Producing the coal, metals and minerals that are critical to America's economy and national security takes an extraordinary amount of time, money and planning. Obtaining the necessary permits in a timely way is critical to the success of mining projects and the many rural communities they support. Our ability to compete in today's worldwide mineral and energy markets in large part depends on an efficient regulatory program. The "Clean Water Restoration Act," sponsored by Rep. James Oberstar (D-Minn.) in the House and Sen. Russ Feingold (D-Wis.) in the Senate, expands federal jurisdiction to areas never before considered within the purview of the federal government. Expanding the scope of federal waters would place a heavy burden on an already overburdened Clean Water Act (CWA) permitting program. Consequently, NMA members, and the American public, have a strong interest in maintaining the important federal-state balance struck by the original CWA.

Legislation

Legislation relating to water resources that has been introduced:

- The "Clean Water Restoration Act" (H.R. 2421), sponsored by House Transportation and Infrastructure Committee Chairman James Oberstar (D-Minn.). This bill is opposed by the National Mining Association.
- The "Clean Water Restoration Act" (S. 1870), a companion bill to H.R. 2421, sponsored by Senator Russ Feingold (D-Wis.). This bill is opposed by the National Mining Association.

Background

The Oberstar-Feingold "Clean Water Restoration Act" would give the federal government jurisdiction over every piece of potentially wet ground in the country. Currently, isolated, intrastate waters are preserved and protected by state and local governments, but by removing the word "navigable" and its commerce clause underpinnings from the definition of waters of the U.S. under the Clean Water Act, this bill would sever the federal-state partnership created by the Clean Water Act and give the U.S. Army Corps of Engineers authority over all state and local water and land use decisions.

State primacy regarding water rights, including the issuance or cancellation of permits, regulation of water quality, requirements for mitigation, placement of points of diversion, changes in beneficial use—all normally within the states' authority—would be preempted by the federal government. By vastly expanding federal jurisdiction, the "Clean Water Restoration Act" would exacerbate a federal permitting process that is already backlogged by two to three years and 20,000 to 30,000 permit applications. As such, this legislation would have a detrimental impact on the ability of mining operations to obtain timely permits and meet the nation's energy and minerals needs.

Proponents of the legislation assert that H.R. 2421 restores the original intent of the CWA and clarifies CWA jurisdiction. It does neither. Instead, H.R. 2421 would, for the first time:

- Grant the Environmental Protection Agency (EPA) and the Corps jurisdiction over all "intrastate waters"—essentially all wet areas within a state, including ground water, ditches, pipes, streets, municipal storm drains, gutters and desert features subject only to undefined constitutional limits.
- Grant EPA and the Corps authority over all "activities affecting these waters" (private or public), regardless of whether the activity is occurring in water or whether the activity actually adds a pollutant to the water.
- Conflict with CWA sections 101(b) and 101(g), which state Congressional intent to "recognize, preserve, and protect the primary responsibilities and rights of the States" to control the development and use of local land and water resources and to "allocate quantities of water within [State] jurisdiction."
- Place critical regulatory decisions in the hands of constitutional lawyers and result in costly litigation regarding the scope of "intrastate waters," the extent of "activities affecting these waters," and the limit of Congress' authority under the Constitution.

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