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HR 2421 IH

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. VISCLOSKEY, 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. PASCRELL, 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. SANCHEZ 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

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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.

*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 (33 U.S.C. 1251 et seq.).
- (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) In enacting amendments to the Federal Water Pollution Control Act in 1972 and through subsequent amendment, including the Clean Water Act of 1977 (91 Stat. 1566) and the Water Quality Act of 1987 (101 Stat. 7), 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 definition of 'waters of the United States' in the regulations of the Environmental Protection Agency and the Army Corps of Engineers have properly established the scope of waters to be protected under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) in order to meet such 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, along with other waters of the United States, 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 interstate and 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, and their start reaches comprise the majority of all stream and river miles in the conterminous United States. These waters reduce the introduction of pollutants to larger rivers and streams, affect the life cycles of aquatic organisms and wildlife, and impact 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 the waters of the United States, including 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 wetlands, provide protection from flooding, and draining or filling wetlands and channelizing or filling streams, including intrastate wetlands and streams, can cause or exacerbate flooding, placing a significant burden on interstate commerce.

(11) Millions of people in the United States depend on 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 one or more small or intermittent streams provide water to public drinking water supplies serving more than 110,000,000 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 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 40 percent, or 14,800, facilities with permits issued under the Federal Water Pollution Control Act, including industrial facilities 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 (including any amendment made by this Act) shall be construed as affecting the authority of the Secretary of the Army or the Administrator of the Environmental Protection Agency (as the case may be) 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 agricultural return flows.

(2) Section 402(l)(2), relating to discharges of stormwater runoff from oil, gas, and mining operations.

(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.

(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.

(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. *END*

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