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SENATE MEMORIAL 46

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Steve Komadina

A MEMORIAL

REQUESTING CONGRESS TO DEFEAT UNITED STATES H.R. 2421 AND
UNITED STATES S. 1870, THE SO-CALLED CLEAN WATER RESTORATION
ACT.

WHEREAS, the federal Clean Water Act amendments contained
in United States H.R. 2421, which is being co-sponsored by
Congressman Tom Udall, proposes to give the federal government
control over virtually all waters of the United States; and

WHEREAS, the legislation, co-sponsored by Representative
James Oberstar (D-Minnesota), would expand the federal
government's control over western water resources to such an
extent that, even periodically, wet ground would come under
federal hegemony; and

WHEREAS, this bill represents one of the most expansive
power grabs over western states and the west's resources in

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1 memory, fundamentally eroding the ability of westerners, and
2 state governments in particular, to manage their own water
3 resources and cause an avalanche of new unfunded mandates to
4 envelop state and local governments; and

5 WHEREAS, it will make it more costly to grow crops,
6 provide water to cities, operate and maintain water storage and
7 delivery facilities, produce energy, including renewable power,
8 build and maintain public transportation systems, deliver
9 affordable goods and services to consumers and carry out
10 virtually any activity that occurs on land without federal
11 agencies constantly threatening to interfere; and

12 WHEREAS, the legislation, formally known as the "Clean
13 Water Restoration Act", is also sponsored in the United States
14 senate as S. 1870 by Senator Russell Feingold (D-Wisconsin);
15 and

16 WHEREAS, the bills' sponsors contend that United States
17 waters are threatened due to United States supreme court
18 decisions in 2001 and 2006, which clarified the waters that
19 fall under federal jurisdiction; and

20 WHEREAS, by changing the federal Clean Water Act's
21 jurisdictional sweep from regulation of "navigable waters" to
22 "waters of the United States", the bill would have a
23 devastating impact on western states' sovereignty and on
24 virtually every citizen in the region; and

25 WHEREAS, there is virtually no business or job-creating

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1 activity in the west that would not be adversely affected by
2 this bill; and

3 WHEREAS, the bill would:

4 A. expand the regulatory reach of the federal
5 environmental protection agency and the army corps of engineers
6 to include essentially all arguably wet areas, or areas that
7 are wet at some time, in the United States, giving the federal
8 government jurisdiction over ground water, ditches, pipes,
9 streets, gutters and desert features;

10 B. expand the legal basis for the federal Clean
11 Water Act, moving it beyond the current jurisdiction under the
12 "commerce clause" in the United States constitution, which
13 limits congressional authority over water to regulating
14 commerce and to making congressional authority over any United
15 States waters virtually unlimited;

16 C. essentially grant the federal environmental
17 protection agency and the army corps of engineers a veto over
18 local land-use policies and any activity involving water,
19 including commercial and residential real estate development,
20 agriculture, electric transmission, transportation, mining and
21 energy development and even recreational activities;

22 D. eliminate existing regulatory limitations that
23 allow common-sense uses, such as prior converted crop land and
24 waste treatment systems;

25 E. implement an expanded definition of waters that

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1 would burden state and local governments both administratively
2 and financially, placing unfunded mandates on those political
3 subdivisions and the states;

4 F. affect land-use plans, floodplain regulations,
5 building and other codes and watershed and storm water plans
6 and likely delay development of new projects and maintenance of
7 existing infrastructure; and

8 G. cause water providers, landowners and water-use
9 entities liability risk; and

10 WHEREAS, under this legislation, liability for citizen
11 lawsuits and exposure to attorney-fee awards would increase for
12 all landowners who have water features on or near their
13 properties; and

14 WHEREAS, similar concerns and risks would be faced by all
15 water delivery and water-use entities;

16 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
17 OF NEW MEXICO that Congressman Tom Udall be requested to
18 withdraw his support for, and that the United States congress
19 be requested to defeat, H.R. 2421 and S. 1870, the so-called
20 Clean Water Restoration Act; and

21 BE IT FURTHER RESOLVED that copies of this memorial be
22 transmitted to the New Mexico congressional delegation, to the
23 speaker of the United States house of representatives and to
24 the majority and minority leaders of the United States senate.