

109TH CONGRESS  
1ST SESSION

# S. 912

To amend the Federal Water Pollution Control Act to clarify the jurisdiction  
of the United States over waters of the United States.

---

## IN THE SENATE OF THE UNITED STATES

APRIL 27, 2005

Mr. FEINGOLD (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. KERRY, Mr. JEFFORDS, Mrs. BOXER, Mr. DAYTON, Mr. SCHUMER, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To amend the Federal Water Pollution Control Act to clarify  
the jurisdiction of the United States over waters of the  
United States.

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 “Clean Water Authority  
5       Restoration Act of 2005”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are as follows:

8               (1) To reaffirm the original intent of Congress  
9       in enacting the Federal Water Pollution Control Act

1 Amendments of 1972 (86 Stat. 816) to restore and  
2 maintain the chemical, physical, and biological integ-  
3 rity of the waters of the United States.

4 (2) To clearly define the waters of the United  
5 States that are subject to the Federal Water Pollu-  
6 tion Control Act.

7 (3) To provide protection to the waters of the  
8 United States to the fullest extent of the legislative  
9 authority of Congress under the Constitution.

10 **SEC. 3. FINDINGS.**

11 Congress finds the following:

12 (1) Water is a unique and precious resource  
13 that is necessary to sustain human life and the life  
14 of animals and plants.

15 (2) Water is used not only for human, animal,  
16 and plant consumption, but is also important for ag-  
17 riculture, transportation, flood control, energy pro-  
18 duction, recreation, fishing and shellfishing, and mu-  
19 nicipal and commercial uses.

20 (3) In enacting amendments to the Federal  
21 Water Pollution Control Act in 1972 and through  
22 subsequent amendment, including the Clean Water  
23 Act of 1977 (91 Stat. 1566) and the Water Quality  
24 Act of 1987 (101 Stat. 7), Congress established the  
25 national objective of restoring and maintaining the

1 chemical, physical, and biological integrity of the wa-  
2 ters of the United States and recognized that achiev-  
3 ing this objective requires uniform, minimum na-  
4 tional water quality and aquatic ecosystem protec-  
5 tion standards to restore and maintain the natural  
6 structures and functions of the aquatic ecosystems  
7 of the United States.

8 (4) Water is transported through inter-  
9 connected hydrologic cycles, and the pollution, im-  
10 pairment, or destruction of any part of an aquatic  
11 system may affect the chemical, physical, and bio-  
12 logical integrity of other parts of the aquatic system.

13 (5) Protection of intrastate waters, along with  
14 other waters of the United States, is necessary to re-  
15 store and maintain the chemical, physical, and bio-  
16 logical integrity of all waters in the United States.

17 (6) The regulation of discharges of pollutants  
18 into interstate and intrastate waters is an integral  
19 part of the comprehensive clean water regulatory  
20 program of the United States.

21 (7) Small and periodically-flowing streams com-  
22 prise the majority of all stream channels in the  
23 United States and serve critical biological and  
24 hydrological functions that affect entire watersheds,  
25 including reducing the introduction of pollutants to

1 large streams and rivers, and especially affecting the  
2 life cycles of aquatic organisms and the flow of high-  
3 er order streams during floods.

4 (8) The pollution or other degradation of wa-  
5 ters of the United States, individually and in the ag-  
6 gregate, has a substantial relation to and effect on  
7 interstate commerce.

8 (9) Protection of the waters of the United  
9 States, including intrastate waters, is necessary to  
10 prevent significant harm to interstate commerce and  
11 sustain a robust system of interstate commerce in  
12 the future.

13 (10) Waters, including wetlands, provide protec-  
14 tion from flooding, and draining or filling wetlands  
15 and channelizing or filling streams, including intra-  
16 state wetlands and streams, can cause or exacerbate  
17 flooding, placing a significant burden on interstate  
18 commerce.

19 (11) Millions of people in the United States de-  
20 pend on wetlands and other waters of the United  
21 States to filter water and recharge surface and sub-  
22 surface drinking water supplies, protect human  
23 health, and create economic opportunity.

24 (12) Millions of people in the United States  
25 enjoy recreational activities that depend on intra-

1 state waters, such as waterfowl hunting, bird watch-  
2 ing, fishing, and photography and other graphic  
3 arts, and those activities and associated travel gen-  
4 erate billions of dollars of income each year for the  
5 travel, tourism, recreation, and sporting sectors of  
6 the economy of the United States.

7 (13) Activities that result in the discharge of  
8 pollutants into waters of the United States are com-  
9 mercial or economic in nature.

10 (14) States have the responsibility and right to  
11 prevent, reduce, and eliminate pollution of waters,  
12 and the Federal Water Pollution Control Act re-  
13 spects the rights and responsibilities of States by  
14 preserving for States the ability to manage permit-  
15 ting, grant, and research programs to prevent, re-  
16 duce, and eliminate pollution, and to establish stand-  
17 ards and programs more protective of a State's wa-  
18 ters than is provided under Federal standards and  
19 programs.

20 (15) Protecting the quality of and regulating  
21 activities affecting the waters of the United States  
22 is a necessary and proper means of implementing  
23 treaties to which the United States is a party, in-  
24 cluding treaties protecting species of fish, birds, and  
25 wildlife.

1           (16) Protecting the quality of and regulating  
 2           activities affecting the waters of the United States  
 3           is a necessary and proper means of protecting Fed-  
 4           eral land, including hundreds of millions of acres of  
 5           parkland, refuge land, and other land under Federal  
 6           ownership and the wide array of waters encompassed  
 7           by that land.

8           (17) Protecting the quality of and regulating  
 9           activities affecting the waters of the United States  
 10          is necessary to protect Federal land and waters from  
 11          discharges of pollutants and other forms of degrada-  
 12          tion.

13 **SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.**

14          Section 502 of the Federal Water Pollution Control  
 15          Act (33 U.S.C. 1362) is amended—

16               (1) by striking paragraph (7);

17               (2) by redesignating paragraphs (8) through

18               (23) as paragraphs (7) through (22), respectively;

19               and

20               (3) by adding at the end the following:

21               “(23) WATERS OF THE UNITED STATES.—The  
 22               term ‘waters of the United States’ means all waters  
 23               subject to the ebb and flow of the tide, the territorial  
 24               seas, and all interstate and intrastate waters and  
 25               their tributaries, including lakes, rivers, streams (in-

1 cluding intermittent streams), mudflats, sandflats,  
 2 wetlands, sloughs, prairie potholes, wet meadows,  
 3 playa lakes, natural ponds, and all impoundments of  
 4 the foregoing, to the fullest extent that these waters,  
 5 or activities affecting these waters, are subject to the  
 6 legislative power of Congress under the Constitu-  
 7 tion.”.

8 **SEC. 5. CONFORMING AMENDMENTS.**

9 The Federal Water Pollution Control Act (33 U.S.C.  
 10 1251 et seq.) is amended—

11 (1) by striking “navigable waters of the United  
 12 States” each place it appears and inserting “waters  
 13 of the United States”;

14 (2) in section 304(l)(1) by striking “NAVIGABLE  
 15 WATERS” in the heading and inserting “WATERS OF  
 16 THE UNITED STATES”; and

17 (3) by striking “navigable waters” each place it  
 18 appears and inserting “waters of the United  
 19 States”.

○