

107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on _____

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:

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

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

6 (3) Water has significant historic and cultural
7 value in our society.

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

20 (5) Water is transported through inter-
21 connected hydrologic cycles, and the pollution, im-
22 pairment, or destruction of part of an aquatic sys-
23 tem may affect the chemical, physical, and biological
24 integrity of other interconnected parts of the aquatic
25 system.

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

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

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

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

22 (10) The waters of the United States, including
23 intrastate and isolated waters, filter pollutants from
24 surface run-off and remove pollutants before the
25 water is released to groundwater or surface water or

1 taken up by plants and animals and widely dispersed
2 throughout the food chain.

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

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

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

20 (14) Destroying, polluting, or altering small
21 stream channels often results in an accumulation of
22 negative effects throughout a watershed, including
23 the introduction of pollutants to larger-order
24 streams and rivers.

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

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

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

21 (18) Thousands of businesses and communities
22 depend on wetlands and intrastate and isolated wa-
23 ters for protection from flooding.

1 (19) Draining or filling isolated wetlands and
2 channelizing or filling streams, including intrastate
3 streams, causes or exacerbates flooding.

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

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

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

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

20 (24) Millions of people in the United States
21 enjoy recreational activities that depend on intra-
22 state and isolated waters, such as waterfowl hunting,
23 bird watching, fishing, and photography and other
24 graphic arts, and those activities and associated
25 travel generate billions of dollars of income each

1 year for the travel, tourism, recreation, and sporting
2 sectors of the economy of the United States.

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

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

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

21 (28) In enacting the Federal Water Pollution
22 Control Act and its amendments, Congress recog-
23 nized that—

1 (A) inconsistent State water pollution con-
2 trol laws are insufficient to protect the aquatic
3 ecosystems of the United States; and

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

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

23 (30) Protecting the quality of and regulating
24 activities affecting the waters of the United States
25 is a necessary and proper means of implementing

1 treaties to which the United States is a party, in-
2 cluding treaties protecting species of fish, birds, and
3 wildlife, such as—

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

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

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

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

24 (32) Protecting the quality of and regulating
25 activities affecting the waters of the United States

1 is necessary to protect Federal land and waters from
2 discharges of pollutants and other forms of degrada-
3 tion.

4 **SEC. 3. PURPOSES.**

5 The purposes of this Act are as follows:

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

12 (2) To regulate activities affecting the waters of
13 the United States, including intrastate and isolated
14 waters.

15 (3) To restore and maintain the chemical, phys-
16 ical, and biological integrity of the waters of the
17 United States.

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

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

21 (1) by striking paragraph (7);

22 (2) by redesignating paragraphs (8) through
23 (23) as paragraphs (7) through (22), respectively;
24 and

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

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

13 **SEC. 5. CONFORMING AMENDMENTS.**

14 The Federal Water Pollution Control Act (33 U.S.C.
15 1251 et seq.) is amended—

16 (1) by striking “navigable waters of the United
17 States” each place it appears and inserting “waters
18 of the United States”;

19 (2) in section 304(l)(1) by striking “NAVIGABLE
20 WATERS” in the heading and inserting “WATERS OF
21 THE UNITED STATES”; and

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