

Clean Water Restoration Act of 2007 (Introduced in Senate)

S 1870 IS

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.

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `**Clean Water Restoration** Act of 2007'.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

- (1) To reaffirm the original intent of Congress in enacting the Federal **Water** Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.
- (2) To clearly define the waters of the United States that are subject to the Federal **Water** Pollution Control Act (commonly known as the `**Clean Water** Act').

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

SEC. 3. FINDINGS.

Congress finds the following:

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

(2) **Water** is used not only for human, animal, and plant consumption, but is also important for agriculture, transportation, flood control, energy production, recreation, fishing and shellfishing, and municipal and commercial uses.

(3) Through prior enactments, Congress established the national objective of restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States and recognized that achieving this objective requires uniform, minimum national **water** quality and aquatic ecosystem protection standards to restore and maintain the natural structures and functions of the aquatic ecosystems of the United States. Since the 1970s, the definitions of 'waters of the United States' in the U.S. Environmental Protection Agency's and the U.S. Army Corps of Engineers' regulations have properly established the scope of waters needed to be protected by the Federal **Water** Pollution Control Act (33 U.S.C. 1251 et seq.) in order to meet the national objective.

(4) **Water** is transported through interconnected hydrologic cycles, and the pollution, impairment, or destruction of any part of an aquatic system may affect the chemical, physical, and biological integrity of other parts of the aquatic system.

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

(6) The regulation of discharges of pollutants into intrastate waters is an integral part of the comprehensive **clean water** regulatory program of the United States.

(7) Small and intermittent streams, including ephemeral and seasonal streams, comprise the majority of all stream miles in the United States and serve critical biological and hydrological functions that affect entire watersheds. These waters reduce the introduction of pollutants to large streams and rivers, provide and purify drinking **water** supplies, and are especially important to the life cycles of aquatic organisms and the flow of higher order streams during floods.

(8) The pollution or other degradation of waters of the United States, individually and in the aggregate, has a substantial relation to and effect on interstate commerce.

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

(10) Waters, including streams and wetlands, provide protection from flooding. Draining or filling intrastate wetlands and channelizing or filling intrastate streams can cause or exacerbate flooding that causes billions of dollars of damages annually, placing a significant burden on interstate commerce.

(11) Millions of people in the United States depend on streams, wetlands, and other waters of the United States to filter **water** and recharge surface and subsurface drinking **water** supplies, protect human health, and create economic opportunity. Source **water** protection areas containing small or intermittent streams provide **water** to public drinking **water** supplies serving more than 110 million Americans.

(12) Millions of people in the United States enjoy recreational activities that depend on intrastate waters, such as waterfowl hunting, bird watching, fishing, and photography, and those activities and associated travel generate hundreds of billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.

(13) Activities that result in the discharge of pollutants into waters of the United States are commercial or economic in nature. More than 14,000 facilities with individual permits issued in accordance with the Federal **Water** Pollution Control Act (33 U.S.C. 1251 et seq.), including industrial plants and municipal sewage treatment systems, discharge into small or intermittent streams.

(14) States have the responsibility and right to prevent, reduce, and eliminate pollution of waters, and the Federal **Water** Pollution Control Act respects the rights and responsibilities of States by preserving for States the ability to manage permitting, grant, and research programs to prevent, reduce, and eliminate pollution, and to establish standards and programs more protective of a State's waters than is provided under Federal standards and programs.

(15) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of implementing treaties to which the United States is a party, including treaties protecting species of fish, birds, and wildlife.

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

(17) Protecting the quality of and regulating activities affecting the waters of the United States is necessary to protect Federal land and waters from discharges of pollutants and other forms of degradation.

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

Section 502 of the Federal **Water** Pollution Control Act (33 U.S.C. 1362) is amended--

- (1) by striking paragraph (7);
- (2) by redesignating paragraphs (8) through (24) as paragraphs (7) through (23), respectively; and
- (3) by adding at the end the following:

“(24) WATERS OF THE UNITED STATES- The term ‘waters of the United States’ means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.’.

SEC. 5. CONFORMING AMENDMENTS.

The Federal **Water** Pollution Control Act (33 U.S.C. 1251 et seq.) is amended--

- (1) by striking ‘navigable waters of the United States’ each place it appears and inserting ‘waters of the United States’;
- (2) in section 304(l)(1) by striking ‘NAVIGABLE WATERS’ in the heading and inserting ‘WATERS OF THE UNITED STATES’; and
- (3) by striking ‘navigable waters’ each place it appears and inserting ‘waters of the United States’.

SEC. 6. SAVINGS CLAUSE.

Nothing in this Act shall be construed as affecting the authority of the Administrator of the Environmental Protection Agency or the Secretary of the Army under the following provisions of the Federal **Water** Pollution Control Act (33 U.S.C. 1251 et seq.):

- (1) Section 402(l)(1), relating to discharges composed entirely of return flows from irrigated agriculture.
- (2) Section 402(l)(2), relating to discharges of stormwater runoff from certain oil, gas, and mining operations composed

entirely of flows from precipitation runoff conveyances, which are not contaminated by or in contact with specified materials.

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

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

(5) Section 404(f)(1)(C), relating to discharges of dredged or fill materials for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches and maintenance of drainage ditches.

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

(7) Section 404(f)(1)(E), relating to discharges of dredged or fill materials for the purpose of construction or maintenance of farm roads or forest roads or temporary roads for moving mining equipment in accordance with best management practices.

(8) Section 404(f)(1)(F), relating to discharges of dredged or fill materials resulting from activities with respect to which a State has an approved program under section 208(b)(4) of such Act meeting the requirements of subparagraphs (B) and (C) of that section.