

110TH CONGRESS
1ST SESSION

H. R. 2421

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

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2007

Mr. OBERSTAR (for himself, Mr. DINGELL, Mr. EHLERS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. SAXTON, Mr. TAYLOR, Mr. PLATTS, Mr. HIGGINS, Mr. LOBIONDO, Mr. COHEN, Mr. SHAYS, Mr. DEFazio, Mr. KIRK, Mr. NADLER, Mr. WALSH of New York, Ms. MATSUI, Mr. CASTLE, Mrs. TAUSCHER, Mr. SMITH of New Jersey, Mr. FILNER, Ms. CORRINE BROWN of Florida, Mr. CAPUANO, Ms. HIRONO, Mr. KAGEN, Mr. BISHOP of New York, Mr. CUMMINGS, Ms. CARSON, Mr. MCNERNEY, Mr. ARCURI, Mr. CARNAHAN, Ms. NORTON, Mr. HALL of New York, Mr. DOGGETT, Mr. GRIJALVA, Mr. PALLONE, Mr. SCOTT of Virginia, Mr. BRADY of Pennsylvania, Mr. HINCHEY, Ms. SCHWARTZ, Mr. KUCINICH, Mr. THOMPSON of California, Mr. WEXLER, Mr. GEORGE MILLER of California, Ms. MCCOLLUM of Minnesota, Ms. ESHOO, Mr. HASTINGS of Florida, Mr. BLUMENAUER, Mr. BERMAN, Mr. KILDEE, Ms. HOOLEY, Mr. SERRANO, Mr. WAXMAN, Mrs. CAPPS, Mr. MORAN of Virginia, Mr. SARBANES, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. FRANK of Massachusetts, Mr. DOYLE, Mr. LANTOS, Mr. LEVIN, Mr. OLVER, Mr. PAYNE, Mr. HONDA, Mr. ABERCROMBIE, Mr. CHANDLER, Mr. CROWLEY, Ms. MOORE of Wisconsin, Mr. McNULTY, Mr. MOORE of Kansas, Ms. CASTOR, Mr. COURTNEY, Mr. JACKSON of Illinois, Mr. SPRATT, Mr. CLAY, Mr. McDERMOTT, Mr. ACKERMAN, Mr. WYNN, Mr. LANGEVIN, Mr. VISCLOSKY, Ms. WOOLSEY, Mrs. LOWEY, Mr. SIRES, Mr. HODES, Mr. STARK, Ms. KAPTUR, Mr. DELAHUNT, Ms. ZOE LOFGREN of California, Mr. MURPHY of Connecticut, Mr. KANJORSKI, Mr. ROTHMAN, Mr. PASCARELL, Mr. UDALL of New Mexico, Ms. SUTTON, Ms. SCHAKOWSKY, Mr. HOLT, Ms. BALDWIN, Mr. SCHIFF, Mr. GONZALEZ, Mr. SHERMAN, Mr. FARR, Ms. SLAUGHTER, Mr. ALLEN, Mrs. DAVIS of California, Mr. MCGOVERN, Ms. JACKSON-LEE of Texas, Mr. TOWNS, Mr. ANDREWS, Mr. GORDON of Tennessee, Ms. BEAN, Ms. SOLIS, Mr. KLEIN of Florida, Mr. THOMPSON of Mississippi, Ms. LORETTA SANCHEZ of California, Mr. NEAL of Massachusetts, Ms. ROYBAL-ALLARD, Mr. WU, Mr. TIERNEY, Mr. WEINER, Mr. VAN HOLLEN, Mr. ELLISON, Mr. RUPPERSBERGER, Ms. CLARKE, Ms. WASSERMAN SCHULTZ, Mr. RYAN of Ohio, Mrs. CHRISTENSEN, Mr. MARKEY, Mr. MEEHAN, Mr. CLEAVER, Mr. ENGEL,

Mr. DAVIS of Alabama, Ms. KILPATRICK, Mrs. MCCARTHY of New York, Ms. SHEA-PORTER, Mr. DICKS, Mr. KIND, Mr. LARSON of Connecticut, Mr. KENNEDY, Mr. LEWIS of Georgia, Mr. WELCH of Vermont, Mr. GUTIERREZ, Mr. PRICE of North Carolina, Mr. COOPER, Mr. RUSH, Mr. CONYERS, Mr. STUPAK, Ms. LINDA T. SÁNCHEZ of California, Ms. WATERS, Ms. HARMAN, Mr. BUTTERFIELD, Mr. YARMUTH, Mr. DAVIS of Illinois, Ms. DEGETTE, Mr. INSLEE, Ms. LEE, Mr. FATTAH, Mr. RANGEL, Ms. DELAURO, and Mr. LYNCH) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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:

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

13 (2) To clearly define the waters of the United
 14 States that are subject to the Federal Water Pollu-
 15 tion Control Act (33 U.S.C. 1251 et seq.).

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

4 **SEC. 3. FINDINGS.**

5 Congress finds the following:

6 (1) Water is a unique and precious resource
7 that is necessary to sustain human life and the life
8 of animals and plants.

9 (2) Water is used not only for human, animal,
10 and plant consumption, but is also important for ag-
11 riculture, transportation, flood control, energy pro-
12 duction, recreation, fishing and shellfishing, and mu-
13 nicipal and commercial uses.

14 (3) In enacting amendments to the Federal
15 Water Pollution Control Act in 1972 and through
16 subsequent amendment, including the Clean Water
17 Act of 1977 (91 Stat. 1566) and the Water Quality
18 Act of 1987 (101 Stat. 7), Congress established the
19 national objective of restoring and maintaining the
20 chemical, physical, and biological integrity of the wa-
21 ters of the United States and recognized that achiev-
22 ing this objective requires uniform, minimum na-
23 tional water quality and aquatic ecosystem protec-
24 tion standards to restore and maintain the natural
25 structures and functions of the aquatic ecosystems

1 of the United States. Since the 1970s, the definition
2 of ‘waters of the United States’ in the regulations of
3 the Environmental Protection Agency and the Army
4 Corps of Engineers have properly established the
5 scope of waters to be protected under the Federal
6 Water Pollution Control Act (33 U.S.C. 1251 et
7 seq.) in order to meet such national objective.

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 intermittent streams, including
22 ephemeral, and seasonal streams, and their start
23 reaches comprise the majority of all stream and river
24 miles in the conterminous United States. These wa-
25 ters reduce the introduction of pollutants to larger

1 rivers and streams, affect the life cycles of aquatic
2 organisms and wildlife, and impact 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. Source
24 water protection areas containing one or more small
25 or intermittent streams provide water to public

1 drinking water supplies serving more than
2 110,000,000 Americans.

3 (12) Millions of people in the United States
4 enjoy recreational activities that depend on intra-
5 state waters, such as waterfowl hunting, bird watch-
6 ing, fishing, and photography, and those activities
7 and associated travel generate billions of dollars of
8 income each year for the travel, tourism, recreation,
9 and sporting sectors of the economy of the United
10 States.

11 (13) Activities that result in the discharge of
12 pollutants into waters of the United States are com-
13 mercial or economic in nature. More than 40 per-
14 cent, or 14,800, facilities with permits issued under
15 the Federal Water Pollution Control Act, including
16 industrial facilities and municipal sewage treatment
17 systems, discharge into small or intermittent
18 streams.

19 (14) States have the responsibility and right to
20 prevent, reduce, and eliminate pollution of waters,
21 and the Federal Water Pollution Control Act re-
22 spects the rights and responsibilities of States by
23 preserving for States the ability to manage permit-
24 ting, grant, and research programs to prevent, re-
25 duce, and eliminate pollution, and to establish stand-

1 ards and programs more protective of a State's wa-
2 ters than is provided under Federal standards and
3 programs.

4 (15) Protecting the quality of and regulating
5 activities affecting the waters of the United States
6 is a necessary and proper means of implementing
7 treaties to which the United States is a party, in-
8 cluding treaties protecting species of fish, birds, and
9 wildlife.

10 (16) Protecting the quality of and regulating
11 activities affecting the waters of the United States
12 is a necessary and proper means of protecting Fed-
13 eral land, including hundreds of millions of acres of
14 parkland, refuge land, and other land under Federal
15 ownership and the wide array of waters encompassed
16 by that land.

17 (17) Protecting the quality of and regulating
18 activities affecting the waters of the United States
19 is necessary to protect Federal land and waters from
20 discharges of pollutants and other forms of degrada-
21 tion.

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

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

25 (1) by striking paragraph (7);

1 (2) by redesignating paragraphs (8) through
2 (24) as paragraphs (7) through (23), respectively;
3 and

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

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

17 **SEC. 5. CONFORMING AMENDMENTS.**

18 The Federal Water Pollution Control Act (33 U.S.C.
19 1251 et seq.) is amended—

20 (1) by striking “navigable waters of the United
21 States” each place it appears and inserting “waters
22 of the United States”;

23 (2) in section 304(l)(1) by striking “NAVIGABLE
24 WATERS” in the heading and inserting “WATERS OF
25 THE UNITED STATES”; and

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

4 **SEC. 6. SAVINGS CLAUSE.**

5 Nothing in this Act (including any amendment made
6 by this Act) shall be construed as affecting the authority
7 of the Secretary of the Army or the Administrator of the
8 Environmental Protection Agency (as the case may be)
9 under the following provisions of the Federal Water Pollu-
10 tion Control Act (33 U.S.C. 1251 et seq.):

11 (1) Section 402(l)(1), relating to discharges
12 composed entirely of agricultural return flows.

13 (2) Section 402(l)(2), relating to discharges of
14 stormwater runoff from oil, gas, and mining oper-
15 ations.

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

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

22 (5) Section 404(f)(1)(C), relating to discharges
23 of dredged or fill materials for the purpose of con-
24 struction or maintenance of farm or stock ponds or

1 irrigation ditches and maintenance of drainage
2 ditches.

3 (6) Section 404(f)(1)(D), relating to discharges
4 of dredged or fill materials for the purpose of con-
5 struction of temporary sedimentation basins on con-
6 struction sites.

7 (7) Section 404(f)(1)(E), relating to discharges
8 of dredged or fill materials for the purpose of con-
9 struction or maintenance of farm roads or forest
10 roads or temporary roads for moving mining equip-
11 ment.

12 (8) Section 404(f)(1)(F), relating to discharges
13 of dredged or fill materials resulting from activities
14 with respect to which a State has an approved pro-
15 gram under section 208(b)(4) of such Act.

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