

**Statement of Senator Russell D. Feingold  
on the Clean Water Authority Restoration Act of 2002**

Mr. President, I rise today to introduce important legislation to affirm federal jurisdiction over isolated wetlands. I am pleased to be joined by Representatives Oberstar and Dingell, who are today introducing companion legislation in the House of Representatives.

In the U.S. Supreme Court's January 2001 decision, *Solid Waste Agency of Northern Cook County versus the Army Corps of Engineers*, a 5 to 4 majority limited the authority of federal agencies to use the so-called migratory bird rule as the basis for asserting Clean Water Act jurisdiction over non-navigable, intrastate, isolated wetlands, streams, ponds, and other waterbodies.

This decision, known as the SWANCC decision, means that the Environmental Protection Agency and Army Corps of Engineers can no longer enforce federal Clean Water Act protection mechanisms to protect a waterway solely on the basis that it is used as habitat for migratory birds.

In its discussion of the case, the Court went beyond the issue of the migratory bird rule and questioned whether Congress intended the Clean Water Act to provide protection for isolated ponds, streams, wetlands and other waters, as it had been interpreted to provide for most of the last 30 years. While not the legal holding of the case, the Court's discussion has resulted in a wide variety of interpretations by EPA and Corps officials that jeopardize protection for wetlands, and other waters. The wetlands at risk include prairie potholes and bogs, familiar to many in Wisconsin, and many other types of wetlands.

In effect, the Court's decision removed much of the Clean Water Act protection for between 30% to 60% of the Nation's wetlands. An estimate from my home state of Wisconsin suggested that more than 60% of the wetlands lost federal protection in my state. My state is not alone. The National Association of State Wetland Managers have been collecting data from states across the country. For example, Nebraska estimates they will lose more than 40% of their wetlands. Indiana estimates they will lose 31% of total wetland acreage and 74% of the total number of wetlands. Delaware estimates the loss of 33% or more of their freshwater wetlands. These wetlands absorb floodwaters, prevent pollution from reaching our rivers and streams, and provide crucial habitat for most of the nation's ducks and other waterfowl, as well as hundreds of other bird, fish, shellfish, and amphibian species. Loss of these waters would have a devastating effect on our environment.

In addition, by narrowing the water and wetland areas subject to federal regulation,