

WETLANDS: WHITE HOUSE VS. "WISE USE" IN CLEAN WATER DEBATE?

The Clinton administration is gearing up for a fight against property rights activists that is likely to occur when Congress considers changing the way it regulates wetlands, according to sources familiar with the administration's strategy.

Environmentalists and development interests have been sparring over wetlands since the admin. released its policy on the swampy lands over the summer (GREENWIRE 8/24).

In its wetlands policy, the administration said decisions on "takings" should be left to the courts, not the legislature. The White House will stick to that policy, admin. sources said, opposing attempts in Congress to allow compensation when the government prohibits development of wetlands.

The administration believes it stands a better chance of advancing its natural resource agenda through the Clean Water Act's wetlands rules than through more emotionally charged issues such as the Endangered Species Act, sources said. The White House is hoping for a victory over "wise use" advocates on wetlands before it confronts them over the ESA, according to GREENWIRE sources.

NBS: SURPRISE SHOWING

Property rights supporters surprised many -- including members of the Clinton administration and the Capitol Hill leadership -- with a strong showing in last year's Congressional debates on creation of the National Biological Survey.

This time, insiders say, the administration is ready. "We have got to believe that there is going to be that same furor" as there was with the NBS, said an EPA staffer.

"We expect that (the Clean Water Act is) going to be the lightning rod -- from 'takings' to 'unfunded mandates' to private property," said one White House aide. "It is a priority," added the admin. source. "We are going to be there."

But "wise use" and development interests will also be there. "My sense is that Congress is more receptive than they've ever been" to concerns about property rights, said Nancy Marzulla, president of Defenders of Private Property. "If you had raised the issue of private property rights in clean water reauthorization five years ago, people would have thought you were crazy. But now ... it's on everyone's mind."

THE "TAKINGS" ISSUE

Property rights supporters argue that when the government prohibits development of wetlands it is "taking" private property -- an act that requires compensation under the Constitution.

Enviros and some members of the Clinton admin. disagree. They argue that such an interpretation is legally flawed and warn that its acceptance would devastate the federal treasury.

"Private property rights and 'takings' will dominate" the wetlands debate, says Robert Szabo, executive director of the industry-backed National Wetlands Coalition. "The whole (wetlands) program is intrusive at this point. ... It must consider landowners' rights."

"We need to protect wetlands in order to protect private property," said National Wildlife Federation's **Glenn Sugameli**, who stressed the role of wetlands in controlling both pollution and floods in surrounding areas.

BROWNER: "BEYOND THE RHETORIC"

EPA chief Carol Browner argues that the government must restrict wetlands development in order to promote broader public interests. "It's time to move beyond the rhetoric," Browner told GREENWIRE. "Don't we want government to take actions that serve the needs of all people?" she asked, the raised pitch of her voice revealing her contempt for "takings" arguments.

The EPA boss compared wetlands regulations to zoning ordinances, saying the public good is paramount in both types of land-use rules. "No one is suggesting you abolish zoning in this country," Browner said. "These are laws that have served the country well."

THE HAYES BILL

Proposals in the House that would buttress property rights are gaining attention and support. A bill by Rep. Jimmy Hayes (D-LA), a champion of development interests in the House, has 130 cosponsors -- more than the two other leading wetlands approaches combined. One of the alternatives, sponsored by Rep. Don Edwards (D-CA), would tighten development restrictions and has 88 cosponsors. The other, introduced recently by Rep. Gerry Studds (D-MA) as an attempt at compromise, has only one cosponsor.

The Hayes bill would divide wetlands into three categories based on their relative value and regulate them accordingly. It also would compensate property owners for prohibitions on development of the most valuable wetlands.

The compensation issue touches off emotional responses on all sides of the debate. "It's a total taxpayer rip-off," said Robyn Roberts, coordinator of the grassroots Clean Water Network.

Some enviros suggested that Hayes, who portrays himself as a fiscal conservative, has backed off his proposal after learning its potential cost. But Hayes aide Steven Kearney, who denied any

softening of his boss's stance, said the bill would cut costs by simplifying wetlands rules. "Think about the amount of money being spent on ... red tape and litigation," he said.

Kearney also said the Hayes approach was vital to small property owners: "Whatever the process is, the larger concerns are going to be able to pay for it. But it's the smaller folks that can't afford to appeal to the Supreme Court that are being hurt by" the current scheme.

BATTLE LOOMING

Most participants expect a confrontation when wetlands rules come up in Congress. "Both in committee and on the floor, I do think there's going to be some kind of battle on 'takings,'" said Audubon Society wetlands specialist Clark Williams. Likewise, industry attorney Szabo calls such a debate "unavoidable."

Although a legislative battle is probable, several analysts said that Congress is so deeply split on the issue that radical change is unlikely. Authorities say the stakes are so high that compromise-minded politicians may keep their distance and back the administration's preference that "takings" be left to the courts. -- DAN KRAININ

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