

Hicks-Ray Associates



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TO: WESTCAS Membership

FROM: Fred B. Hicks and Tom Ray

SUBJECT: Updates on Clean Water Act Related Legislation

One of the hot button issues between many Members of Congress and the Obama Administration has been what some perceive as an expansion of the powers of government under the Clean Water Act. Earlier this week, the House Transportation and Infrastructure Committee adopted three separate pieces of legislation to better define the limits on the power of the Executive Branch when it comes to CWA enforcement:

- HR 2541, the Regulatory Consistency Act prohibits USEPA from requiring an NPDES permit for a discharge resulting from “silvaculture” activities performed by nursery operators, site preparation, harvesting operations, surface drainage and road use and construction and maintenance where there is run-off.
- HR 4278, the Preserving Rural Resources Act “amends the CWA and replaces a requirement that a permit be obtained for any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of such waters into a use to which it was previously subject and where the flow or circulation of such waters may be impaired or the reach of such waters may be reduced with a requirement that a permit be obtained for any such discharge that is not currently exempted from permit requirements.”
[Congressional Research Service Summary]
- HR 596, the Farmers Privacy Act limits the use of Ariel surveillance by prohibiting the Administrator of USEPA from conducting surveillance from the air of agricultural land under the CWA unless voluntary written consent is obtained, prior written notice provided or if USEPA has obtained a certificate of reasonable suspicion before conducting the surveillance.

Although much of this legislation does not apply to public agencies that most WESTCAS members are associated with, the CWA implications for all stakeholders are self-evident, particularly in light of EPA’s policy of expanding its authority and outreach under the CWA.

Finally, Representative Earl Blumenauer of Oregon introduced HR 6249 this week. This is the Water Protection and Reinvestment Act of 2012 and proposes to “raise revenue by

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assessing small fees on a broad base of those who use water and contribute to water pollution.” WESTCAS members are familiar with this concept since Mr. Bleumenaer has introduced similar bills over the past several years.

The challenge for this legislation is that it proposes to raise billions of much needed dollars for the Clean Water SRF and do so each year by assessments from the pharmaceutical industry and others who discharge into the “waters of the US.” HR 6249, and its earlier versions have attracted the support of a wide spectrum of water community interest groups and the strong opposition of the business community which opposes a user tax to fund water supply.

Because it addresses taxes as well as the CWA, HR 6249 has been given a triple Committee referral to the Transportation and Infrastructure, the Ways and Means, and the Science and Technology Committee. It is difficult for us to see how it will be able to navigate its way through three different committees and past the strong opposition of the business community.

These four bills are a reminder of the coming battles between the three branches of government concerning the reach of the Clean Water Act.