

# CLEAN WATER ACT JURISDICTION

## **Issue:**

We expect legislation to be introduced that would expand federal Clean Water Act (CWA) jurisdiction to all intrastate waters including groundwater, ditches, culverts, pipes, desert washes, sheet flow, erosional features, farm and stock ponds and prior converted cropland. H.R. 2421, the Clean Water Restoration Act of 2007 (Oberstar) was heard in the House Transportation and Infrastructure Committee on April 15, 2008.

## **Background:**

If legislation deleting the term “navigable” from the CWA were to become law, it would significantly change the intent of Congress when it enacted the CWA. In 1972, Congress enacted the CWA to restore the chemical, physical and biological integrity of our Nation’s lakes, streams and rivers. Based on the Act’s, plain language and its legislative history, Congress did not intend to directly regulate groundwater.

H.R. 2421 (The Clean Water Restoration Act) created sweeping new federal authority which could extend to groundwater and potentially all activities affecting groundwater. Most courts have concluded that the current Act does not convey federal jurisdiction over groundwater and have held that Congress did not intend to regulate discharges to groundwater under the CWA.

H.R. 2421’s findings overlooked important state-federal balance struck by the CWA. The term intrastate waters includes waters under State jurisdiction and most states specifically list groundwater in the definition of waters of the State. The legislation would have granted the Environmental Protection Agency and the Army Corps of Engineers, for the first time, jurisdiction over all intrastate waters – essentially all wet areas within a state, including groundwater, ditches, pipes, streets, municipal storm drains, gutters, desert features and farmland.

Although H.R. 2421 contained a “savings clause,” it did not address agriculture’s concerns. The clause 1) Did not exempt any waters or areas from broad jurisdiction; 2) Failed to include important regulatory exemptions for prior converted cropland and waste treatment systems; 3) Limited the agencies’ abilities to adopt future regulatory exemptions; and, 4) Paraphrased the existing statutory exemptions, raising questions regarding Congressional intent with respect to the full scope of the existing statutory exemptions – including omitting Section 502(14) which exempts agricultural stormwater discharges.

## **Proposed Position:**

Winegrape Growers of America support limiting CWA authority to navigable streams and flowing waterways that have continuous flow. Staff and consultants should work closely with the Waters Advocacy Coalition (see attached policy position paper; statement of policy; and listing of members).

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