

110TH CONGRESS  
1ST SESSION

# S. 1870

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

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## IN THE SENATE OF THE UNITED STATES

JULY 25, 2007

Mr. FEINGOLD (for himself, Mr. LAUTENBERG, Mr. LEVIN, Mr. KERRY, Mr. LIEBERMAN, Mrs. BOXER, Mr. MENENDEZ, Mr. SANDERS, Mr. CARDIN, Mr. DURBIN, Mr. REED, Mr. DODD, Mr. KOHL, Mr. WHITEHOUSE, Ms. STABENOW, Mr. CARPER, Mr. WYDEN, Mr. LEAHY, Mr. BROWN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## 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 Restora-  
5 tion Act of 2007”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are as follows:

1           (1) To reaffirm the original intent of Congress  
2           in enacting the Federal Water Pollution Control Act  
3           Amendments of 1972 (86 Stat. 816) to restore and  
4           maintain the chemical, physical, and biological integ-  
5           rity of the waters of the United States.

6           (2) To clearly define the waters of the United  
7           States that are subject to the Federal Water Pollu-  
8           tion Control Act (commonly known as the “Clean  
9           Water Act”).

10          (3) To provide protection to the waters of the  
11          United States to the fullest extent of the legislative  
12          authority of Congress under the Constitution.

13 **SEC. 3. FINDINGS.**

14          Congress finds the following:

15           (1) Water is a unique and precious resource  
16           that is necessary to sustain human life and the life  
17           of animals and plants.

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

23           (3) Through prior enactments, Congress estab-  
24           lished the national objective of restoring and main-  
25           taining the chemical, physical, and biological integ-

1 rity of the waters of the United States and recog-  
2 nized that achieving this objective requires uniform,  
3 minimum national water quality and aquatic eco-  
4 system protection standards to restore and maintain  
5 the natural structures and functions of the aquatic  
6 ecosystems of the United States. Since the 1970s,  
7 the definitions of “waters of the United States” in  
8 the U.S. Environmental Protection Agency’s and the  
9 U.S. Army Corps of Engineers’ regulations have  
10 properly established the scope of waters needed to be  
11 protected by the Federal Water Pollution Control  
12 Act (33 U.S.C. 1251 et seq.) in order to meet the  
13 national objective.

14 (4) Water is transported through inter-  
15 connected hydrologic cycles, and the pollution, im-  
16 pairment, or destruction of any part of an aquatic  
17 system may affect the chemical, physical, and bio-  
18 logical integrity of other parts of the aquatic system.

19 (5) Protection of intrastate waters is necessary  
20 to restore and maintain the chemical, physical, and  
21 biological integrity of all waters in the United  
22 States.

23 (6) The regulation of discharges of pollutants  
24 into intrastate waters is an integral part of the com-

1       prehensive clean water regulatory program of the  
2       United States.

3           (7) Small and intermittent streams, including  
4       ephemeral and seasonal streams, comprise the ma-  
5       jority of all stream miles in the United States and  
6       serve critical biological and hydrological functions  
7       that affect entire watersheds. These waters reduce  
8       the introduction of pollutants to large streams and  
9       rivers, provide and purify drinking water supplies,  
10      and are especially important to the life cycles of  
11      aquatic organisms and the flow of higher order  
12      streams during floods.

13          (8) The pollution or other degradation of wa-  
14      ters of the United States, individually and in the ag-  
15      gregate, has a substantial relation to and effect on  
16      interstate commerce.

17          (9) Protection of intrastate waters is necessary  
18      to prevent significant harm to interstate commerce  
19      and sustain a robust system of interstate commerce  
20      in the future.

21          (10) Waters, including streams and wetlands,  
22      provide protection from flooding. Draining or filling  
23      intrastate wetlands and channelizing or filling intra-  
24      state streams can cause or exacerbate flooding that

1 causes billions of dollars of damages annually, plac-  
2 ing a significant burden on interstate commerce.

3 (11) Millions of people in the United States de-  
4 pend on streams, wetlands, and other waters of the  
5 United States to filter water and recharge surface  
6 and subsurface drinking water supplies, protect  
7 human health, and create economic opportunity.  
8 Source water protection areas containing small or  
9 intermittent streams provide water to public drink-  
10 ing water supplies serving more than 110 million  
11 Americans.

12 (12) Millions of people in the United States  
13 enjoy recreational activities that depend on intra-  
14 state waters, such as waterfowl hunting, bird watch-  
15 ing, fishing, and photography, and those activities  
16 and associated travel generate hundreds of billions  
17 of dollars of income each year for the travel, tour-  
18 ism, recreation, and sporting sectors of the economy  
19 of the United States.

20 (13) Activities that result in the discharge of  
21 pollutants into waters of the United States are com-  
22 mercial or economic in nature. More than 14,000 fa-  
23 cilities with individual permits issued in accordance  
24 with the Federal Water Pollution Control Act (33  
25 U.S.C. 1251 et seq.), including industrial plants and

1 municipal sewage treatment systems, discharge into  
2 small or intermittent streams.

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

13 (15) Protecting the quality of and regulating  
14 activities affecting the waters of the United States  
15 is a necessary and proper means of implementing  
16 treaties to which the United States is a party, in-  
17 cluding treaties protecting species of fish, birds, and  
18 wildlife.

19 (16) Protecting the quality of and regulating  
20 activities affecting the waters of the United States  
21 is a necessary and proper means of protecting Fed-  
22 eral land, including hundreds of millions of acres of  
23 parkland, refuge land, and other land under Federal  
24 ownership and the wide array of waters encompassed  
25 by that land.

1           (17) Protecting the quality of and regulating  
2           activities affecting the waters of the United States  
3           is necessary to protect Federal land and waters from  
4           discharges of pollutants and other forms of degrada-  
5           tion.

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

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

9           (1) by striking paragraph (7);

10           (2) by redesignating paragraphs (8) through  
11           (24) as paragraphs (7) through (23), respectively;  
12           and

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

14           “(24) WATERS OF THE UNITED STATES.—The  
15           term ‘waters of the United States’ means all waters  
16           subject to the ebb and flow of the tide, the territorial  
17           seas, and all interstate and intrastate waters and  
18           their tributaries, including lakes, rivers, streams (in-  
19           cluding intermittent streams), mudflats, sandflats,  
20           wetlands, sloughs, prairie potholes, wet meadows,  
21           playa lakes, natural ponds, and all impoundments of  
22           the foregoing, to the fullest extent that these waters,  
23           or activities affecting these waters, are subject to the  
24           legislative power of Congress under the Constitu-  
25           tion.”.

1 **SEC. 5. CONFORMING AMENDMENTS.**

2 The Federal Water Pollution Control Act (33 U.S.C.  
3 1251 et seq.) is amended—

4 (1) by striking “navigable waters of the United  
5 States” each place it appears and inserting “waters  
6 of the United States”;

7 (2) in section 304(l)(1) by striking “NAVIGABLE  
8 WATERS” in the heading and inserting “WATERS OF  
9 THE UNITED STATES”; and

10 (3) by striking “navigable waters” each place it  
11 appears and inserting “waters of the United  
12 States”.

13 **SEC. 6. SAVINGS CLAUSE.**

14 Nothing in this Act shall be construed as affecting  
15 the authority of the Administrator of the Environmental  
16 Protection Agency or the Secretary of the Army under the  
17 following provisions of the Federal Water Pollution Con-  
18 trol Act (33 U.S.C. 1251 et seq.):

19 (1) Section 402(l)(1), relating to discharges  
20 composed entirely of return flows from irrigated ag-  
21 riculture.

22 (2) Section 402(l)(2), relating to discharges of  
23 stormwater runoff from certain oil, gas, and mining  
24 operations composed entirely of flows from precipita-  
25 tion runoff conveyances, which are not contaminated  
26 by or in contact with specified materials.

1           (3) Section 404(f)(1)(A), relating to discharges  
2 of dredged or fill materials from normal farming,  
3 silviculture, and ranching activities.

4           (4) Section 404(f)(1)(B), relating to discharges  
5 of dredged or fill materials for the purpose of main-  
6 tenance of currently serviceable structures.

7           (5) Section 404(f)(1)(C), relating to discharges  
8 of dredged or fill materials for the purpose of con-  
9 struction or maintenance of farm or stock ponds or  
10 irrigation ditches and maintenance of drainage  
11 ditches.

12           (6) Section 404(f)(1)(D), relating to discharges  
13 of dredged or fill materials for the purpose of con-  
14 struction of temporary sedimentation basins on con-  
15 struction sites, which do not include placement of fill  
16 material into the waters of the United States.

17           (7) Section 404(f)(1)(E), relating to discharges  
18 of dredged or fill materials for the purpose of con-  
19 struction or maintenance of farm roads or forest  
20 roads or temporary roads for moving mining equip-  
21 ment in accordance with best management practices.

22           (8) Section 404(f)(1)(F), relating to discharges  
23 of dredged or fill materials resulting from activities  
24 with respect to which a State has an approved pro-  
25 gram under section 208(b)(4) of such Act meeting

- 1 the requirements of subparagraphs (B) and (C) of
- 2 that section.

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