

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 Representatives 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 watching,
2 fishing, and photography and other graphic
3 arts, and those activities and associated travel generate
4 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 respects 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.

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);

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”.

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