

107TH CONGRESS
2^D SESSION

H. R. 5194

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

JULY 24, 2002

Mr. OBERSTAR (for himself, Mr. DINGELL, Mr. DEFAZIO, and Mr. BORSKI) 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 Authority
5 Restoration Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

4 (2) Water is used not only for human, animal,
5 and plant consumption, but is also important for ag-
6 riculture, transportation, flood control, energy pro-
7 duction, recreation, fishing and shellfishing, and mu-
8 nicipal and commercial uses.

9 (3) Water has significant historic and cultural
10 value in our society.

11 (4) In enacting the Federal Water Pollution
12 Control Act (33 U.S.C. 1251 et seq.) in 1972 and
13 through subsequent amendment, including the Clean
14 Water Act of 1977 (91 Stat. 1566) and the Water
15 Quality Act of 1987 (101 Stat. 7), Congress estab-
16 lished the national objective of restoring and main-
17 taining the chemical, physical, and biological integ-
18 rity of the waters of the United States and recog-
19 nized that achieving this objective requires restora-
20 tion and maintenance of the natural structures and
21 functions of the aquatic ecosystems of the United
22 States.

23 (5) Water is transported through inter-
24 connected hydrologic cycles, and the pollution, im-
25 pairment, or destruction of part of an aquatic sys-

1 tem may affect the chemical, physical, and biological
2 integrity of other interconnected parts of the aquatic
3 system.

4 (6) Protection of intrastate waters, including
5 waters that appear to be isolated, along with other
6 waters of the United States, is necessary to restore
7 and maintain the chemical, physical, and biological
8 integrity of all waters in the United States.

9 (7) The regulation of discharges of pollutants
10 into isolated and intrastate waters is an integral
11 part of the comprehensive clean water regulatory
12 program of the United States.

13 (8) The term “waters of the United States”
14 means all waters of the United States subject to the
15 powers of the Federal Government under the Con-
16 stitution, including wetlands adjacent to bodies of
17 water and other wetlands and waters often referred
18 to as isolated.

19 (9) Regardless of whether a wetland or other
20 water is referred to as isolated, wetlands, lakes,
21 ponds, and other types of water in the United States
22 are an integral part of the aquatic environment that
23 contribute to the chemical, physical, and biological
24 integrity of the aquatic system.

1 (10) The waters of the United States, including
2 intrastate and isolated waters, filter pollutants from
3 surface run-off and remove pollutants before the
4 water is released to groundwater or surface water or
5 taken up by plants and animals and widely dispersed
6 throughout the food chain.

7 (11) The waters of the United States, including
8 intrastate and isolated waters, also provide crucial
9 habitat for flora and fauna that contribute to the bi-
10 ological integrity of the aquatic environment, includ-
11 ing unique aquatic vegetation, amphibians, reptiles,
12 fish, shorebirds, raptors, waterfowl, and other migra-
13 tory birds.

14 (12) More than one-half of the duck population
15 of the United States breeds in intrastate and iso-
16 lated waters, as do approximately one-half of all am-
17 phibian species in the United States.

18 (13) Small and periodically-flowing streams
19 comprise the majority of all stream channels in the
20 United States and serve critical biological and
21 hydrological functions that affect entire watersheds,
22 especially the life cycles of aquatic organisms and
23 the movement of higher order streams during floods.

24 (14) Destroying, polluting, or altering small
25 stream channels often results in an accumulation of

1 negative effects throughout a watershed, including
2 the introduction of pollutants to larger-order
3 streams and rivers.

4 (15) The pollution or other degradation of wa-
5 ters of the United States, including isolated and
6 intrastate waters, individually and in the aggregate,
7 has a substantial relation to and affect on interstate
8 commerce.

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

14 (17) The navigation system of the United
15 States directly benefits from maintaining the variety
16 of water types that collect, store, and filter run-off
17 because that collection, storage, and filtration great-
18 ly reduces the quantity of sediment deposits and
19 navigation disruption in the waters of the United
20 States, and without the direct benefits of isolated
21 and intrastate waters, the United States would
22 spend millions of additional dollars on navigational
23 dredging projects.

1 (18) Thousands of businesses and communities
2 depend on wetlands and intrastate and isolated wa-
3 ters for protection from flooding.

4 (19) Draining or filling isolated wetlands and
5 channelizing or filling streams, including intrastate
6 streams, causes or exacerbates flooding.

7 (20) Floods and the risk of floods are a signifi-
8 cant burden on interstate commerce because floods
9 damage and destroy public infrastructure, private
10 homes, and businesses.

11 (21) Millions of people in the United States de-
12 pend on intrastate and isolated wetlands to filter
13 water and recharge surface and subsurface drinking
14 water supplies.

15 (22) Polluted drinking water and depleted
16 drinking water supplies are significant burdens on
17 interstate commerce because the lack of a safe and
18 ample water supply significantly limits economic
19 growth and adversely affects human health.

20 (23) Agriculture depends on intrastate and iso-
21 lated waters for irrigation, watering stock, and
22 maintenance of water supply to wells.

23 (24) Millions of people in the United States
24 enjoy recreational activities that depend on intra-
25 state and isolated waters, such as waterfowl hunting,

1 bird watching, fishing, and photography and other
2 graphic arts, and those activities and associated
3 travel generate billions of dollars of income each
4 year for the travel, tourism, recreation, and sporting
5 sectors of the economy of the United States.

6 (25) Discharges of dredged and fill material
7 and other pollutants into waters of the United
8 States, including intrastate and isolated waters, are
9 almost always associated with activities that are
10 commercial or economic in nature.

11 (26) Wetlands, including intrastate and isolated
12 wetlands, are routinely filled to construct roads,
13 parking lots, residential subdivisions, commercial
14 buildings, solid waste landfills, and recreational and
15 institutional facilities, all of which have a substantial
16 relation to and effect on interstate commerce.

17 (27) Activities that result in the discharge of
18 pollutants into waters of the United States are com-
19 mercial or economic in nature, including industrial
20 production, transportation and infrastructure devel-
21 opment, residential and commercial construction and
22 site development, navigation, agriculture and
23 silviculture, and resource extraction.

1 (28) In enacting the Federal Water Pollution
2 Control Act and its amendments, Congress recog-
3 nized that—

4 (A) inconsistent State water pollution con-
5 trol laws are insufficient to protect the aquatic
6 ecosystems of the United States; and

7 (B) uniform, minimum national water
8 quality and aquatic ecosystem protection stand-
9 ards are essential to prevent incentives to lower
10 environmental standards and allow businesses
11 in States with less protective environmental
12 standards to achieve greater profits, not only at
13 the expense of the downstream public but also
14 at the expense of businesses in States that im-
15 pose more protective environmental standards.

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

1 (30) Protecting the quality of and regulating
2 activities affecting the waters of the United States
3 is a necessary and proper means of implementing
4 treaties to which the United States is a party, in-
5 cluding treaties protecting species of fish, birds, and
6 wildlife, such as—

7 (A) the Convention for the Protection of
8 Migratory Birds in the United States and Can-
9 ada, signed at Washington on August 16, 1916
10 (39 Stat. 1702);

11 (B) the Convention for the Protection of
12 Migratory Birds and Game Mammals, signed at
13 Mexico City on February 7, 1936 (50 Stat.
14 1311); and

15 (C) the Convention on Nature Protection
16 and Wildlife Preservation in the Western Hemi-
17 sphere, with an annex, opened for signature at
18 the Pan American Union at Washington on Oc-
19 tober 12, 1940 (56 Stat. 1354).

20 (31) Protecting the quality of and regulating
21 activities affecting the waters of the United States
22 is a necessary and proper means of protecting Fed-
23 eral land, including hundreds of millions of acres of
24 parkland, refuge land, and other land under Federal

1 ownership and the wide array of waters encompassed
2 by that land.

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

8 **SEC. 3. PURPOSES.**

9 The purposes of this Act are as follows:

10 (1) To provide protection to waters of the
11 United States to the fullest extent of the legislative
12 authority of Congress under the Constitution, in-
13 cluding the Commerce Clause, the Property Clause,
14 the Treaty Clause, and the Necessary and Proper
15 Clause of Articles I and IV of the Constitution.

16 (2) To regulate activities affecting the waters of
17 the United States, including intrastate and isolated
18 waters.

19 (3) To restore and maintain the chemical, phys-
20 ical, and biological integrity of the waters of the
21 United States.

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 (23) as paragraphs (7) through (22), respectively;
3 and

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

5 “(23) 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”.

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