

105TH CONGRESS  
1ST SESSION

# H. R. 128

To preserve the authority of the States over waters within their boundaries, to delegate the authority of the Congress to the States to regulate water, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. CRAPO (for himself, Mr. HANSEN, Mr. SMITH of Oregon, Mrs. CHENOWETH, and Mr. SKEEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To preserve the authority of the States over waters within their boundaries, to delegate the authority of the Congress to the States to regulate water, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Water Sov-  
5 ereignty Protection Act”.

1 **SEC. 2. USE OF STATE LAW BY UNITED STATES FOR AC-**  
2 **QUIRING AND EXERCISING WATER RIGHTS.**

3 (a) IN GENERAL.—Whenever the United States seeks  
4 to appropriate water or acquire a water right within a  
5 State, or to exercise any right with respect to a water  
6 right, the United States shall be subject to all procedural  
7 and substantive laws of the State relating to the alloca-  
8 tion, adjudication, appropriation, acquisition, use, and ex-  
9 ercise of water rights to the same extent as any private  
10 person is subject to such laws.

11 (b) CONSENT TO JOINDER.—(1) Consent is given to  
12 join the United States in any administrative or judicial  
13 proceeding of a State relating to the allocation, adjudica-  
14 tion, appropriation, use, or exercise of a water right to  
15 the same extent as any private person may be joined in  
16 such a proceeding. The United States, when a party to  
17 any such a proceeding, shall be—

18 (A) deemed to have waived any right to plead  
19 that the State laws are inapplicable or that the  
20 United States is not amenable thereto by reason of  
21 its sovereignty, and

22 (B) subject to the judgments, orders, and de-  
23 crees issued pursuant to any such proceeding, and  
24 may obtain review thereof, in the same manner and  
25 to the same extent as a private individual under like  
26 circumstances.

1       (2) Consent and waiver by the United States under  
2 this subsection is in addition to section 208 of the Act  
3 of July 10, 1952 (43 U.S.C. 666; commonly referred to  
4 as the “McCarran Amendment”).

5       (c) IMPLIED FEDERAL RESERVED WATER  
6 RIGHTS.—The withdrawal, designation, or other reserva-  
7 tion of lands by the United States for any purpose (wheth-  
8 er by statute or administrative action) does not give rise  
9 by implication to a Federal reserved right to water relating  
10 to such purpose.

11 **SEC. 3. MANAGEMENT AND CONTROL OF WATER WITHIN A**  
12 **STATE.**

13       (a) IN GENERAL.—Notwithstanding any other provi-  
14 sion of law and except as otherwise provided by this Act—

15           (1) management and control over water within  
16 a State shall be subject to and in accordance with  
17 the laws of the State in which such water is located;

18           (2) the authority of the Congress to regulate  
19 water is expressly delegated to the respective States,  
20 including the authority to regulate water in inter-  
21 state commerce, whether as a usufructuary right, in  
22 trade, or for travel; and

23           (3) the United States, and any agency or officer  
24 on behalf of the United States, may exercise man-  
25 agement and control over waters within a State only

1 in compliance with the laws of the State in which  
2 the water is located.

3 (b) SUIT BY PRIVATE PARTIES.—The United States  
4 waives sovereign immunity with respect to any claim for  
5 declaratory, equitable, or injunctive relief brought by a  
6 non-governmental entity against the United States under  
7 the laws of a State relating to the management or control  
8 of water within the State.

9 **SEC. 4. COSTS AND FEES RELATING TO ADMINISTRATIVE**  
10 **OR JUDICIAL PROCEEDINGS.**

11 In any administrative or judicial proceeding in which  
12 the United States participates pursuant to this Act or sec-  
13 tion 208 of the Act of July 10, 1952 (43 U.S.C. 666; com-  
14 monly referred to as the “McCarran Amendment”), the  
15 United States shall be subject to the imposition of costs  
16 and fees to the same extent as costs and fees may be im-  
17 posed on a private party.

18 **SEC. 5. SAVINGS PROVISIONS AND DISCLAIMERS.**

19 (a) IN GENERAL.—Nothing in this Act shall be con-  
20 strued as—

21 (1) permitting appropriations of water under  
22 State law which interfere with the provisions of  
23 international treaties of the United States; or

24 (2) affecting, impairing, diminishing, subordi-  
25 nating, or enlarging the rights of the United States

1       or any State to water under any international treaty  
2       or interstate compact.

3       (b) SUBMERGED AND OUTER CONTINENTAL SHELF  
4 LANDS.—Nothing in this Act shall be construed to affect  
5 or modify the Submerged Lands Act (43 U.S.C. 1301 et  
6 seq.) or the Outer Continental Shelf Lands Act (43 U.S.C.  
7 1331 et seq.).

8 **SEC. 6. DEFINITION.**

9       For the purposes of this Act, the term “State” in-  
10 cludes the District of Columbia, the Commonwealth of  
11 Puerto Rico, the Commonwealth of the Northern Mariana  
12 Islands, American Samoa, Guam, and the Virgin Islands.

○