



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 7, 2009

### **S. 787** **Clean Water Restoration Act**

*As ordered reported by the Senate Committee on Environment and Public Works  
on June 18, 2009*

CBO estimates that implementing S. 787 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues.

S. 787 would amend the Clean Water Act to establish federal jurisdiction over certain bodies of water. The Clean Water Act requires that any person seeking to discharge certain material into waters under federal jurisdiction obtain a permit from the Army Corps of Engineers (the Corps). The Supreme Court has ruled that this provision of the Clean Water Act applies only to “relatively permanent, standing or flowing bodies of water.” S. 787 would expand federal jurisdiction to include intermittent and geographically isolated wetlands.

Based on information from the Corps and the Environmental Protection Agency (EPA), CBO expects that implementing S. 787 could alter, and possibly reduce, certain permitting and enforcement activities under the Clean Water Act. CBO expects that S. 787 would restore federal jurisdiction over certain waters that were covered under the Clean Water Act prior to the Supreme Court decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001), *Carabell v. United States* (2006), and *Rapanos v. United States* (2006). Both the Corps of Engineers and EPA have maintained the personnel levels for permitting and enforcement activities under the Clean Water Act that existed prior to those decisions, and despite an increase in such activities, neither agency has received additional appropriations to carry out those activities. Under S. 787, CBO expects that the agencies would maintain existing personnel levels and that those personnel would be adequate to carry out permitting and enforcement activities under the bill.

CBO expects that implementing S. 787 could alter and possibly reduce litigation duties of federal attorneys. According to information from the Department of Justice, 45 federal court proceedings have arisen from jurisdictional determinations under the Clean Water Act since 2006. CBO estimates that the budgetary impact of reducing such litigation would be insignificant in any year given the small number of cases involved.

CBO also expects that implementing S. 787 would slightly increase receipts from permitting fees. The Corps charges corporations \$100 and individuals \$10 for standard permits issued under section 404 of the Clean Water Act. Following the Supreme Court decisions mentioned above, the number of standard permits issued by the Corps decreased 30 percent, but information from the Corps indicates that the decline is mainly attributable to weakening economic conditions. CBO estimates that under S. 787, fee receipts from permits would increase by less than \$100,000 a year.

S. 787 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), because it would require public and private entities to obtain permits and otherwise comply with restrictions for any activities that would affect the bodies of water added by the bill. The cost of the mandates would be the additional costs of obtaining permits (or designing projects to avoid having to obtain a permit), net of any savings that would result from a modified permitting process. Information about the additional bodies of water that would be covered by the bill is scarce, and the number of activities that would require a permit is uncertain. Therefore, CBO has no basis for estimating whether the cost of the mandate would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Ryan Miller and Amy Petz (for the impact on state and local governments and the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.