

Summary of Baucus – Klobuchar – Boxer Amendment to Clean Water Restoration Act

Purposes

The amendment adds language to the purposes section making it explicit that the purpose of the CWRA is to return to the pre-SWANCC, pre-Rapanos scope of jurisdiction, and it deletes language that some have asserted could be interpreted to expand the jurisdiction of the statute beyond that point.

Findings

In general, the findings section has been amended to retain only those findings required to establish Congressional intent with regard to the waters that are within the scope of the Act and Congress's authority under the Constitution, while specifying certain actions that the bill does not take. This section makes it clear that this bill overturns SWANCC and Rapanos without expanding the scope beyond its scope before SWANCC and Rapanos. It states that ground waters are not considered waters of the United States under the Clean Water Act, and it reaffirms long standing state authority to make decisions related to water allocation.

Definition of Waters of the United States

The amendment strikes the language in S. 787 stating that the waters listed in the definition are included in the Clean Water Act "*...to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.*" This phrase is the source of interpretations that S. 787 as introduced could have been construed to expand the jurisdiction of the statute beyond its scope before the SWANCC and Rapanos decisions. Its deletion is consistent with the purpose of restoring the scope of the Act to the status quo prior to SWANCC.

The amendment codifies the existing regulatory exclusions for prior converted cropland and man made waste treatment systems, thus strengthening these protections. These exclusions remove these waters from the jurisdiction of the statute completely, strengthening the existing protections for the agriculture industry by removing prior converted cropland from the scope of the statute.

Permitting Exemptions

The amendment retains and modifies the savings clause in the underlying bill to ensure that the existing exemptions in the Clean Water Act that have protected farmers for decades from permitting requirements remain intact, while deleting the unnecessary language that had summarized those exemptions. A list of the existing exemptions is attached.

Regulations

The amendment requires EPA and the Army Corps to promulgate such regulations as are necessary to implement the amendment and explicitly provides that in such rulemaking, the term "waters of the United States" shall be construed consistently with the scope of jurisdiction before the SWANCC and Rapanos decisions and with Congress's legislative authority under the Constitution.

Organizations Supporting Baucus – Klobuchar – Boxer Amendment to Clean Water Restoration Act

National Association of Wheat Growers	Association of State Wetland Managers
Montana Grain Growers Association	Coastal States Organization
National Farmers Union	Environmental Council of the States
Montana Farmers Union	The Izaak Walton League of America
Minnesota Farmers Union	National Wildlife Federation
California Farmers Union	American Farmland Trust
California Association of Sanitation Agencies	National Association of State Foresters
American Public Works Association	California Environmental Protection Agency
Trout Unlimited	National Ground Water Association
Montana Trout Unlimited	American Sportfishing Association
Ducks Unlimited	Delta Waterfowl
Pheasants Forever	Federation of Fly Fishers
Theodore Roosevelt Conservation Partnership	National Trappers Association
National Association of Clean Water Agencies	North American Bear Foundation
Association of Fish & Wildlife Agencies	North American Grouse Partnership
Association of State and Interstate Water Pollution Control Administrators	Quail Forever
Association of State Floodplain Managers	Whitetails Unlimited
	Wildlife Management Institute
	The Wildlife Society

Clean Water Act Section 402 Point Source Permit Exemptions – Current Law

(l) Limitation on Permit Requirement.--

(1) **Agricultural Return Flows.--**The Administrator shall not require a permit under this section, for discharge composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

[402(l)(1) designated by PL 100-4]

(2) **Stormwater Runoff From Oil, Gas, and Mining Operations.--**The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

[402(l)(2) added by PL 100-4]

Clean Water Act Section 404 Wetlands Permit Exemptions – Current Law

(f)(1) Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material--

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).