

MAY 10 1994

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA EXECUTIVE SECRETARY

A handwritten signature in black ink, appearing to read 'David E. Duff', written over the printed name of the Executive Secretary.

May 9, 1994

To: Board of Directors (Committee on Legislation--Information)
(Special Committee on Water Quality and
Environmental Compliance--Information)

From: General Manager

Subject: Imminent Senate Action on the Safe Drinking Water Act (SDWA)

Report

The SDWA reauthorization is expected to be heard on the Senate floor on Thursday, May 12. The Baucus Bill (S. 2019) will be the vehicle for the Senate's SDWA reauthorization. S. 2019 was to be amended by a "Manager's Amendment" on Monday, May 9. The Manager's Amendment is entitled the "Baucus-Chafee-Hatfield-Kerrey Amendments" to S. 2019. The strong bipartisan support of the ranking members of the Senate Environment and Public Works (EPW) Committee was responsible for the expected unanimous consent approval of the Baucus-Chafee-Hatfield-Kerrey amendments.

The Manager's Amendment reflects a successful compromise between the EPW staff, the SDWA Coalition, and staff from Hatfield and Kerrey (who had been considering their own amendments but will now back S. 2019). All major contentious issues have been resolved, including standard setting, risk assessment, and radon language. The result is a very satisfactory outcome for drinking water utilities (see Attachment No. 1), which is consistent with Metropolitan's SDWA policy principles.

The last issue to be resolved by the EPW staff is the drinking water source protection issue. Agricultural groups have made a "paradigm shift" on this issue. In mid-April, their position was that drinking water source protection had no place in the SDWA (see Attachment No. 2), and they were lining up senators to "kill" the SDWA if source protection was included. Based on the 46 senators supporting Agriculture on Clean Water Act issues (see Attachment No. 3), Agriculture appeared to have the strength to kill the source protection language. Fortunately, they changed their position (see Attachment No. 4) and are actively sponsoring drinking water source protection based on voluntary incentives and partnerships. Attachment 5 is a one-page summary of the new drinking water source protection language.

May 9, 1994

It is expected that this source protection language based on voluntary incentives and partnerships will be incorporated into S. 2019 in the Manager's Amendment or as an amendment by Senators Warner and Conrad.

Assuming S. 2019 is passed by the Senate, the focus of SDWA activity will shift to the House of Representatives. Two bills are currently available: H.R. 3392 (Slattery-Bliley, supported by the SDWA Coalition), and H.R. 4314 (Lambert-Synar-Studds, which was introduced April 28 and is based largely on the U.S. Environmental Protection Agency's recommended changes to the SDWA). It is anticipated that both H.R. 3392 and H.R. 4314 would have to undergo major revisions before they could achieve broad support similar to S. 2019 in the Senate. Staff, in conjunction with Will and Muys, will continue to actively play a role in this process.

Board Committee Assignments

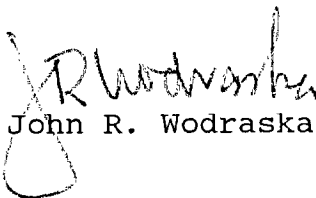
This letter is referred for information to:

The Committee on Legislation because of its responsibility to review staff's recommendations for positions on legislation, pursuant to Administrative Code 2581 (b); and

The Special Committee on Water Quality and Environmental Compliance because of its authority regarding Federal water quality issues pursuant to Administrative Code 2551 (b) and (c).

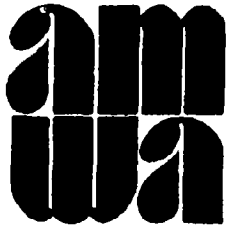
Recommendation

For Information Only.


John R. Wodraska

MDB:wt
(O:\Board\SenAct.mdb)

Attachments



ATTACHMENT No. 1
ASSOCIATION OF METROPOLITAN WATER AGENCIES

MEMORANDUM BY FAX

Total Number of Pages: 3

TO: AMWA Members and Subscribers
FROM: Diane VanDe Hei, Executive Director
DATE: May 6, 1994
SUBJECT: Senate Negotiations on SDWA Reauthorization Legislation Completed/The Majority of AMWA's Concerns Addressed

Important But No Action Needed

Members of the Senate Committee on Environment and Public Works reached a tentative (virtually final) agreement today with Senators Mark Hatfield (R-OR) and Bob Kerrey (D-NE) regarding a package of amendments to S. 2019, the Safe Drinking Water Act reauthorization bill reported from Committee. Both Senator Hatfield and Kerrey support many of AMWA's concerns as well as those of the other members of the SDWA Coalition, and have negotiated amendments to many of the key sections of the statute impacting States, local governments and water suppliers including standard setting. Parties to the negotiations (including Senators Hatfield and Kerrey but also Senators Max Baucus, the Chair and John Chafee, the Ranking Minority Member of the Committee) have agreed to support, and vote for, the compromise package on the Senate floor. The Manager's Amendment will be offered during Senate floor consideration by Senator Max Baucus (D-MT) as a "Manager's Amendment" to S. 2019.

Because of the compromise, it appears that Senator Domenici will support the Committee's package and not offer amendments. At this time, floor action on the bill, as amended by the Manager's Amendment, is planned for Monday, May 9 with the actual vote on the bill planned for Thursday, May 12.

Summary of Compromise

The agreed to compromise contains the following changes to S. 2019:

Standard Setting: At the time a maximum contaminant level is proposed, EPA must publish and seek public comment on an analysis of: 1) the health risk reduction benefits that are likely to occur as the result of treatment to comply with the standard; 2) the costs that will be experienced as a result of compliance with the standard, including monitoring, treatment, and other costs; and 3) any

potential increased health risk that may occur as a result of compliance with the maximum level.

This section also allows the EPA to establish a standard that is less stringent than is feasible (as defined by existing law) under certain circumstances. Under this section, if the Agency determines that the less stringent level will result in compliance costs that are "substantially less than costs that would be experienced by public water systems to comply with the level that is feasible and that the less stringent level will -- 1) for any contaminant regulated on the basis of the carcinogenic effects of the contaminant, not result in a significant increase in individual lifetime cancer risks from concentrations of the contaminant in drinking water relative to the feasible level; or 2) for any contaminant regulated on the basis of a health effect other than a carcinogenic effect, ensure a reasonable certainty of no harm."

For the non-carcinogens, EPA is allowed to use the authority provided only after the Administrator publishes guidelines establishing sound scientific practices for the implementation of such authority. In order to assist in the development of the guidelines, \$1 million is authorized from the State Revolving Loan Fund for fiscal year 1995 to support a study by the National Academy of Sciences of the scientific practices related to the development of drinking water standards.

Selection of New Contaminants For Regulation: S. 2019 creates an occurrence data base and uses the data base for the selection of future contaminants for regulation. The Manager's Amendment, that will be offered on the Senate floor, retains this provision but will also require the Agency to consider "appropriate, peer-reviewed, scientific information and an assessment of health risks, conducted in accordance with sound scientific practices (considering applicable guidance from the National Academy of Sciences) in making a determination on whether to regulate a contaminant.

Viability: The amended bill will still require States to establish a "viability" program, but does not tie it to State primacy and focuses on new systems rather than existing ones.

Monitoring: The Manager's Amendment will allow States greater flexibility in determining monitoring requirements. The amendment allows the States to submit an application to the Administrator to establish, for any National Primary Drinking Water Regulation (other than a regulation applicable to a microbial contaminant) a monitoring plan based on occurrence data and other relevant factors. In addition, however, the monitoring frequencies must be no less frequent than the requirements of the NPDWR for a contaminant that has been "detected at a quantifiable level" during the 5-year period ending on the date of the monitoring.

EPA must review the State plan and approve or disapprove it within 180 days or the plan is deemed approved.

Operator Certification: The Manager's Amendment requires EPA to develop guidelines for operator certification and requires States to have a certification program. The penalty for not establishing a program, is a reduction in capitalization grants from the State Revolving Loan Fund.

Radon: The Manager's Amendment will allow a standard for radon that: "(i) results in a radon concentration level in indoor air from drinking water that is equivalent to the national average concentration in outdoor air, or (ii) is not less than 50 percent of the national level (established under (i)) including risks from ingestion of radon in drinking water and episodic uses of drinking water, if the National Academy of Sciences considers it appropriate to include the risk..."

Notification of Violations: The Manager's Amendment will require water suppliers to provide notice by mail to each customer of any violation of a maximum contaminant level or treatment technique in the first billing, if any that occurs after the violation, but not later than 1 year after the violation.

Variances: The Manager's Amendment does not clean up the current variance process but adds a new variance section for systems serving less than 10,000 people.

Enforcement: There are no additions to the current law's citizen suits provisions and the Manager's Amendment will prohibit EPA from bypassing States that are diligently taking enforcement actions.

Source Water Protection: Source water protection provisions are expected to be a part of the compromise package but details are not yet available.

The bill, as it will be considered on the floor, also strikes the provision from S. 2019 that would have prohibited EPA from using the "risk trade-off" language of the bill for disinfection byproducts. However, the schedule for promulgation of the D/DBP rule package agreed to by the negotiating committee (in which AMWA participated) remains in the bill. The bill contains no fee provisions, allows up to 5 years for compliance purposes and contains a State Revolving Loan Fund for drinking water.

House Action

The staff to the House Subcommittee on Health and the Environment as well as staff to the full House Energy and Commerce Committee have been meeting on a Safe Drinking Water Act reauthorization bill. Although AMWA has been involved in those discussions, the focus of all members of the Coalition have been on the Senate side. Once the Senate bill is completed (hopefully next week), we will refocus time and resources on reauthorization as it moves through the U.S. House of Representatives.

Attachment No. 2

April 14, 1994

The Honorable Max Baucus
Chairman
Committee of Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We the undersigned organizations are strongly supportive of the goals of the Safe Drinking Water Act and efforts during the reauthorization to provide the mechanisms and funding to address difficult drinking water concerns.

We have met with majority and minority Environment and Public Works Committee staff to identify our reservations about certain provisions of S. 1547, as reported out by the committee. Although no promises were made on resolution of specific issues, we will continue to work with staff to address our concerns. Of foremost concern is the inclusion of the watershed and/or "source water protection" program provisions in S. 1547. *

Watershed protection has traditionally been a function of the Clean Water Act, which provides the framework for protection of this country's surface waters. We support reasonable and workable watershed protection programs in the Clean Water Act and believe that other legislation, such as the Safe Drinking Water Act, should not be used to disrupt or interfere with on-going progress in the watershed arena. *

S. 1547 would encourage local municipalities to regulate land uses around surface and groundwater supplies. The potential exists for individual municipalities nationwide to issue mandates to landowners in source water protection areas for the control of both regulated and unregulated contaminants. This could lead to the overlap of numerous governmental authorities and programs, and create a confusion of water regulations across the country.

Other comments concerning S. 1547 include the following:

- o Quantifiable detections of regulated contaminants, including detections far below water quality standards, could trigger unwarranted public health concerns and enforceable protection measures by local and regional entities.
- o EPA designation of a number of unregulated contaminants to be monitored, and perhaps, regulation by local entities through their source water protection programs.

- o EPA accumulation of evidence of contamination by regulated and unregulated pollutants in a national database. Quality assurance of any such data is essential for the validity of the database and to prevent unnecessary public concern.
- o While the bill attempts to address reform of the standard setting process, the EPA Administrator may, in fact, have less flexibility to consider public health risk reduction benefits, costs, and science-based information than under current law.

We support the need to protect and enhance U.S. drinking water supplies, and believe the authority to do so should remain with the Safe Drinking Water Act. On the other hand, any watershed protection programs should continue to be under the purview of the Clean Water Act.

We strongly urge you to support amendments that will address our concerns in such a way that we can provide workable mechanisms to accomplish the end goal of improving the quality of our nation's drinking water. We look forward to working with you, other Members of the Senate, and committee staff as the reauthorization process moves to the full Senate.

Sincerely,

- Agricultural Retailers Association
- American Farm Bureau Federation
- American Feed Industry Association
- American Forest & Paper Association
- American Sheep Industry Association
- American Soybean Association
- Egg Association of America
- National Agricultural Chemicals Association
- National Association of State Departments of Agriculture
- National Association of Wheat Growers
- National Broiler Council
- National Cattlemen's Association
- National Corn Growers Association
- National Cotton Council
- National Council of Farmer Cooperatives
- National Farmers Union
- National Food Processors Association
- National Grange
- National Milk Producers Federation
- National Pork Producers Council
- National Potato Council
- National Turkey Federation
- The Fertilizer Institute
- United Egg Association
- United Egg Producers
- U.S. Rice Producers Group

Attachment No. 3

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40844

United States Senate

WASHINGTON, DC 20510
April 25, 1994

The Honorable Max Baucus
Chairman
Committee on Environment and
Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As Members from agriculturally dependent states and Senators interested in the reauthorization of the Clean Water Act, we believe it is important to relay our concerns with S. 1114 and to work toward the common goal of protecting and improving our nation's water quality. We appreciate your efforts and the cooperative spirit with you and members of the Environment and Public Works Committee have worked in addressing a number of the important concerns production agriculture, agribusiness and farm-state Senators have highlighted in the reauthorization process.

We have closely followed the progress of S. 1114. We are supportive of the bill's goal of a targeted, watershed approach and timely implementation of best management practices to address non-point source pollution in impaired watersheds. However, we are concerned with many provisions that remain in the legislation. We believe many provisions are excessively restrictive and would prove extremely costly for family farmers, livestock producers, agribusiness, forest product producers and our small rural communities.

We have identified several provisions in S. 1114 that we believe must be addressed if we are to achieve our common goal of ensuring the future viability of American agriculture, while at the same time enhancing the quality of our nation's water. We look forward to working with you and members of the Environment and Public Works Committee to find reasonable, affordable and workable solutions to the following concerns:

CRITERIA AND STANDARDS. S. 1114 expands water quality criteria and standards to sediment quality, habitat areas, ambient biological criteria and ground water quality for non-point sources. These new criteria and standards far exceed the original purpose of the Act, which was to protect navigable waters (surface waters) for human health and safety.

NON-POINT SOURCE. S.1114 requires a mandatory and enforceable non-point source program for all waters designated as impaired. It is open-ended, in that further BMP's will be mandated as additional criteria and standards are developed. We believe a better way to address agricultural non-point source runoff is through a cooperative partnership between government

The Honorable Max Baucus
April 25, 1994
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and landowners. Such a program should emphasize voluntary adoption of BMP's, site-specific technical assistance and cost-sharing.

ECONOMICALLY ACHIEVABLE. The "economically achievable" criterion in S. 1114 should be applied on a farm-by-farm basis. Management measures required of farmers and ranchers should not cause an undue economic burden. Such requirements should take into account the reasonableness of the relationship between the cost of the management measure and the benefits derived.

INADEQUATE TIME. S. 1114 requires that revised state plans demonstrate that water quality standards be attained within ten years following the date of submission of the plan. A more realistic goal would be 15 years or more. Each farm and, indeed, each field, presents a different challenge. There are literally millions of potential non-point sources (including many urban sources) to manage, with differing soil types, topography, climate, etc. Natural or background sources of pollution may make this goal unachievable. Present science has demonstrated that it may take many years for BMP's to yield water quality benefits.

CITIZEN LAW SUITS. While the committee has made important clarifications regarding non-point sources being exempt from citizen law suits, S. 1114 effectively nullifies the Supreme Court's Gwaltney decision and allows citizen suits against point sources for past violations. Point source activities on farms, particularly livestock operations, remain subject to potentially costly citizen suits. There is no need to overturn the Supreme Court's Gwaltney decision.

STATE PRIMACY. The authority of each state to allocate quantities of water within its jurisdiction should not be superseded, abrogated, or otherwise impaired by the CWA. S. 1114 should contain provisions in section 510 to make this clear.

LACK OF ADEQUATE FUNDING. It is highly likely that financial assistance will not be available from the federal government in the quantity needed for States and individuals to comply with the new mandates contained in the Act. Further, S. 1114 caps the State Revolving Fund (SRF) monies available to \$10,000/year per individual, not to exceed 50 percent of the total project cost. Manure management facilities and conservation tillage equipment may cost \$50,000 or more. Unless this limit is raised, SRF funding applications will be few.

NEW SOURCE REQUIREMENTS. S. 1114 provides the EPA Administrator with broad authority to designate any agricultural or forestry operation as a "new source" of pollution, even though

The Honorable Max Baucus
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the operations are not subject to an NPDES (National Pollutant Discharge Elimination System) permit. For example, construction or expansion of an existing livestock or poultry and even ongoing forest management practices could cause these operations -- regardless of whether they are in an impaired area -- to be designated a "new source" and subject to more stringent environmental regulation. This provision could be used to discourage the expansion and growth of the U.S. livestock, poultry and forest products industries at a time when American producers are rapidly diversifying.

WETLANDS DEFINITION. S.1114 fails to address needed wetland reform. Prior converted cropland should be excluded, regardless of the crop grown. Agricultural lands cropped a majority of the time should be excluded from jurisdiction. Classification of wetlands should be established.

ANTIDEGRADATION. Federal mandates for antidegradation and Outstanding National Resource Waters (ONRW) are unnecessary. Current law requires states to have antidegradation policies and already allows for the protection of special waters and ONRW's. Modification of existing law could have severe economic impacts. The EPA or a state can bring a cease and desist order against agriculture and other producers that are not in compliance with management measures or site specific plans regardless of the impact on water quality. In other words, the EPA can shut down a farming operation if it fails to comply with all these new requirements. Injunctive relief (including temporarily or permanently ceasing operations), is unnecessary, inappropriate and should be dropped from the bill.

OTHER IMPORTANT CONCERNS. We also have concerns with the following issues: program funding shortfalls, grants and cost-share funding, developmental criteria, EPA emergency powers, enforcement authority, farmer financial limitations, prior converted wetlands, agricultural lands definition, definitions for pollutant and discharge, definitions for non-point source and agricultural source, lack of credit for prior BMP's, failure to recognize SCS as lead agency, economic achievability, pollution prevention and source reduction not to control input use, livestock numbers or acres planted, private sector technical assistance, citizen monitoring, point source fees, impaired waters definition, commercial facilities and storm water permits.

These issues are foremost in our concern as the Clean Water Act reauthorization debate continues. Again, we appreciate your efforts in working with food and fiber producers, agribusiness, forest product producers and farm-state Members progressing

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April 25, 1994
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toward our ultimate goal of maintaining and improving our nation's water quality. We look forward to working with each of you and the Environment and Public Works Committee on finding workable solutions to these and other important issues for rural America.

Sincerely,

Borrell Boffa

Mark [unclear]

David Dixon

John Green

Richard Shelly

[unclear]

Bill McCull

[unclear]

Malcolm Waller

[unclear]

Chuck Bradley

Alvin [unclear]

Paul Cochran

Lois Doe

Dale Burdette

Terry [unclear]

Henry [unclear]

[unclear]

[unclear]

[unclear]

John Warner

The Honorable Max Baucus
April 25, 1994
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Don Coats

James Helms

Mark Taper

Frank Lautenberg

Don Nickles

Strom Thurmond

Frank Brown

Gregg Hatcher

Al D'Amico

Key Bailey Hutchison

Carrie MacLachlan

Frank Lautenberg

Henry Lott

Dick Cheney

Allyson S. Burdick

John Chafee

Phil Gramm

Carl Levin

Pat Bond

Ed Bradley

Bob Smith

Frank W. Lautenberg

John D. Dingell

Phil Hartman

Attachment No. 4

40844

May 3, 1994

The Honorable Max Baucus, Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20250

Dear Mr. Chairman:

The overwhelming majority of participants in the undersigned organizations are strongly supportive of the attached compromise amendment on source water quality protection being circulated by Senators John Warner and Kent Conrad as a substitute to Section 9 of S. 1547 as reported by the Environment and Public Works Committee. The amendment allows a State to establish a source water quality petition program which:

- ◆ Encourages a drinking water authority or local government entity to submit a petition requesting that the State assist in addressing financial or technical limitations on their capability to provide drinking water that complies with national drinking water standards or to address unregulated contaminants that pose an urgent threat to public health;
- ◆ Provides for any State response in the form of financial and technical assistance as may be appropriate under existing water quality programs, such as the Clean Water Act and other State, regional or Federal water quality programs;
- ◆ Authorizes federal grants as an incentive for States to initiate a petition program; and
- ◆ Relies on a voluntary, incentive-based partnership among all affected persons.

We believe this amendment provides a workable mechanism to help accomplish the end goal of improving our nation's drinking water, while addressing our earlier stated concerns that Section 9 as currently written would encourage local municipalities to issue mandates to landowners in source water protection areas for the control of both regulated and unregulated contaminants, creating a confusion of water regulations across the country.

Meetings with majority and minority Environment and Public Works Committee staff are continuing in an effort to achieve agreement. We look forward to working with you and other Members of the Senate on this important issue, and we hope that you will concur with the merits of the compromise.

Sincerely,

ad hoc Agricultural Clean Water Working Group
Clean Water Industry Coalition
Food Industry Environmental Council

Attachment

cc: The Honorable John Chafee
The Honorable John Warner
The Honorable Kent Conrad

Attachment No. 5

40844

Summary of Proposed Source Water Quality
Protection Based on Partnerships and Incentives

- o Program is voluntary and administered by each state (EPA's role is de-emphasized)
- o Petitions are to be submitted by drinking water suppliers to "trigger" a source protection program
- o Source protection programs are "triggered" when (1) the water supplier's ability to comply with primary drinking water standards (maximum contaminant levels) is impaired, or (2) there is an unregulated contaminant that EPA determines is an urgent threat to public health (e.g. Cryptosporidium)
- o The state provides access to both financial (loans and grants) and technical assistance to the water supplier and its partners
- o The drinking water supplier (petitioner) must provide the data to show that contamination is a problem (this should be straightforward due to all of the monitoring data required by new EPA regulations)
- o State approves or disapproves petitions based on state priorities and urgency of public health concern.
- o Additional monitoring needed to identify sources of contamination would be part of the petition approval process
- o Provisions for interstate coordination of source protection are included
- o Financial assistance available for source protection explicitly includes State Revolving Fund loans from both the SDWA and CWA, as well as other federal sources (this clearly links the SDWA and the CWA)
- o Financial assistance also includes EPA grants of up to 50% for source protection to serve as "seed money" for state source protection programs
- o EPA will provide technical guidance on source protection