



Legislative News

March 1993

Watershed Approach Receives Strong Endorsement at Browner Hearing

Watershed protection themes were prevalent at the confirmation hearing for Carol Browner. Browner, who formerly served as Florida's Secretary of Environmental Protection and as an aide to then Senator Al Gore, stressed the need for greater creativity and ingenuity in tackling environmental problems. The need to go beyond EPA's traditional "command and control" approach to water pollution was emphasized. Geographic targeting, pollution prevention and market incentives were several themes that committee members advocated and the Administrator endorsed.

David Durenberger (R-MN) was one Senator who championed watershed protection. In his opening statement, he said,

"We have made a start on the ecosystem approach under the Clean Water Act with the work in the Chesapeake Bay and the Great Lakes and through the National Estuary Program. Adding a thorough watershed component to the basic structure of the Clean Water Act is an additional step we must take."

Durenberger added, "We need an integrated view of each watershed if we are to make the best choices using our limited resources."

In her testimony, Browner noted the importance of looking at receiving bodies of water as entire ecosystems, including the flora and fauna, when developing environmental solutions.

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Wetlands Bill Introduced

On January 5th, Representative Don Edwards (D-CA) introduced H.R. 350, the Wetlands Reform Act of 1993. The bill, which has 42 cosponsors, has been referred to the House Committees on Merchant Marine & Fisheries, Public Works and Transportation, and Ways and Means. It is very similar to legislation Edwards introduced in the 102nd Congress that received strong backing by environmental groups. One change is that this year's bill includes a new section with tax incentives to encourage protection of privately-owned wetlands. In addition, since the National Academy of Sciences (NAS) study on wetlands delineation is now underway, H.R. 350 states that any revisions to the Federal Delineation Manual shall consider the findings of the NAS study (last year's bill had a provision mandating the study).

Like last year's proposal, H.R. 350 would expand the activities regulated under Section 404 to include draining, flooding, excavation and driving pilings, in addition to discharging fill or dredged materials. It also would strengthen the role of the Fish and Wildlife Service and National Marine Fisheries Service in the permit process. In addition, the bill would require EPA and the Army Corps of Engineers to report on the overall effects of the Section 404 program as well as on the success of mitigation efforts. And it authorizes a pilot program for wetlands restoration.

In an effort to expedite the permit process, H.R. 350 would require the Corps to devote some district staff exclusively for "small projects" (based on size of discharge and applicant). In addition, it would require the General Accounting Office to

Wetlands Bill - Continued on Page 4

Action on CWA a Priority

House and Senate environmental committees are saying that CWA reauthorization is near the top of their legislative agenda. The reauthorization of Superfund, however, will be one competing priority because the House Public Works Committee has jurisdiction over both laws.

Whether to continue and perhaps increase funding for the State Revolving Loan Fund, which is now being considered as a provision in the Clinton economic package, is expected to be a key issue in this year's reauthorization debate. Alternative funding sources, such as a proposal offered last session by Merchant Marine Committee Chairman Studts to tax toxic polluters and pesticide manufacturers, will probably receive serious attention.

Despite efforts to depoliticize the wetlands issue by mandating the National Academy of Sciences' study, the issue still remains very controversial and will most likely be one of the most difficult issues facing lawmakers this year. Despite 19 hearings last session on various clean water issues, the House Public Works and Transportation Committee failed to report a bill. A committee aide attributes the inaction to the inability to reach any kind of consensus on the wetlands issue.

How to address polluted run-off will also be at the center of the CWA debate. Some lawmakers have expressed interest in expanding the Coastal Zone Act Reauthorization Amendments (CZARA) to non-coastal areas to deal with nonpoint sources. In addition, it is expected that watershed management will be an issue for CWA reauthorization.

"Legislative News" is a regular newsletter of the Office of Wetlands, Oceans and Watersheds (OWOW). Its purpose is to provide an overview of those legislative issues and actions that are particularly relevant to OWOW programs. Any comments regarding its content should be directed to Patty Scott of OWOW at FTS 260-1956.

President Proposes Increased Funds for Watershed Resource Restoration

In his State of the Union address before a joint session of Congress on February 17th, President Clinton outlined an economic stimulus package, which included approximately \$47 million in additional FY 1993 Clean Water Act section 319 nonpoint source (NPS) grants for watershed resource restoration. The President's proposal, which must first be approved by Congress before any funds are expended, is intended to help create new jobs by investing in natural infrastructure projects that improve water quality, increase and improve habitat for fish and wildlife, and improve recreation. The grants would be targeted to fund the full range of nonpoint source projects that can contribute to watershed restoration. The program would thus encompass appropriate wetlands restoration, coastal/estuarine and clean lakes projects.



EPA estimates that the proposal could create as many as 2,400 jobs, which would include about 1,400 direct and indirect jobs and a possible 1,000 induced jobs.

Because many states may have difficulty meeting the 40 percent match currently required under Section 319, efforts are underway to waive the matching requirement so that the new funds could be channeled immediately to address the most pressing habitat and water quality problems in all states. EPA is working to ensure that states will be enabled to support the best projects.

President's Proposal - Continued on Page 4

The concept that economic growth and environmental protection are not mutually exclusive, a theme from the Clinton-Gore campaign, was discussed, and Browner and Committee members spoke of the idea enthusiastically. The Republicans on the committee were particularly pleased to hear of Browner's pledge to bring all sides to the table, including the business community as well as the public, in formulating environmental policy. As Administrator, Browner promised to be decisive and timely and to do her best to ease regulatory burdens without sacrificing environmental protection.

On the issue of wetlands, Browner told the Committee she was proud of her record in Florida. She said she successfully protected wetland resources without stopping property development during a recession. She described how she helped to engineer an agreement between the state of Florida and the Walt Disney Corporation and cited it as an example of her ability to balance economic growth and environmental protection. Under that agreement, Disney was permitted to build on some existing wetlands in exchange for the transformation of an 8,500 acre ranch into a wildlife refuge. The refuge, she noted, serves as home to 12 endangered species.

With regard to the delineation manual, Browner said she is optimistic that the National Academy of Sciences' study will help to resolve many of the controversial issues surrounding the wetlands debate. When asked about the value of created wetlands, Browner said that in Florida while a perfectly good wetland can be constructed, they have found that the money is much better spent on restoring and mitigating impacts on existing wetlands.

On the issue of contaminated sediments, particularly in the Great Lakes, Browner said that the challenge is to find a cost-effective solution. Moreover, she said that we must look at the unique character of the individual system and bring all considerations to the table. She added that no single methodology will work nationwide.

When asked about the relationship of nonpoint source pollution and agriculture, Browner said we must reach out to all affected groups, including farmers, who have historically been left out of the process. She said we must do a better job of communicating with farmers — using people who speak their language.



Several Senators made a plea for increasing appropriations for the State Revolving Loan Fund. They expressed concern that there remains \$100 billion in sewage treatment plant needs nationwide, which does not include the additional funds needed to address combined sewer overflows (CSOs). While Browner said she could not comment at the time on the Administration's position, she said one of the things she learned from the hearing was the importance of the SRF, which she promised to share with President Clinton and his budget advisors.

Inouye to Introduce Watershed Bill

Hawaiian Senator Daniel Inouye (D-HI) is circulating for comment a bill he intends to introduce in March calling for a watershed management approach to protect fragile coral reef ecosystems. Entitled the Coral Reef Ecosystem Protection Act, the bill would require NOAA, in consultation with EPA, to identify coral reefs and adjacent waters (including waterbodies connected by currents, watersheds & airsheds) that would be subject to special management measures. Coral reefs in Florida, Hawaii, the Gulf of Mexico, Puerto Rico, American Samoa, Guam, Northern Mariana Islands and the Republic of Palau would be targeted for protection and restoration.

Under the proposal, within two years after enactment, EPA would be required to develop habitat quality criteria to ensure protection of coral reef ecosystems. In addition to adopting biocriteria and monitoring programs, states would be encouraged to include specific policies, including Best Management Practices (BMPs), to protect coral reefs as part of their programs developed pursuant to the Coastal Zone Management Act of 1990.

Inouye Proposal - Continued on Page 5

determine what additional personnel and resources are needed by the Corps and EPA in order to improve the process. It also would require EPA and the Corps to make improvements in wetlands education and outreach programs by using what-



ever funds necessary and would establish a training and certification program for private sector wetlands delineators.

Finally, the bill would provide favorable tax treatment for landowners who donate wetlands to a Wet-

lands Stewardship Trust or a federal or state conservation agency. It also would exclude from gross income any funds received from "compatible uses" of wetlands, which would include activities such as fishing and hunting, but not activities that degrade the functions or values of the resource.

cosponsors

Dole Introduces Property Rights Bill

On January 21, Senate Minority Leader Robert Dole introduced legislation to require Federal agencies to assess whether Federal regulations violate constitutional property rights. The bill would codify in law the current executive order on private property takings. The measure, S. 177, is identical to a provision former Senator Steve Symms (R-ID) introduced in the 102nd Congress and successfully attached to two major bills — a highway bill and a bill to elevate EPA to Cabinet-level. The provision in the highway bill was, however, stripped by the House rules committee before reaching the House floor for a vote and the Cabinet bill was never acted on by the full House. Dole may also try to attach the measure to this year's EPA Cabinet bill, which is expected to receive swift action. The bill has 12 cosponsors and has been referred to the Government Affairs Committee.

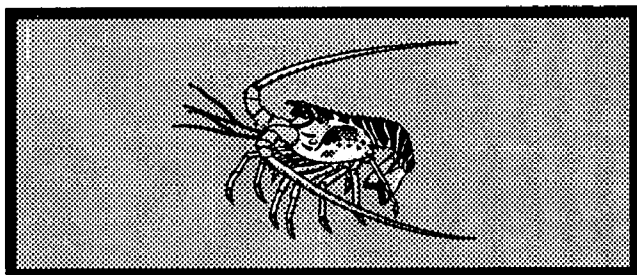
The President's plan also includes an additional \$845 million for the State Revolving Loan fund (SRF). These monies would be used for sewage treatment plant construction, which is expected to generate another 50,000 jobs.

Carol Browner appeared before the House Appropriations Subcommittee on Veterans Administration, Housing and Urban Development and Independent Agencies on February 24th to testify in support of the President's package. While most of the committee members were supportive of the proposal, several committee members expressed concern about waiving the state matching requirements under the SRF and Section 319. Browner explained that the waivers would only be issued this one time in order to get the money to the local communities as expeditiously as possible to create jobs. In addition, concerns were expressed about how quickly the funds could be expended. Browner expressed confidence that the money would be spent on "ready to go" projects, which she said would have tremendous environmental benefits.

Hayes Bill Expected Soon

Representative Jimmy Hayes (D-LA) is expected soon to reintroduce his bill from last Congress, which would restrict EPA's role in the wetlands regulatory process, require ranking and categorizing of wetlands according to their ecological worth, and require that landowners be compensated when they are restricted from developing wetlands on their property. While Representative Hayes is said to be considering revisions to last year's proposal, H.R. 1330, an aide to Hayes said that the Congressman is pleased with the basic approach in the original bill, which attracted 167 in the last Congress.

Moreover, the bill would require states to develop and submit for EPA approval a watershed management plan to control nonpoint sources of pollution, which in conjunction with point source controls, would assure the attainment of water and sediment quality standards. The program would be developed in cooperation and coordination with local, regional and interstate entities and be subject to public comment and review. EPA would be required to publish guidelines specifying elements of the watershed management program, including descriptions of appropriate "watershed management measures" for various categories and subcategories of nonpoint sources. Under the Inouye proposal, management measures is defined to mean "economically achievable measures" to control existing and new categories of nonpoint sources, which would reflect the greatest degree of pollution reduction achievable using the best available technologies, processes, siting



criteria, etc. The bill also calls for enhanced integration of various Federal, state and local efforts relating to coral reefs. In an effort to protect reefs from physical damage, the bill would impose significant civil penalties on individuals who operate vessels in a manner that causes damage to a coral reef.

Senator Inouye has also introduced S. 137, a bill to conduct a study of algae blooms off the coasts of Maui and Hawaii. This legislation seeks to explore the causes of the blooms and to eradicate them by exploring alternatives for the improved management of chemicals present in wastewater treatment programs. The algae blooms are contributing to the destruction of the precious coral reef ecosystem and the fish and wildlife that depend on the reefs for survival.

Browner appears before Senate Committee in Support of EPA-to-Cabinet Bill

On Thursday, February 18th, EPA Administrator Carol Browner testified before the Senate Government Affairs Committee in support of legislation to make the EPA a Cabinet Department, arguing that the Agency's mission entails a "holistic perspective that crosses traditional department boundaries." President Clinton, who made a campaign pledge to elevate the Agency, has asked Congress to act swiftly on the measure. An EPA-to-Cabinet level bill passed the Senate last year, but floundered in the House largely because of extraneous provisions attached to the measure.

While all the Senators on the committee unanimously endorsed elevation, there is disagreement over whether it should be a "clean bill," or whether it should include some new functions and mandates for the new Department. Senator John Glenn's (D-OH) bill would redesignate the Agency as the Department of the Environment, and it would establish a new bureau of environmental statistics within the Department. In addition, it would create a commission to study environmental policy and would call for an international gathering on energy efficiency to be sponsored by the U.S. Glenn's proposal would also prohibit the department from contracting with private firms to do those functions that are inherently "governmental."

Senator William Roth of Delaware, the committee's ranking minority member, offered an alternative bill, S.380, which he argues is a more "stripped down version." S. 380, which would redesignate the Agency as the Department of Environmental Protection, contains fewer mandates and requirements for new functions.

In her testimony, Browner noted the President's support for EPA Cabinet status, but said the Administration would support some technical changes to the Glenn measure. The subcommittee is scheduled to meet again this week to markup legislation.

Beach Closure Bill Reintroduced

Representative William Hughes (D-NJ) reintroduced legislation that would require uniform procedures for beach testing and monitoring in our coastal recreation waters, including the Great Lakes. Representative Hughes argues that the Beach Assessment, Closure, and Health Act of 1993 (also known as the B.E.A.C.H. bill) is necessary since states have their own methods of testing and evaluating the quality of recreational waters and offer differing degrees of protection to the public. Moreover, according to Hughes, some states do not provide any protection. Because of its strict standards, Hughes' home state of New Jersey is often forced to close its beaches.

The bill would require EPA to issue criteria for pathogens in coastal recreation waters within 18 months after enactment, including specific numeric criteria to calculate for short-term increases in pathogens from rainfall, malfunctions of sewage treatment plants, or other causes. States would be required to adopt these standards, and in the event they were exceeded, states would be required to notify the public (e.g. the posting of signs) and local government(s) of the nature and extent of the violation. In addition, the bill would require EPA to publish regulations on specific methods to be used by the states to monitor coastal recreation waters. One change from the bill originally introduced last year is that there is now an exemption from the monitoring requirements for certain coastal areas if EPA determines the exemption would not impair water quality standards or impair the public health.



Who's Who in the 103rd Congress

With 110 new House Members (one quarter of the House) and 14 new Senators, the 103rd Congress has more new faces than any other Congress since 1948. There have also been significant changes in full committee and subcommittee chairmen with jurisdiction over OWOW programs, as well as some major committee reorganizations.

Gerry Studds (D-MA), who served as acting chairman of the House Merchant Marine Committee after Representative Walter Jones' death last year, will continue chairing the full committee, with Congressman Jack Fields (R-TX), as the ranking minority member. In the opening days of the 103rd Congress, Chairman Studds reorganized the Merchant Marine Committee by eliminating the Subcommittee on Oversight and Operations and dividing the former Subcommittee on Fisheries and Wildlife Conservation and the Environment into two subcommittees. The newly created Subcommittee on the Environment and Natural Resources will be chaired by Studds, along with ranking minority member Jim Saxton (R-NJ). They will have jurisdiction over most water resource issues, including coastal and marine pollution, and wetlands and habitat conservation. The other new committee, the Subcommittee on Fisheries Management, will be chaired by Thomas Manton (D-NY), along with ranking minority member Don Young (R-Alaska).

Billy Tauzin (D-LA) will continue chairing the Subcommittee on Coast Guard along with Howard Coble (R-N.C.) as the ranking minority member; William Lipinski (D-Ill) will head up the Subcommittee on Merchant Marine, with Herbert Bateman (R-VA) as ranking minority member; and Solomon Ortiz (D-TX) will chair the Oceanography Subcommittee along with Curt Weldon (R-PA) as ranking minority member.

On the House Public Works and Transportation Committee, there were three key vacancies due to the retirement of Full Committee Chairman Robert Roe (D-NJ), ranking Republican John Paul

Hammerschmidt, and Water Resources Subcommittee Chairman Henry Nowak (D-NY). Norm Mineta (D-CA), who has been active on transportation issues, assumes chair of the full committee. The fact that Mineta is an original cosponsor of the Edwards wetlands bill is noteworthy, given the important role his committee plays in CWA reauthorization and in particular, the Section 404 debate. Bud Schuster (R-PA) will serve as the ranking minority member on Public Works.

Doug Applegate (D-PA) replaces Rep. Nowak as chair of the Subcommittee on Water Resources. Applegate supported H.R. 1330, the Hayes wetlands bill, in the 102nd Congress. Sherry Boehlert (R-NY) will be the ranking Republican on the subcommittee.

On the Senate side, the Senate Environment and Public Works Committee has a new chairman due to the departure of Daniel Patrick Moynihan (D-NY), who left to chair the Senate Finance Committee. Max Baucus (D-MT) has assumed Chairmanship of the full committee, with Senator John Chafee (R-RI) continuing his role as ranking minority member.

In an effort to even out the workload and balance its membership, Chairman Baucus announced a reorganization of the subcommittees. The former Subcommittee on Environmental Protection will now be named the Subcommittee on Clean Water, Fisheries and Wildlife. It will have jurisdiction over CWA reauthorization and the Endangered Species Act and will inherit jurisdiction over ocean dumping, the Safe Drinking Water Act (SDWA) and groundwater protection, which were all previously handled by the superfund subcommittee. Sen. Bob Graham (D-Fla) will head up the newly formed subcommittee with Chafee as the ranking minority member. The jurisdictional change has prompted discussion of whether CWA and SDWA should be merged into a single law.

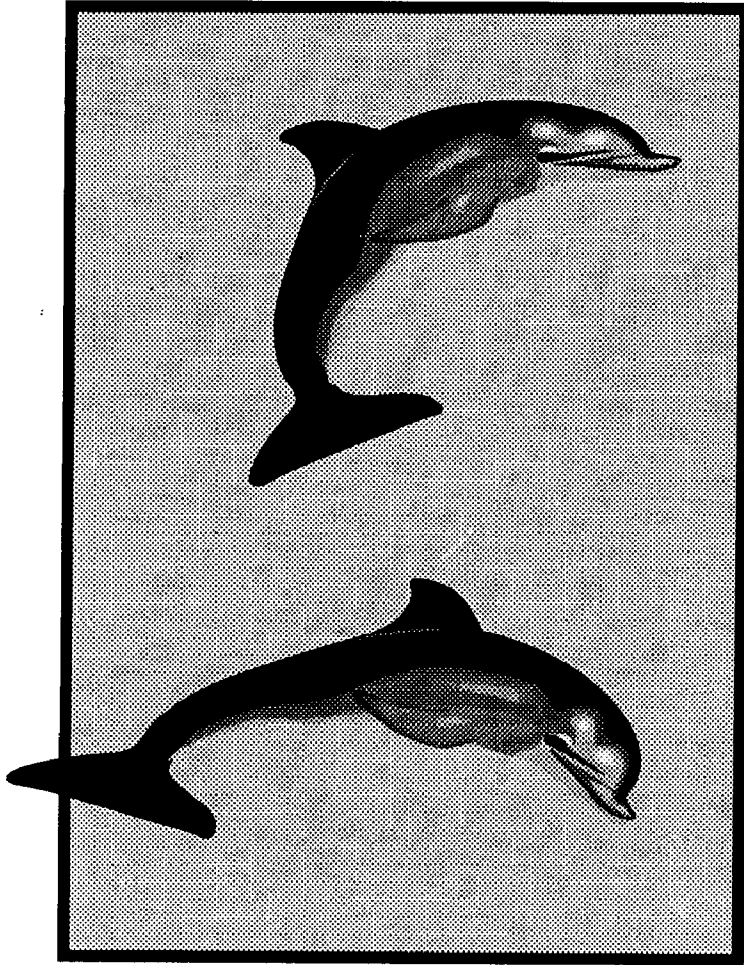
White House Office of Environmental Policy

President Clinton is seeking to eliminate the Council on Environmental Quality (CEQ) and to replace it with his newly formed Office of Environmental Policy. The CEQ, however, cannot be abolished without Congressional approval, and there is some opposition to the move on Capitol Hill. Clinton announced the formation of the new office on February 8th. Its director, Katie McGinty, will attend meetings of the National Security Council, the Domestic Policy Council and the new Economic Council, in order to ensure environmental issues are given proper attention in formulating domestic and international policy.

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New California Estuary Program Proposed

Prior to resigning from Congress to become Office of Management and Budget (OMB) director, Leon Panetta introduced two bills to provide protection to the California coastline. H.R. 294 would add Morro Bay, California to the priority listing of the National Estuary Program, and H.R. 293 would designate the central waters of the California coastline as a National Marine Sanctuary. Given the importance of these proposals to Panetta's former district, they may be pursued by another member of the California delegation or Panetta's replacement.



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