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Senate Committee votes to support Clean Water Act changes

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The Senate Environment and Public Works (EPW) Committee approved an amended Clean Water Restoration Act (CWRA) Thursday in a 12-7 party-line vote. The committee's Ranking Member James Inhofe (R-OK) immediately predicted that "there is no chance of it passing the Senate." He charged that "Democrats are moving a bill that amounts to the biggest bureaucratic power grab in a generation and it's directed right at America's heartland. In fact, this bill is a significant part of a hostile agenda, whether it's new energy taxes from cap-and-trade or more unfunded mandates from Washington, aimed squarely at rural America."

To support his case that rural America strongly opposes changing federal law that controls water pollution, Inhofe presented the committee with a 14-page list of organizations lined up against the bill, S. 787. His list includes the American Farm Bureau Federation, the Associated Builders and Contractors, the National Stone, Sand & Gravel Association, the American Forest and Paper Association, the National Association of Home Builders, the National Association of REALTORS, the American Highway Users Alliance, and the American Association of Airport Executives.

EPW Chair Barbara Boxer (D-CA) responded to Inhofe forcefully, entering her own list into the record to show that the bill's long list of supporters includes the National Association of Wheat Growers, National Farmers Union, leading hunting and fishing organizations, and California's Republican Governor Arnold Schwarzenegger. She added that Inhofe and other Republicans seemed to be objecting to the terms of the original bill sponsored by Sen. Russ Feingold (D-WI) rather than the compromise substitute bill co-sponsored by herself along with Sens. Max Baucus (D-MT) and Amy Klobuchar (D-MN).

Following the committee vote, Nebraska Farmers Union President John Hansen, Chair of the NFU's Legislative Committee, told *Agri-Pulse* that NFU supports the Baucus/Klobuchar/Boxer bill because "We know that this is a contentious issue and we feel that the amendment was a good-faith effort to deal with the issue. . . We think the amendment protects agriculture's primary interests."

Inhofe and other Republicans charged that by amending the Clean Water Act to replace references to "navigable waters of the United States" with "waters of the United States," the bill would "vastly expand" federal jurisdiction at the expense of state jurisdiction and

private property rights. The National Cattlemen’s Beef Association (NCBA) warns that “by removing the word “navigable” from the definition, the CWRA would expand federal regulatory control to unprecedented levels, essentially putting stock tanks, drainage ditches, any puddle or water feature found on family farms and ranches, potentially even ground water, under the regulatory strong-arm of the federal government.”

Baucus and Klobuchar responded to such charges by explaining that they are well aware of the need to protect farmers and ranchers. They pointed out that their bill includes specific exclusions:

- “Waters of the United States do not include prior converted cropland.”
- “Water treatment systems, including treatment ponds or lagoons designed to meet the requirements of this Act (other than cooling ponds which also meet the criteria of this definition) are not waters of the United States.”

Boxer added that rather than expanding federal jurisdiction, the legislation now being sent to the full Senate simply restores the original intent of congressional legislation as it was passed during the Nixon administration. She said that controversial, razor-thin rulings by the U.S. Supreme Court in 2001 and 2006 created both confusion and serious pollution risks affecting 20 million acres of wetlands and thousands of miles of streams.

Inhofe acknowledged in his opening remarks that Republicans wouldn’t be able to stop the legislation being approved by the committee. But Republicans did their best to slow progress. Sen. John Barrasso (R-WY) insisted on votes on a string of amendments which attempted to remove Clean Water Act jurisdiction over, first, streams, then in successive amendments, mudflats, prairie potholes, wet meadows, natural ponds, agricultural production, livestock production, and finally groundwater. All of Barrasso’s amendments were voted down in party-line votes, leading Boxer to note that Barrasso was a “glutton for punishment” – and to urge the Republicans to read the specific exclusions already part of the bill. She added that “we want exemptions that make sense, but we don’t want to create enormous loopholes for polluters.”

Sen. Kit Bond (R-MO) called the bill “a vast expansion of the jurisdiction of the Corps of Engineers and the EPA. It would remove the limitation ‘navigable’ in the Clean Water Act and replace it with ‘waters of the United States.’ This seemingly minor change would give the federal government the power to regulate everything liquid, from farm ponds to storm water retention basins, to roadside ditches. . . even to a puddle of rainwater.”

Bond said that “I continue to support protecting our wetlands and our water but I believe this is an unconstitutional, unlimited federal power to run amuck over our farms and farmlands and cities and to replace planning and zoning at the local level with federal dictation.”