

Water Resource News



The Truth About H.R. 872

provided by CropLife America

What does HR 872 mean for the environment and human health?

The Label IS the Law - Registration and labeling of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires that EPA ensure that the use of a pesticide result in ‘no unreasonable adverse effect’ to humans or the environment, including water quality, and labels are crafted to minimize impacts. The FIFRA label is the law: users who do not follow the label are in violation of federal law.

Pesticide Laws Protect Water Quality - FIFRA regulations are already in place to identify Clean Water Act ‘listed’ water bodies where a pesticide scheduled for registration review is the cause or potential cause of impairment. If a currently registered pesticide is a cause of concern for water quality, changes are made to the registration and use of that product to address the concern to protect water quality.

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Nature Conservancy propose Prop. 8 in Texas

by Matt Stephens, the Dayton News

Texas voters will get a chance to have an impact on water conservation beginning with early voting Monday, Oct. 24, for Proposition 8 on the Nov. 8 ballot, which promotes water stewardship among agricultural landowners.

The proposition encourages landowners who grow crops or raise wildlife to make decisions on the water usage of their land, which could benefit their taxes, said Matt Phillips, director of government relations for the Nature Conservancy.

Proposition 8 only affects landowners who receive an agricultural or wildlife evaluation, Phillips said, but would not give landowners additional tax breaks so it wouldn't cost the state any additional funding.

However, for landowners who have

struggled with the drought or have been affected by wildfires, the proposition would allow them to maintain the same level of property taxes.

“Whatever tax bill you have now, you'll pay the same rate,” Phillips said.

According to the Nature Conservancy's website at www.nature.org, Senate Bill 449, which enabled legislation for Proposition 8 to qualify for the Water Stewardship evaluation, states that in order to qualify for the lower land assessment, a landowner must do three of the following: erosion control, habitat stewardship benefiting water quality or conservation of native animal and plant species, reductions in domestic and livestock water uses,

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H.R. 872, Info 411

The House of Representatives has passed H.R. 872, the Reducing Regulatory Burdens Act of 2011, by a vote of 292 to 130. H.R. 872 states that National Pollutant Discharge Elimination System (NPDES) permits are not required when applying pesticides according to their EPA approved label.

Historically, pesticide applications have been regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), rather than NPDES permits under the fed-

eral Clean Water Act. A court decision was the reason that NPDES permits would be required in addition. H.R. 872 amends both the Clean Water Act and FIFRA in order to restore the previous regulatory framework.

H.R. 872 is currently in the Senate Agriculture, Nutrition, and Forestry Committee. It has gained 137 Co-Sponsors.

You can Track H.R. 872 progress at

<http://thomas.loc.gov/cgi-bin/thomas>

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No Widespread Impairments - Despite activists' allegations, *very* few US waters are listed as impaired by a *currently registered* pesticide. Even where a currently registered pesticide is a concern for a water body, pesticide regulations allow for use restrictions to be put into place to protect water quality.

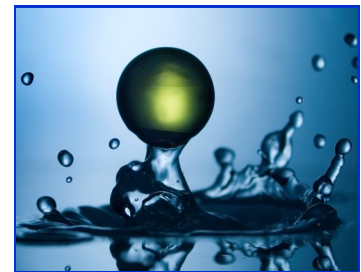
It's a Permit to Discharge! – Activists' talking points are flat wrong – permits granted under the Clean Water Act do *not* prevent pollutants from being discharged into our waterways. The National Pollutant Discharge Elimination Permit (NPDES) is in fact a permit *to* discharge! In the case of pesticides, it's a permit to discharge a substance that is already evaluated by EPA for impacts to water quality...no other permitted discharge is double regulated by EPA!

The Fish Myth – Fish kills have occurred from the misapplication of pesticides. In those circumstances, existing pesticide and water laws were violated, and enforced against. HR 872 does not change existing law as it relates to misapplication of pesticides, either under FIFRA or the Clean Water Act. Filling out paperwork and paying a fee to get a permit will *not* prevent fish kills: following the pesticide label will!

Protecting Human Health - Eastern Equine Encephalitis, Japanese Encephalitis, La Crosse Encephalitis, St. Louis Encephalitis, West Nile Virus, Western Equine Encephalitis, Dengue Fever, Malaria, Rift Valley Fever and Yellow Fever are just some of the mosquito-borne diseases that regularly threaten human health in the US. HR 872 would ensure that EPA's

permit does not disrupt *effective, timely* control of this serious pest threat.

Forest Health & Invasive Species - EPA's permit will limit the use of pest control as a forest management tool, resulting in increased tree mortality and a general decline in overall forest health. The permit will also create barriers to the control of pests, such as Gypsy Moth and Forest Tent Caterpillar. This may result in a higher incidence of preventable tree kills and defoliated landscapes.



What Does H.R. 872 mean for Pesticide Users and Applicators?

What's the big deal? - EPA's own analysis suggests that the NPDES permits program for pesticides will result the single greatest expansion of the program in its history, covering approximately 5.6 million covered pesticides applications per year by at least 365,000 applicators. Those affected include state agencies, city and county municipalities, mosquito control districts, water districts, pesticide applicators, farmers, ranchers, forest managers, scientists and many others.

Who is Covered, and Who is at Risk?

- EPA's current general permit is intended to cover applications of pesticides registered for aquatic use and applied to water or forest canopies into or over flowing or seasonal waters, and conveyances to those waters. It was the numerous activist lawsuits against both agricultural and non-ag users of aquatic and terrestrial pesticides that led to Congress seeking to clarify the intention of Clean Water Act. *The very same groups who oppose HR 872 make no secret of their intention to continue their citizen suits until all pesticide applications are permitted if there is even a chance that the pesticide could come in contact with any "water," either flowing water or seasonal drainage ditches that could be a conveyance to a water of the US.*

This How We Got Here - Nothing in the Clean Water Act or the permit protects *against* citizen suits against farmers or terrestrial applicators for not obtaining a permit. This establishes an uncertain liability for farmers and

ranchers, as well as users applying pesticides to golf courses and public utility rights of way, and private homes and businesses.

ESA's New Twist - After a year of consultation, the National Marine Fisheries Service (NMFS) recently concluded in its draft biological opinion (BiOp) that implementation of EPA's Pesticide General Permit, as currently written, would likely jeopardize the continued existence of 33 species of salmon, steelhead, smelt, sturgeon, and whales listed as endangered or threatened under the Endangered Species Act (ESA) and 29 habitats listed as critical to the survival of those species. NMFS proposed a Reasonable and Prudent Alternative (RPA) that would require significant and burdensome changes to the permit. The BiOp *expands the scope* of permitted users and *increases the burden* of permit compliance because the RPA...

- Restricts the choices of pesticides available, regardless of whether the product is EPA-approved for a particular use
- Requires any pesticide-application 'decision maker' in the range of listed species to file a Notice of Intent (NOI) and Annual Report - this includes individual homeowners, small housing developments, voluntary lake management organizations, and small towns – regardless of size of the entity or treatment area.
- Directs NMFS to consult on every decision. For pesticide applications in the range of listed species, NMFS wants a 30-day review of *all* NOIs submitted.
- Makes no attempt to demonstrate economic and technical feasibility.

Did You Know?

*You can use the
Grassroots Advocacy
Center on the AAW's
Website to Contact your
U.S. Congressmen
[www.americanagriwo
men.org](http://www.americanagriwomen.org)*

Barge industry rejects Obama user fee proposal

by American Farm Bureau

In his deficit reduction plan and legislation put forward Sept. 19, President Obama floated the idea of a new inland waterways user fee to raise about \$1 billion for lock repairs and construction over the next decade.

The additional funding from the user fee would boost the Inland Waterways Trust Fund, which is now financed by a 20 cents-per-gallon fuel tax paid by inland waterway shippers. Inland waterway construction projects are required to be 50-50 cost-shared between the trust fund and taxpayers. However, the fund and congressional appropriations fall far short of the need for repair and rebuilding of crumbling

locks and dams.

The Waterways Council, a barge industry group, applauded the president for addressing the need for more inland waterway infrastructure funding, but rejected the new user fee plan.

“The proposed legislation would more than double the amount of taxes and fees on one beneficiary of our nation’s waterways, commercial shippers,” said Michael Toohey, president and EO of the Waterways Council. “Currently, commercial users are the only contributors to the Inland Waterways Trust Fund. These new economic burdens will disrupt the fragile economic recovery by unfairly disadvantaging consumers who will surely pay more for their goods and electricity. The proposal also discourages use of our water-

ways, which provide the most energy-efficient, environmentally sound, traffic congestion-relieving, safest way to transport bulk commodities.” President George W. Bush also, in 2008, proposed a lock user fee, an idea that was no better liked by Congress or the barge industry than it is now.

The barge industry supports a proposal to increase its fuel tax to 26-29 cents per gallon, along with capping project costs to decrease overruns and providing 100 percent federal funding for smaller lock projects. The fuel tax currently is capped at 20 cents by the Water Resources Development Act; it reached the cap in 1994.

While there is disagreement over how to pay for new construction and repairs of inland waterway infrastructure, there is no debate over the

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wetland restoration, allowance of groundwater and surface water monitoring for data collection, invasive aquatic plant and animal control or an amendment of a water right to dedicate all or part of the right to environmental purposes.

Another allowable criteria is the donation of water rights to the Texas Water Trust, a state program that currently does not provide incentives for landowners, Phillips said.

“Prop 8 can help protect water

for future generations,” Phillips said.

For the greater Houston area – which is heavily reliant on surface water – the proposition could raise water levels of streams and other bodies of water, while also improving the water quality, Phillips said.

The Nature Conservancy originally discussed the idea for a proposition prior to the last legislative session, Phillips said. The idea was brought to Sen. Kirk Watson, D-Austin, Sen.

Craig Estes, R-Wichita Falls, and Rep. Allan Ritter, R-Nederland, who wrote Senate Bill 449 and supported the legislation.

The legislation was passed unanimously by both Democrats and Republicans, Phillips said. “(Proposition 8) is just one of those things that everybody supports,” he said.

For more information about the proposition or the Nature Conservancy, go to www.texansforprop8.com.

Federal judge disagrees on delta smelt plan

A federal judge in Fresno on Wednesday took issue with a federal government effort to push encroaching salt water back in the Sacramento-San Joaquin Delta to help the threatened delta smelt.

U.S. District Judge Oliver W. Wanger, however, didn't totally scrap the effort.

Instead, he found that there is support to keep encroaching saltwater west of the confluence of the Sacramento and San Joaquin Rivers. Both environmentalists and advocates for farmers and other water users found something to like in the ruling.

"We're not happy with the change in location because the [smelt] is on the brink of extinction," said Trent Orr, an attorney with the environmental group Earth justice.

But, he said, Wanger also didn't "reject the concept" that it is necessary to push back encroaching salt water to protect the smelt.

The politically conservative Pacific Legal Foundation, however, praised the decision. The PLF was not involved in this legal battle, but has been part of other efforts on federal regulation of the delta smelt.

"Once again, federal regulators wanted to severely curtail water deliveries into Central and Southern California, but they didn't make a solid scientific case that the cutbacks were needed to help the delta smelt," PLF staff attorney Brandon Mid-

dleton said in a release.

Federal authorities had sought to push the encroaching salt water back to a point about 46 miles from the Golden Gate Bridge. Instead, Wanger's ruling pegged the spot at no closer than around 49 miles from the Golden Gate.

The change in location, Wanger's decision says, will "significantly reduce the water



supply impact" to urban and agricultural water users.

Wanger also found the federal government failed to consider the National Environmental Policy Act when setting the saltwater encroachment line.

Federal officials, Wanger wrote, "completely abdicated their responsibility to consider reasonable alternatives" to the plan, which "would not only protect the species, but would also minimize the adverse impact on humans and the human environment."

Water users that depend on the delta had pointed out that Wanger had already invalidated a smelt management plan – known as a "biological opinion" – and in doing so, specifically cited the fall water release for the smelt as an area that needed reworking by the U.S. Fish

By John Ellis / The Fresno Bee

and Wildlife Service.

Court documents filed by the water users said the proposed action on behalf of the smelt would cut 850,000 acre feet of water deliveries to the State Water Project.

Environmentalists, however, said in court papers that in this wet year, water contractors were still "trying to stop fish protections."

Facts about Smelt

The longfin smelt, *Spirinchus thaleichthys*, is an anadromous smelt (family Osmeridae) found in California's bay, estuary, and near shore coastal environments from San Francisco Bay north to Lake Earl, near the Oregon border. It is not a native of California.

The Smelt have a short life-span. Most reach maturity at two years of age, and can grow from 124mm to 140mm in length. Spawning occurs primarily from January to March, after which most adults die.

Smelts reassemble salmon in appearance and serve as a feeding source for both salmon and trout. They live in the sea but travel to freshwater to breed.

Barge Fees continued from page 4

need for waterway improvements. Farm groups, shippers, members of Congress and the administration agree that the inland waterways transportation system is deteriorating to the point where U.S. farmers and others are losing a competitive advantage to producers in other countries.

More than 57 percent of the nation's locks, most on the Mississippi, Illinois and Ohio rivers, have been in service

for longer than their intended design age of 50 years, according to the House

Almost 40 percent of the locks are more than 70 years old, and two locks still in service date back to 1839.

Transportation and Infrastructure Committee's Water Resources and Environment Subcommittee, which held a Sept. 21 hearing on the challenges of funding system improvements. Almost 40 percent of the locks are more than 70 years old, and two locks still in service date back to 1839.

That wouldn't be so bad, except for the fact that needed repairs have not been made and older locks were built for the standard 600-foot barge tow of the

1920s, not today's typical 1,200-foot barge tows. Towboat operators must move a few barges at a time through the older locks, a process that creates bottlenecks on the busy rivers. Whether due to longer shipping delays or having to switch to more expensive modes of transportation, farmers and consumers ultimately will pay the price if the nation does not update and maintain the inland waterways transportation system, according to Rep. Bob Gibbs (R-Ohio) chairman of the subcommittee.

"When it becomes more expensive to produce and transport goods in the United States, production facilities and jobs move overseas," Gibbs said in a memo to subcommittee members about the purpose of the hearing. The National Corn Growers Association (NCGA), the only farm group that testified at the hearing, said that more than a billion bushels of grain each year, about 60 percent of all U.S. grain exports, are shipped on the Mississippi River. "The lower the cost of transportation, the lower the cost of U.S. grain on the world market; thus, the more grain the U.S. is able to sell," explained Steve Ebke, a Nebraska corn farmer and NCGA leader. "South American countries are investing large sums in river infrastructure to upgrade their river systems to be more competitive with the U.S.," he added. "America cannot afford to allow any aspect of river com-

merce to deteriorate for fear of losing export market share to South America at the expense of our agriculture industry." The Inland Waterways Trust Fund's \$70-\$80 million per year in revenue is inadequate to cover the \$8 billion cost of seven lock-and-dam projects that are under construction or already authorized by Congress. Gibbs estimates that it would cost \$18 billion to completely modernize the inland waterways system. President Obama also proposed in his American Jobs Act the creation of an American Infrastructure Financing Authority with \$10 billion to lend for rebuilding U.S. infrastructure in general, i.e. roads, bridges, airports, etc., as well as inland waterways. The loans could be repaid through user fees, helping to ensure that a shortfall in the Inland Waterways Trust Fund, for example, would not delay rehabilitation projects that are needed today to keep American goods moving and help bring down the 13.3 percent unemployment rate among construction workers. An Oct. 11 Senate procedural vote on the Jobs Act fell 10 votes short of the 60 needed to advance the bill. The House, where Republicans are in the majority, is not expected to take up the president's proposal. The American Farm Bureau Federation has not taken a position on the bill. The House on July 15 approved a fiscal 2012 Energy and Water Development appropriations bill that would provide \$1.6 billion for Corps of Engineers construction projects.

Voluntary Water Quality Regulation of Private Forests Threatened by Lower Court Ruling

by F & W Forestry Services Inc.

A 35-year-old system of voluntary regulation of water run-off from roads on private woodlands could be replaced by EPA permit requirements under a federal court ruling now headed to the U.S. Supreme Court.

Marshall Thomas, president of F&W Forestry Services, Inc., based in Albany, Ga., said a Court of Appeals ruling in Oregon could have a far-reaching impact on the management of privately-owned forest land throughout the United States.

The Oregon decision overturned a long-standing system of erosion and water control on private forest lands through state-developed and enforced Best Management Practices (BMPs) that treat forest roads as "non-point" sources of pollution—a position embraced by the U.S. Environmental Protection Agency for more than three decades.

"The ruling is unfortunate in many ways," Thomas writes in the fall edition of his firm's publication, *The F&W Forestry Report*.

"Perhaps of most concern is the fact that the forestry community has done an outstanding job of self-regulating water quality practices, working on a voluntary basis with state and federal agencies and environmental groups."

If the Oregon decision is upheld by the Supreme Court and is not undone through legislation by Congress, the voluntary BMP requirements on building or maintaining forest roads will be replaced by

costly and time-consuming permit requirements on landowners and loggers under the Environmental Protection Agency or EPA-supervised state agencies.

"These voluntary efforts have been extremely effective," Thomas writes. "According to EPA's own data, forest operations account for only three percent of the total sediment contribution to streams and ranks 11th among all contributing sources. To put the forestry contribution in perspective, natural sources alone contribute about 11 percent of stream sediment loads—and there is no credit given to forestry for the sediment it removes from other land uses.

"Adherence to BMPs is a part of the ethical code of the forestry community—we helped set the standards and we know they are effective in protecting water quality," he said. "In addition, there are laws in place that are enforced to punish the few bad actors."

"Forestry, by definition, is an isolated activity that is best self-regulated," Thomas wrote. "Right now, adherence to BMPs is a matter of pride and responsibility—regulating the same thing through a federal permitting process will only drive costs up and reduce the 'pride' component. It is unlikely there will be a corresponding increase in water quality."

About F&W

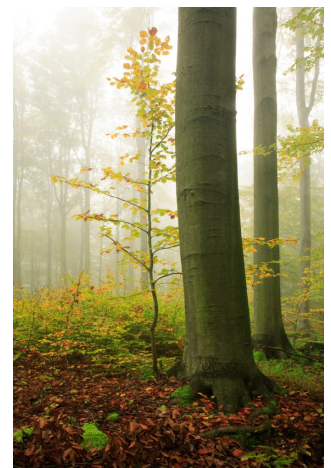
F&W Forestry Services, Inc., is one of the nation's oldest and largest forest management firms. Es-

tablished in 1962, the company handles timber sales and provides comprehensive forest management and consulting services to private and industrial landowners through a network of 19 offices in 12 states.

Source:

www.FWForestry.com

"Perhaps of most concern is the fact that the forestry community has done an outstanding job of self-regulating water quality practices...."
- Marshall Thomas



"We are a force of truth, a reasoned, non-partisan voice for the agricultural community to the public."

American Agri Women

Cheryl Day,
Water Resource Management Chair
3509 N E County Line Rd
Cerro Gordo, IL 61818

Farm Phone: 217-763-9907
Work Phone: 217-763-6300
Fax: 217-763-6010
E-mail: cday@iadd.info



The Newsletter was created by AAW Water Resource Management Chair, Cheryl Day, to better inform AAW members on water issues. The articles in the newsletter is based from media outlets and information submitted to Cheryl Day. All AAW members are invited to submit information on water issues to Cheryl. If your Affiliate has a Water Resource Chair or a member who follows water issues please have them contact Cheryl Day. In order to best serve AAW, it is important to establish a network across the membership.

If you have any questions about the information appearing in this newsletter or on AAW Water Policies in general please feel free to contact Cheryl Day.

We're on the web!

www.americanagriwomen.org

