

Without the bill, as many as 20 million acres of wetlands and thousands of miles of seasonal streams across the country will be vulnerable to pollution and destruction, testified Carol Browner, former administrator of the U.S. Environmental Protection Agency.

Browner repeatedly scoffed at the notion the bill would expand the reach of the Clean Water Act. "This does not do that in any way, shape or form," she told the Senate Environment and Public Works Committee.

But Randall Smith, testifying on behalf of the Montana Stockgrowers Association and the National Cattlemen's Beef Association, said he could see the potential for hundreds if not thousands of permits required just on his family ranch north of Dillon, Mont.

"This bill would result in the imposition of huge financial burdens on farmers and ranchers and would take away private property rights to the productive use of their land and would do little to better our environment," he testified.

The dispute centers on a proposed change in wording to the Clean Water Act. Sen. Russ Feingold, D-Wis., wrote the bill in response to a split decision by the U.S. Supreme Court in 2006 in a case challenging the Clean Water Act.

The justices issued five separate opinions in *Rapanos v. U.S.*, leaving the definition of which waters should be protected somewhat unclear.

Feingold's bill would remove the word "navigable" from the phrase "navigable waters of the United States" in the Clean Water Act. It would define "waters of the United States" as "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries."

The bill "would restore the protections of the Clean Water Act that have been jeopardized because of some activist members of the Supreme Court," said Committee Chairwoman Barbara Boxer, D-Calif. She said that 111.6 million Americans are served by water systems that receive water from streams that only run intermittently, which are now argued to be outside jurisdiction of Clean Water Act.

"His bill is simple," Boxer said. "It restores the long-established jurisdiction of the Clean Water Act to protect the waters it was intended to protect and has always protected."

She had letters of support for the bill from governors of several states, including Montana Gov. Brian Schweitzer. She noted that the bill includes a provision stating that the federal government's regulation would not change for discharges from normal farming and ranching activities, the construction of farm or stock ponds

and other activities.

But Sen. John Barrasso, R-Wyo., said there is "overwhelming objection to this bill" and said the people of Wyoming "do not want the federal government to go where this bill wants to go." Removing the word "navigable" is clearly an expansion, he said.

"The concern I hear at home is that this legislation would grant to the EPA and to the Army Corps (of Engineers) virtually unlimited regulatory control over all wet areas within a state," Barrasso said. "Let's be clear, this bill then trumps states' rights."

He argued that the bill would undo former Wyoming Sen. Malcolm Wallop's amendment to the Clean Water Act to prevent Washington from overriding state control of water. He also said the bill would slow or stop economic activity in many industries, delay construction or repair of ditches, wells, pipelines and canals and have unintended consequences that would lead to "absurd results."

Browner said the act would only clarify Congress's original intent and would not erode or undermine Wallop's measure.

"This is how we did the job on a day-to-day basis," she said. "We didn't assert jurisdiction over every single puddle, nor would this legislation cause the government to be able to assert jurisdiction over every puddle."

She also argued that it would only limit federal agencies to act as they have for 30 years.

"If you don't do something like this bill, you could end up in a situation where an overly aggressive administrator started expanding the federal government's activities."

Smith, the rancher, said he agreed with a letter sent by the Wyoming Stock Growers Association to Barrasso arguing that the bill would give the federal government an authority over private lands equal to the authority it has over public lands and national forests.

Sen. Sheldon Whitehouse, D-R.I., responded that the concerns are clearly heartfelt but that they make no sense and he knows them not to be true.

"You sound like just a wonderful, wonderful guy," he said to Smith. "And yet what you say about this piece of legislation bears absolutely no relationship to the reality of this legislation as I know and believe it to be."

Whitehouse also read from a table showing state-by-state analysis of the Supreme Court decision and said that the drinking water of 177,871 Wyomingites now risks losing protection.

Barrasso defended Smith.

"We read these bills very carefully, we think about them very carefully, and we see all the things that Mr. Smith testified about today as potential down sides, and we don't see any upside benefit to the hard-working ranchers of our community," he said.