

IGWA Bulletin

Idaho Legislature Clarifies IDWR's Exclusive Jurisdiction Over Water Rights

SENATE BILL 1353, AMENDS IDAHO CODE SECTION 42-201, TO MAKE IT CLEAR THAT THE IDAHO DEPARTMENT OF WATER RESOURCES (IDWR) HAS EXCLUSIVE JURISDICTION OVER THE APPROPRIATION OF WATER, AND THAT NO OTHER STATE AGENCY OR LOCAL GOVERNMENT MAY TAKE ANY ACTION TO "PROHIBIT, RESTRICT OR REGULATE THE APPROPRIATION OF THE PUBLIC SURFACE OR GROUND WATERS OF THE STATE." SENATE BILL 1353 DID NOT ENACT NEW LAW; IT SIMPLY RESTATES THAT ONLY IDWR HAS THE AUTHORITY TO REGULATE WATER RIGHTS IN IDAHO.

THE LEGISLATION ASSURES THAT PROPERTY OWNERS AND DEVELOPERS WILL NOT FACE DUAL PERMITTING SYSTEMS ADMINISTERED BY IDWR AND LOCAL GOVERNMENTS LIKE CITIES. THE LEGISLATION DOES NOT DIMINISH ANY AUTHORITIES POSSESSED BY LOCAL GOVERNMENTS, OR PREVENT THEM FROM EXERCISING THEIR AUTHORITIES IN A MANNER THAT MAY AFFECT THE LOCATION OR MANNER OF DRILLING A WELL WITHIN THEIR JURISDICTIONAL BOUNDARIES.

THE NEED FOR SENATE BILL 1353 BECAME APPARENT AFTER SPENDING SEVERAL EVENINGS DURING THE SUMMER AND FALL OF 2005 WITH THE PARMA CITY COUNCIL DISCUSSING A PROPOSED ORDINANCE ENTITLED "DEDICATION OF WATER SYSTEMS TO THE CITY." THE CITY OF EAGLE PASSED THIS ORDINANCE AND IT HAD BEEN CIRCULATED TO THE CITY OF PARMA AND SEVERAL OTHER CITIES. GARY DUSPIVA, A BOISE VALLEY WELL DRILLER AND THE IDAHO GROUND WATER ASSOCIATION'S (IGWA) VICE PRESIDENT, ASKED ME TO EVALUATE THE ORDINANCE'S IMPACT ON GROUND WATER APPROPRIATION AND WELL DRILLING. IN ADDITION TO REQUIRING THAT OWNERS OF LAND TO BE DEVELOPED OR ANNEXED DONATE SURFACE AND GROUND WATER RIGHTS FOR THE NEW USES TO THE CITY, THE ORDINANCE CONTAINED A PROVISION REQUIRING THAT:

"ANY WELL CONSTRUCTION OR DEVELOPMENT OF GROUND WATER RESOURCES SHALL BE PROHIBITED WITHIN THE CITY'S MUNICIPAL WATER SERVICE AREA EXCEPT AS MAY BE SET FORTH IN A DEVELOPMENT AGREEMENT OR BY A SPECIAL PURPOSE PERMIT ISSUED BY THE BUILDING

CONTINUED ON PG. 2



OFFICIAL AND APPROVED BY THE CITY COUNCIL.”

WE ADVISED THE CITY THAT THIS PROVISION CONFLICTED WITH IDWR’S EXCLUSIVE JURISDICTION OVER THE APPROPRIATION OF WATER, AND WITH THE STATUTORY EXEMPTION OF DOMESTIC WATER RIGHTS FROM IDWR’S PERMITTING PROCESS. UNDER IT, NO ONE COULD APPROPRIATE A GROUND WATER RIGHT IN THE CITY OF PARMA WITHOUT THE CITY’S PERMISSION.

DURING OUR DISCUSSIONS WITH THE PARMA CITY COUNCIL, WE LEARNED THAT ITS TRUE OBJECTIVE WAS NOT THE APPARENT POWER GRAB, BUT TO PROTECT ITS WATER SUPPLY AND ITS WATER SYSTEM FROM THE POTENTIAL ADVERSE IMPACTS OF NEW WELL DRILLING. WE ASSURED THE COUNCIL THAT IDWR HAS ADEQUATE AUTHORITY AND PERMITTING PROCEDURES TO ADDRESS THESE ISSUES. WE SUGGESTED THAT THE COUNCIL COULD REQUIRE RESIDENTS AND DEVELOPERS TO SHOW THAT NEW PROPOSED WELLS WOULD NOT HARM CITY WELLS, PIPES AND OTHER WATER SYSTEM INFRASTRUCTURE.

WHILE CITY STAFF WERE NOT TOTALLY CONVINCED THAT THE CITY COULD NOT LEGALLY PASS THIS WATER DEVELOPMENT VETO PROVISION, THE COUNCIL AGREED TO REPLACE IT WITH THE REQUIREMENT THAT PROPOSALS FOR NEW DEVELOPMENT AND ANNEXATIONS:

“DEMONSTRATE THAT 1) THE LOCATION OF A NEW WELL WILL NOT RESULT IN A VIOLATION OF ANY REGULATION GOVERNING THE LOCATION OF WATER SYSTEMS OR FACILITIES, AND 2) THE DEVELOPMENT WILL NOT RESULT IN SUBSTANTIAL HARM TO THE CITY’S MUNICIPAL WATER SYSTEM.

DESPITE THIS SUCCESS WITH THE CITY OF PARMA, WE REMAINED CONCERNED THAT PARMA STAFF WERE NOT FULLY CONVINCED THAT THE CITY CANNOT ENACT A WATER RIGHT VETO ORDINANCE, AND THAT OTHER CITIES MIGHT ATTEMPT TO DO SO. IGWA SHARED THIS CONCERN AND ASKED ME TO PREPARE SENATE BILL 1353 TO ADDRESS IT.

SENATE BILL 1353 CLEARLY STATES THAT ONLY IDWR HAS AUTHORITY OVER THE APPROPRIATION OF WATER RIGHTS. NO OTHER AGENCY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE OF IDAHO MAY PROHIBIT, RESTRICT, OR REGULATE THE RIGHT TO APPROPRIATE THE SURFACE OR GROUND WATERS OF THE STATE.

IGWA MEMBERS SHOULD NOT INTERPRET THIS LEGISLATION AS AN IMMUNIZATION FROM ANY AUTHORITY OR REQUIREMENT THAT MAY AFFECT THE LOCATION OR MANNER OF DRILLING A WELL. AS YOU CAN SEE FROM THE ORDINANCE GARY AND I NEGOTIATED WITH THE CITY OF PARMA, THE CITY CAN REQUIRE THAT DEVELOPERS SHOW THAT THEY HAVE COMPLIED WITH ALL EXISTING REGULATORY REQUIREMENTS APPLICABLE TO WELL DRILLING, AND THAT THE NEW WELL WILL NOT CAUSE “SUBSTANTIAL HARM” TO THE CITY’S MUNICIPAL WATER SYSTEM (WELL CASINGS, PUMPS, PIPES AND OTHER INFRASTRUCTURE).

SUBDIVISION COVENANTS REPRESENT TERMS OF PRIVATE AGREEMENT BETWEEN THE

CONTINUED ON PG. 3

SELLER AND THE PURCHASER THAT REMAIN WITH THE LAND THROUGH ALL SUBSEQUENT PURCHASERS UNTIL THEY ARE MODIFIED. THROUGH COVENANTS, PURCHASERS MAY AGREE NOT TO DRILL WELLS, OR TO DRILL ONLY UNDER SPECIFIED CONDITIONS, AND THOSE COVENANTS ARE BINDING.

THERE MAY BE QUESTIONS ABOUT WHETHER A CITY ORDINANCE THAT AFFECTS WELL DRILLING CROSSES THE LINE INTO IDWR'S JURISDICTION BY REGULATING THE APPROPRIATION OF WATER. IF YOU ENCOUNTER SUCH AN ORDINANCE OR OTHER LOCAL GOVERNMENT RULE, CONTACT IGWA TO DISCUSS IT.

FOR MORE BACKGROUND ON THE PARMA CITY ORDINANCE, CHECK THE IGWA WEB SITE AT WWW.IGWA.INFO AND CLICK ON IGWA NEWS TO SEE COPIES OF THE ORIGINAL PROPOSED ORDINANCE, THE LETTER I WROTE TO THE CITY COUNCIL DISCUSSING OUR CONCERNS, AND THE FINAL ORDINANCE AS ENACTED BY THE CITY COUNCIL.

*DANIEL V. STEENSON—RINGERT/CLARK LLP
IGWA'S LEGAL COUNSEL*



| JANUARY, 2007 | | | | | | |
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Torque: 83,000

900/350 IR Compressor
PTO from carrier at 500 hp
Approximate Weight: 56,000 lbs

DR-24HD

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Torque: 9,700 ft-lbs

Lower Drive
Pullback/Pulldown: 117,000 lbs/42,000 lbs
Torque: 208,000 ft-lbs

900/350 IR Compressor
PTO from carrier at 500 hp
Approximate Weight: 72,000 lbs



DR-40

Top Drive
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Torque: 22,000 ft-lbs

Lower Drive
Pullback/Pulldown: 75,000 lbs/33,000 lbs
Torque: 250,000 ft-lbs

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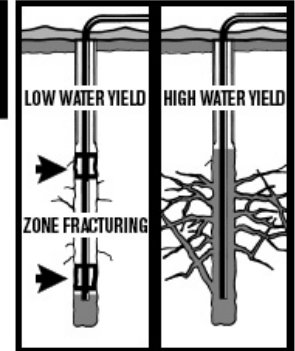
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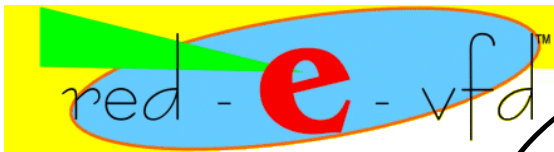
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Special Report from NG WA—State Legislative Outlook

STATE WATER WELL CONSTRUCTION REGULATIONS, DRILLER AND PUMP INSTALLER LICENSING LAWS AND CONTINUING EDUCATION REQUIREMENTS ARE PRIORITY ISSUES THAT MANY STATE ASSOCIATIONS AND INDUSTRY PROFESSIONALS MONITOR. STATE ASSOCIATIONS PROVIDE A VALUABLE SERVICE TO THEIR MEMBERSHIP IN MONITORING DEVELOPMENTS AND MOBILIZING INDUSTRY PROFESSIONALS ON THESE AND OTHER TOPICS.

SOME OTHER ISSUES THAT HAVE SURFACED AROUND THE COUNTRY THAT MAY POP UP IN YOUR AREA INCLUDE:

CRANE OPERATOR CERTIFICATION BILLS: SOME STATES HAVE ADOPTED CRANE OPERATOR CERTIFICATION REQUIREMENTS. STATE ASSOCIATIONS MAY WANT TO MONITOR SUCH ACTIVITY TO ENSURE THAT MOBILE DRILLING RIGS ARE NOT INADVERTENTLY INCLUDED WITHIN THE DEFINITION OF A CRANE. AT THE FEDERAL LEVEL, NGWA VOLUNTEERS HAVE WORKED TO EXCLUDE DRILLING RIGS FROM FEDERAL OSHA'S DRAFT CRANE REGULATIONS. THE FEDERAL REGULATIONS HAVE YET TO BE PROPOSED OR FINALIZED. IT IS IMPORTANT, HOWEVER, THAT STATES MONITOR INDIVIDUAL STATE CRANE LEGISLATION AND REGULATIONS. NGWA'S STATE CENTER FOR GROUND WATER POLICY HAS A BILL TRACKING SERVICE AND BACKGROUND MATERIALS IN THE INFORMATION EXCHANGE SECTION OF THE READING ROOM. ADDITIONALLY, THE NATIONAL COMMISSION FOR CRANE CERTIFICATION WEB SITE TRACKS CRANE CERTIFICATION LAWS.

FEDERAL AND STATE WELL TESTING LEGISLATION: SEVERAL YEARS AGO, NEW JERSEY PASSED ONE OF THE MOST EXTENSIVE PRIVATE WELL TESTING PROGRAMS IN THE COUNTRY. PRIVATE WELL TESTING IS REQUIRED AT THE TIME OF NEW CONSTRUCTION AND PROPERTY TRANSFER. ADDITIONALLY, PERIODIC TESTING OF PRIVATE WELLS SERVICING RENTAL PROPERTIES MUST BE DONE. WELL TESTING LEGISLATION HAS POPPED UP IN SEVERAL STATES SINCE THAT TIME. THIS YEAR, FOR EXAMPLE, NORTH CAROLINA'S GOVERNOR SIGNED INTO LAW LEGISLATION TO REQUIRE ADDITIONAL INSPECTION AND TESTING AT THE TIME OF PRIVATE WELL CONSTRUCTION.

IN 2007, THE U.S. GEOLOGICAL SURVEY IS EXPECTED TO RELEASE A STUDY ON THE QUALITY OF THE SOURCE WATER FOR DOMESTIC WELLS. FROM PAST STUDIES, IT APPEARS THAT NITRATE, BACTERIA AND NATURALLY OCCURRING CONSTITUENTS WILL BE CONTAMINANTS OF POTENTIAL CONCERN.

CONTINUED ON PG. 8

THE SURVEY ANTICIPATES HOSTING A CONGRESSIONAL BRIEFING ON THE STUDY RESULTS. DEPENDENT ON NEWS COVERAGE EITHER FROM THIS USGS NATIONAL STUDY RELEASE OR, AS THE RESULT OF OTHER LOCALIZED STUDIES, STATE ASSOCIATIONS MAY SEE STATE PRIVATE WELL TESTING LEGISLATION INTRODUCED. THE NORTH CAROLINA BILL GAINED TRACTION FOLLOWING NEWS ARTICLES IN THE RALEIGH PAPER.

NGWA'S STATE CENTER FOR GROUND WATER POLICY BILL TRACKING SERVICE CAN BE USED TO SUPPLEMENT YOUR STATE ASSOCIATION'S REGULAR LEGISLATIVE CONTACTS. A "STATE WELL TESTING BRIEFING PACKET" IS ALSO UNDER DEVELOPMENT. VOLUNTEERS INTERESTED IN HELPING REVIEW THE BRIEFING PACKET ARE ENCOURAGED TO CONTACT CHRIS REIMER AT CREIMER@NGWA.ORG.

NGWA IS ORGANIZING A "PRIVATE WELL TESTING TASK FORCE" TO POSITION THE ASSOCIATION IN ADVANCE TO ADDRESS FEDERAL WELL TESTING LEGISLATION, IF PROPOSED, IN 2007. THE 2007 NGWA WASHINGTON FLY-IN ATTENDEES WILL ALSO BE ASKED TO HELP EDUCATE CONGRESSIONAL MEMBERS AND THEIR STAFFS ABOUT PRIVATE WELL SYSTEMS AS SAFE, AFFORDABLE DRINKING WATER SOURCES.

WATER TREATMENT EQUIPMENT SELECTION AND MAINTENANCE: IMPACTS ON PRIVATE WELL SYSTEMS: THE CENTERS FOR DISEASE CONTROL AND PREVENTION IS LOOKING AT THE USE OF WATER TREATMENT DEVICES ON PRIVATE WELL SYSTEMS IN AREAS OF KNOWN GROUND WATER CONTAMINATION. STUDY RESULTS WERE INITIALLY EXPECTED TO BE RELEASED IN THE FALL OF 2006, BUT THAT TIMELINE APPEARS TO BE SLIPPING. THE CDC STUDY'S GOALS ARE TO INVESTIGATE THE EFFICACY OF TREATMENT DEVICES, INCLUDING HOW CONSUMERS SELECT AND MAINTAIN THE EQUIPMENT. WHILE CDC HAS REPEATEDLY SAID THAT THE STUDY IS NOT AIMED AT PRIVATE WELL SYSTEMS, CONSUMER CONFIDENCE MAY BE AFFECTED IF THE RESULTS INDICATE CONSUMERS ARE DRINKING WATER EXCEEDING SAFE LEVELS. PROFESSIONALS MAY WANT TO CONSIDER PROACTIVELY EDUCATING THEIR CUSTOMERS, ESPECIALLY IF THEY OPERATE IN AREAS WHERE GROUND WATER NATURALLY EXCEEDS DRINKING WATER STANDARDS.

NGWA'S EXPO IS AN OPPORTUNITY FOR INDUSTRY MEMBERS TO OBTAIN THE SKILLS AND KNOWLEDGE TO ADDRESS GROUND WATER QUALITY CONCERNS THAT MAY BE HIGHLIGHTED IN THE USGS AND CDC STUDIES. NGWA'S WELL OWNER WEB SITE OFFERS MULTIPLE RESOURCES FOR EDUCATING CONSUMERS ABOUT PRIVATE WELLS AND GROUND WATER QUALITY. NGWA'S WASHINGTON FLY-IN WILL IN TURN PROVIDE A VENUE TO PROACTIVELY EDUCATE FEDERAL POLICYMAKERS ABOUT THE STEPS THAT CONTRACTORS AND CONSUMERS CAN AND DO TAKE TO PROTECT THEIR

CONTINUED ON PG. 9

PRIVATE WELL INVESTMENTS.

WATER RESOURCE ALLOCATION AND DOMESTIC WELL EXEMPTIONS: SEVERAL WESTERN STATES ARE QUESTIONING OR ACTIVELY REASSESSING THEIR STATE'S CURRENT EXEMPTION OF DOMESTIC WELLS FROM STATE WATER RIGHTS OR RESOURCE LAWS. NEW MEXICO AND WASHINGTON STATE, AMONG OTHER STATE ASSOCIATIONS, HAVE AND ARE TAKING AN ACTIVE PART IN WATER RESOURCE DEBATES IN THEIR STATES. AS COMPETITION FOR WATER INCREASES, STATE ASSOCIATIONS AND THEIR MEMBERSHIPS WILL INCREASINGLY BE AFFECTED BY THE DEBATE AND RESULTANT DECISIONS REGARDING HOW WATER RESOURCES ARE ALLOCATED. THE WASHINGTON STATE ASSOCIATION'S WHITE PAPER IS POSTED ON THE NGWA STATE CENTER FOR GROUND WATER POLICY READING ROOM UNDER "SUSTAINABILITY."

PERCHLORATE STANDARDS: MASSACHUSETTS EARLIER THIS YEAR BECAME THE FIRST STATE TO ADOPT A DRINKING WATER AND WASTE CLEANUP STANDARD FOR PERCHLORATE, SETTING THE STANDARD AT 2 PPB. POTENTIAL SOURCES OF PERCHLORATE INCLUDE, AMONG OTHERS, ORDINANCE, ROCKET PROPELLANTS, FLARES, FIREWORKS, FERTILIZER, AND CHLORINE. IN CALIFORNIA, THE OLIN CORPORATION HAS TRIED TO IMPLICATE A MUSHROOM FARMER AND WELL CHLORINATION AS SOURCES FOR SOME OF THE PERCHLORATE IN A CONTAMINANT PLUME OLIN IS BEING ASKED TO REMEDIATE. AT THIS TIME, THERE IS NO FEDERAL DRINKING WATER STANDARD FOR PERCHLORATE. NGWA'S GROUND WATER ON-LINE DATA BASE CONTAINS PERTINENT ABSTRACTS FROM THE ASSOCIATION'S JOURNALS AND CONFERENCE PRESENTATIONS ON THE SOURCES, OCCURRENCE AND TREATMENT OF PERCHLORATE.

STATE IMPLEMENTATION OF THE GROUND WATER RULE: THE U.S. EPA ADMINISTRATOR SIGNED THE FINAL "GROUND WATER RULE" ON OCTOBER 11. THE PURPOSE OF THE RULE IS TO PROVIDE FOR INCREASED PROTECTION AGAINST MICROBIAL PATHOGENS IN PUBLIC WATER SYSTEMS THAT USE GROUND WATER SOURCES. THERE ARE APPROXIMATELY 147,000 PUBLIC WATER SYSTEMS THAT USE GROUND WATER AS THEIR SOURCE. VIOLATIONS OF CURRENT MICROBIAL STANDARDS ARE THE LARGEST CATEGORY AMONG ALL OF U.S. EPA SDWA STANDARD VIOLATIONS. THE ADDITIONAL MICROBIAL REQUIREMENTS ARE SURE TO ADD CHALLENGES FOR GROUND WATER SUPPLIED SYSTEMS, MANY OF WHICH WILL BE SMALL OR NON-TRADITIONAL WATER PROVIDERS SUCH AS TRAILER PARKS, RESTAURANTS OR SCHOOLS.

WHEN INVITED TO COMMENT ON THE PROPOSED GROUND WATER RULE SIX YEARS AGO, NGWA STRESSED THAT ONLY A SMALL PORTION OF GROUND WATER-

CONTINUED ON PG. 10

SUPPLIED WATER SYSTEMS ARE VULNERABLE TO FECAL CONTAMINATION. NGWA IDENTIFIED AS A CHALLENGE DEVELOPING A WORKABLE PROGRAM THAT IDENTIFIES VULNERABLE SYSTEMS AND TARGETS RESOURCES TO DETERMINE WHICH OF THOSE SYSTEMS REQUIRE CORRECTIVE ACTION OR, SECONDARILY, TREATMENT. WHILE AN IN-DEPTH REVIEW OF THE NEW REGULATIONS HAS NOT YET BEEN COMPLETED, IT APPEARS THAT U.S. EPA DID PROVIDE STATE AGENCIES WITH CONSIDERABLE FLEXIBILITY IN IMPLEMENTING THE NEW RULE AND ALSO RECOGNIZED THAT NOT ALL GROUND WATER SYSTEMS ARE VULNERABLE TO FECAL CONTAMINATION.

STATE ASSOCIATIONS MAY WANT TO MONITOR DEVELOPMENTS IN THEIR STATES AS THEY UNFOLD. IN OHIO, FOR EXAMPLE, THE STATE INDICATED EVEN PRIOR TO THE RULE'S RELEASE THAT THEY ANTICIPATE TAKING A FAIRLY AGGRESSIVE STANCE IN DETERMINING WHICH SYSTEMS ARE VULNERABLE TO CONTAMINATION AND REQUIRE TREATMENT SIMILAR TO SURFACE WATER SYSTEMS. STATES ALSO HAVE FLEXIBILITY UNDER THE RULE REGARDING MONITORING THAT WILL AFFECT COSTS AND EASE OF COMPLIANCE. STATES HAVE THREE YEARS TO ADOPT THE RULE.

NGWA'S EXPO WORKSHOPS INCLUDE TOPICS AIMED AT HELPING INDUSTRY MEMBERS ENHANCE THEIR SKILLS AND COMPETENCIES RELATED TO WELL CONSTRUCTION, REHABILITATION, AND WATER TREATMENT, SERVICES THAT MAY BE REQUESTED AS A RESULT OF THIS NEW RULE.

OTHER? ONE OF THE MAJOR STRENGTHS OF AN ASSOCIATION IS ITS SHARED KNOWLEDGE AND COLLECTIVE EFFORTS THAT CAN MAGNIFY RESULTS. DO YOU HAVE OTHER ISSUES THAT YOU HAVE TACKLED IN YOUR STATE THAT YOU BELIEVE MAY SPREAD TO OTHER STATES? PLEASE SHARE THAT INFORMATION WITH OTHERS. THE NGWA AFFILIATE STATE ELIST IS ONE WAY TO QUICKLY SHARE OR GATHER NEWS FROM AROUND THE COUNTRY. THE DECEMBER NGWA EXPO'S PEER-TO-PEER SESSION IS ANOTHER PLACE TO DISCUSS IN-PERSON THE RAMIFICATIONS OF THE ELECTIONS AND WHAT MAY LIE AHEAD. FOR AN EXTENDED FORUM, THE MARCH 4, 2007 LEADERSHIP CONFERENCE AND MARCH 5-6 NGWA WASHINGTON FLY-IN, OFFER OPPORTUNITIES NOT ONLY TO LEARN FROM THE INVITED SPEAKERS BUT EACH OTHER, BE SURE TO MAKE YOUR PLANS EARLY FOR THESE EVENTS.

*COMMENTS OR QUESTIONS ARE INVITED.
EMAIL OR CALL CHRIS REIMER, NGWA GOVERNMENT AFFAIRS
AT CREIMER@NGWA.ORG OR 800/551-7379, EXT. 560.*