

Calendar No. 685111TH CONGRESS
2^D SESSION**S. 787****[Report No. 111-361]**

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

APRIL 2, 2009

Mr. FEINGOLD (for himself, Mrs. BOXER, Mr. CARDIN, Mr. BROWN, Ms. CANTWELL, Mr. CARPER, Mr. DODD, Mr. DURBIN, Mrs. GILLIBRAND, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MENENDEZ, Mr. MERKLEY, Mr. REED, Mr. SANDERS, Mr. SCHUMER, Mrs. SHAHEEN, Ms. STABENOW, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. KAUFMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

DECEMBER 10, 2010

Reported by Mrs. BOXER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Clean Water Restora-
3 tion Act”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

6 (1) to reaffirm the original intent of Congress
7 in enacting the Federal Water Pollution Control Act
8 Amendments of 1972 (Public Law 92–500; 86 Stat.
9 816) to restore and maintain the chemical, physical,
10 and biological integrity of the waters of the United
11 States;

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

15 (3) to provide protection to the waters of the
16 United States to the maximum extent of the legisla-
17 tive authority of Congress under the Constitution.

18 **SEC. 3. FINDINGS.**

19 Congress finds that—

20 (1) water is a unique and precious resource
21 used not only to sustain human, animal, and plant
22 life, but is also economically important for agri-
23 culture, transportation, flood control, energy produc-
24 tion, recreation, fishing and shellfishing, and munic-
25 ipal and commercial uses;

1 (2) water is transported through interconnected
2 hydrological cycles, and the pollution, impairment, or
3 destruction of any part of an aquatic system may af-
4 fect the chemical, physical, and biological integrity
5 of other parts of the aquatic system;

6 (3) in 1972, Congress enacted the Federal
7 Water Pollution Control Act Amendments of 1972
8 (Public Law 92-500; 86 Stat. 816), which amended
9 the Federal Water Pollution Act (33 U.S.C. 1251 et
10 seq.) in its entirety, in order to meet the national
11 objective of restoring and maintaining the chemical,
12 physical, and biological integrity of the Nation's wa-
13 ters;

14 (4) prior to the date of enactment of that Act
15 in 1972, State approaches and previous Federal leg-
16 islation proved ineffective in protecting the Nation's
17 waters;

18 (5) the enactment of that Act in 1972 estab-
19 lished uniform, minimum national water quality and
20 other clean water protection programs to restore and
21 maintain aquatic ecosystems of the United States
22 that serve as critical drinking water sources, water
23 supplies for municipal, industrial, and agricultural
24 uses, flood reduction, recreation, habitat for fish and
25 wildlife, and many other uses;

1 (6) in establishing broad, uniform, and min-
2 imum Federal standards and programs under the
3 Federal Water Pollution Control Act (33 U.S.C.
4 1251 et seq.) in 1972, Congress recognized, pre-
5 served, and protected the responsibility and right of
6 the States and Indian tribes to prevent, reduce, and
7 eliminate pollution of waters by preserving for
8 States and Indian tribes the ability to manage grant,
9 research, and permitting programs by assuming im-
10 plementation of portions of the Act to prevent, re-
11 duce, and eliminate pollution, and to establish stand-
12 ards and programs that are more protective than
13 Federal standards and programs, for waters of the
14 United States within the borders of each State or on
15 land under the jurisdiction of the Indian tribe;

16 (7) since the 1970s, the definitions of “waters
17 of the United States” in regulations of the Environ-
18 mental Protection Agency and the Corps of Engi-
19 neers have properly established the scope of waters
20 that require protection by the Federal Water Pollu-
21 tion Control Act in order to meet the national objec-
22 tive described in paragraph (3);

23 (8) this Act will treat, as “waters of the United
24 States”, those features that were treated as such
25 pursuant to the regulations of the Environmental

1 Protection Agency and the Corps of Engineers in ex-
2 istence before the dates of the decisions referred to
3 in paragraph (10), including—

4 (A) all waters which are subject to the ebb
5 and flow of the tide;

6 (B) all interstate waters, including inter-
7 state wetlands;

8 (C) all other waters, such as intrastate
9 lakes, rivers, streams (including intermittent
10 streams), mudflats, sandflats, wetlands,
11 sloughs, prairie potholes, wet meadows, playa
12 lakes, or natural ponds;

13 (D) all impoundments of waters of the
14 United States;

15 (E) tributaries of the aforementioned wa-
16 ters;

17 (F) the territorial seas; and

18 (G) wetlands adjacent to the aforemen-
19 tioned waters;

20 (9) “ground waters” are treated separately
21 from “waters of the United States” for purposes of
22 the Federal Water Pollution Control Act and are not
23 considered “waters of the United States” under this
24 Act;

1 (10) the ability to meet the national objective
2 described in paragraph (3) has been undermined by
3 the decisions of the United States Supreme Court in
4 Solid Waste Agency of Northern Cook County v.
5 United States Army Corps of Engineers, 531 U.S.
6 159 (January 9, 2001) and Rapanos v. United
7 States, 547 U.S. 715 (June 19, 2006), which have
8 resulted in confusion, permitting delays, increased
9 costs, litigation, and reduced protections for waters
10 of the United States described in paragraph (8);

11 (11) to restore original protections, Congress is
12 the only entity that can reaffirm the geographical
13 scope of waters that are protected under the Federal
14 Water Pollution Control Act;

15 (12) the intent of Congress with the enactment
16 of this Act is to restore geographical jurisdiction of
17 the Federal Water Pollution Control Act to that
18 which was in existence before the dates of the deci-
19 sions referred to in paragraph (10);

20 (13)(A) as set forth in section 6, nothing in this
21 Act modifies or otherwise affects the amendments
22 made by the Clean Water Act of 1977 (Public Law
23 95-217; 91 Stat. 1566) to the Federal Water Pollu-
24 tion Control Act that exempted certain activities,
25 such as farming, silviculture, and ranching activities;

1 as well as agricultural stormwater discharges and re-
2 turn flows from oil, gas, and mining operations and
3 irrigated agriculture, from particular permitting re-
4 quirements;

5 (B) furthermore, the definition of the term
6 “point source” under section 502 of that Act (~~33~~
7 U.S.C. 1362) excludes agricultural stormwater dis-
8 charges and return flows from irrigated agriculture;
9 and

10 (C) this Act does not modify or otherwise affect
11 any of the provisions described in subparagraphs (A)
12 and (B);

13 (14)(A) through agency rulemaking, the term
14 “waters of the United States” did not include—

15 (i) prior converted cropland used for agri-
16 culture; or

17 (ii) manmade waste treatment systems nei-
18 ther created in waters of the United States nor
19 resulting from the impoundment of waters of
20 the United States; and

21 (B) this Act does not modify or otherwise affect
22 either of the provisions described in subparagraph
23 (A);

24 (15) Congress supports the policy in effect
25 under section 101(g) of the Federal Water Pollution

1 Control Act (33 U.S.C. 1251(g)), which states that
2 “the authority of each State to allocate quantities of
3 water within its jurisdiction shall not be superseded,
4 abrogated or otherwise impaired by this Act. It is
5 the further policy of Congress that nothing in this
6 Act shall be construed to supersede or abrogate
7 rights to quantities of water which have been estab-
8 lished by any State. Federal agencies shall co-oper-
9 ate with State and local agencies to develop com-
10 prehensive solutions to prevent, reduce and eliminate
11 pollution in concert with programs for managing
12 water resources.”;

13 (16) protection of intrastate waters is necessary
14 to restore and maintain the chemical, physical, and
15 biological integrity of all waters in the United
16 States;

17 (17) the regulation of discharges of pollutants
18 into intrastate waters is an integral part of the com-
19 prehensive clean water regulatory program of the
20 United States;

21 (18) small and intermittent streams, including
22 ephemeral and seasonal streams, which have been
23 jeopardized by the decisions referred to in paragraph
24 (10)—

1 (A) comprise the majority of all stream
2 miles in the United States;

3 (B) serve critical biological and
4 hydrological functions that affect entire water-
5 sheds;

6 (C) reduce the introduction of pollutants to
7 large streams and rivers;

8 (D) provide and purify drinking water sup-
9 plies;

10 (E) are especially important to the life cy-
11 cles of aquatic organisms; and

12 (F) aid in flood prevention, including re-
13 ducing the flow of higher-order streams;

14 (19) the pollution or other degradation of wa-
15 ters of the United States, individually and in the ag-
16 gregate, has a substantial relation to and effect on
17 interstate commerce;

18 (20) protection of intrastate waters is necessary
19 to prevent significant harm to interstate commerce
20 and sustain a robust system of interstate commerce
21 in the future;

22 (21)(A) waters, including streams and wetlands,
23 provide protection from flooding; and

24 (B) draining or filling intrastate wetlands and
25 channelizing or filling intrastate streams can cause

1 or exacerbate flooding that causes billions of dollars
2 of damages annually, placing a significant burden on
3 interstate commerce;

4 ~~(22)~~ millions of individuals in the United States
5 depend on streams, wetlands, and other waters of
6 the United States to filter water and recharge sur-
7 face and subsurface drinking water supplies, protect
8 human health, and create economic opportunity;

9 ~~(23)~~ source water protection areas containing
10 small or intermittent streams provide water to public
11 drinking water supplies serving more than
12 110,000,000 individuals in the United States;

13 ~~(24)(A)~~ millions of individuals in the United
14 States enjoy recreational activities that depend on
15 intrastate waters, such as waterfowl hunting, bird
16 watching, fishing, and photography;

17 ~~(B)~~ those activities and associated travel gen-
18 erate hundreds of billions of dollars of income each
19 year for the travel, tourism, recreation, and sporting
20 sectors of the economy of the United States;

21 ~~(C)~~ annually, 34,000,000 hunters and anglers
22 spend more than \$76,600,000,000 on hunting- and
23 fishing-related products and activities, including ap-
24 proximately 2,000,000 waterfowl hunters who ac-

1 count for about \$2,300,000,000 in annual economic
2 growth;

3 ~~(25)~~ activities that result in the discharge of
4 pollutants into waters of the United States are com-
5 mercial or economic in nature, and, in the aggre-
6 gate, have a substantial effect on interstate com-
7 merce;

8 ~~(26)~~ a substantial number of the sources regu-
9 lated under the Federal Water Pollution Control Act
10 discharge into headwater streams that may be inter-
11 mittent or seasonal;

12 ~~(27)~~ more than 40 percent of those sources, or
13 14,800 facilities with individual permits issued in ac-
14 cordance with the Federal Water Pollution Control
15 Act (~~33~~ U.S.C. 1251 et seq.), including industrial
16 plants and municipal sewage treatment systems, dis-
17 charge into small or intermittent streams;

18 ~~(28)~~ protecting the quality of and regulating ac-
19 tivities affecting the waters of the United States is
20 a necessary and proper means of implementing trea-
21 ties to which the United States is a party, including
22 treaties protecting species of fish, birds, and other
23 wildlife;

1 (29) approximately half of North American mi-
2 gratory birds depend upon or are associated with
3 wetlands and intermittent or ephemeral streams;

4 (30) approximately half of all threatened and
5 endangered species in the United States depend on
6 wetlands;

7 (31) for those reasons, the protection of wet-
8 lands and other waters providing breeding, feeding,
9 and sheltering habitat for migratory birds and en-
10 dangered species is essential to enable the United
11 States to fulfill the obligations of the United States
12 under international treaties for the conservation of
13 those species;

14 (32) protecting the quality of and regulating ac-
15 tivities affecting the waters of the United States is
16 a necessary and proper means of protecting Federal
17 land, including hundreds of millions of acres of
18 parkland, refuge land, and other land under Federal
19 ownership and the wide array of waters encompassed
20 by that land; and

21 (33) protecting the quality of and regulating ac-
22 tivities affecting the waters of the United States is
23 necessary to protect Federal land and waters from
24 discharges of pollutants and other forms of degrada-
25 tion.

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

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

4 (1) by striking paragraph (7);

5 (2) by redesignating paragraphs (8) through
6 (25) as paragraphs (7) through (24), respectively;
7 and

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

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

21 **SEC. 5. CONFORMING AMENDMENTS.**

22 The Federal Water Pollution Control Act (~~33~~ U.S.C.
23 ~~1251~~ et seq.) is amended—

24 (1) by striking “navigable waters of the United
25 States” each place it appears and inserting “waters
26 of the United States”;

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

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

7 **SEC. 6. SAVINGS CLAUSE.**

8 Nothing in this Act affects the authority of the Ad-
9 ministratoꝛ of the Environmental Protection Agency or
10 the Secretary of the Army under the following provisions
11 of the Federal Water Pollution Control Act:

12 (1) Section 402(l)(1) (33 U.S.C. 1342(l)(1)),
13 relating to discharges composed entirely of return
14 flows from irrigated agriculture.

15 (2) Section 402(l)(2) (33 U.S.C. 1342(l)(2)),
16 relating to discharges of stormwater runoff from cer-
17 tain oil, gas, and mining operations composed en-
18 tirely of flows from precipitation runoff conveyances,
19 which are not contaminated by or in contact with
20 specified materials.

21 (3) Section 404(f)(1)(A) (33 U.S.C.
22 1344(f)(1)(A)), relating to discharges of dredged or
23 fill materials from normal farming, silviculture, and
24 ranching activities, such as plowing, seeding, culti-
25 vating, minor drainage, harvesting for the produc-

1 tion of food, fiber, and forest products, or upland
2 soil and water conservation practices.

3 (4) Section 404(f)(1)(B) (33 U.S.C.
4 1344(f)(1)(B)), relating to discharges of dredged or
5 fill materials for the purpose of maintenance of cur-
6 rently serviceable structures.

7 (5) Section 404(f)(1)(C) (33 U.S.C.
8 1344(f)(1)(C)), relating to discharges of dredged or
9 fill materials for the purpose of construction or
10 maintenance of farm or stock ponds or irrigation
11 ditches and maintenance of drainage ditches.

12 (6) Section 404(f)(1)(D) (33 U.S.C.
13 1344(f)(1)(D)), relating to discharges of dredged or
14 fill materials for the purpose of construction of tem-
15 porary sedimentation basins on construction sites,
16 which do not include placement of fill material into
17 the waters of the United States.

18 (7) Section 404(f)(1)(E) (33 U.S.C.
19 1344(f)(1)(E)), relating to discharges of dredged or
20 fill materials for the purpose of construction or
21 maintenance of farm roads or forest roads or tem-
22 porary roads for moving mining equipment in ac-
23 cordance with best management practices.

24 (8) Section 404(f)(1)(F) (33 U.S.C.
25 1344(f)(1)(F)), relating to discharges of dredged or

1 fill materials resulting from activities with respect to
2 which a State has an approved program under sec-
3 tion 208(b)(4) of that Act (33 U.S.C. 1288(b)(4))
4 meeting the requirements of subparagraphs (B) and
5 (C) of that section.

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Clean Water Restoration*
8 *Act”.*

9 **SEC. 2. PURPOSES.**

10 *The purposes of this Act are—*

11 *(1) to reaffirm the original intent of Congress in*
12 *enacting the Federal Water Pollution Control Act*
13 *Amendments of 1972 (Public Law 92–500; 86 Stat.*
14 *816) to restore and maintain the chemical, physical,*
15 *and biological integrity of the waters of the United*
16 *States; and*

17 *(2) to clearly define the waters of the United*
18 *States that are subject to the Federal Water Pollution*
19 *Control Act (33 U.S.C. 1251 et seq.) as those features*
20 *that were treated as such pursuant to the final rule*
21 *(including the preamble to that final rule) published*
22 *at 53 Fed. Reg. 20764 (June 6, 1988) and 51 Fed.*
23 *Reg. 41206 (November 13, 1986), and other applicable*
24 *rules and interpretations as in effect on January 8,*
25 *2001.*

1 **SEC. 3. FINDINGS.**

2 *Congress finds that—*

3 *(1) water is transported through interconnected*
4 *hydrological cycles, and the pollution, impairment, or*
5 *destruction of any part of an aquatic system may af-*
6 *fect the chemical, physical, and biological integrity of*
7 *other parts of the aquatic system;*

8 *(2) “ground waters” are treated separately from*
9 *“waters of the United States” for purposes of the Fed-*
10 *eral Water Pollution Control Act and are not consid-*
11 *ered “waters of the United States” under this Act;*

12 *(3) the ability to meet the national objective of*
13 *the Federal Water Pollution Control Act (33 U.S.C.*
14 *1251 et seq.) has been undermined by the decisions of*
15 *the United States Supreme Court in Solid Waste*
16 *Agency of Northern Cook County v. United States*
17 *Army Corps of Engineers, 531 U.S. 159 (January 9,*
18 *2001) and Rapanos v. United States, 547 U.S. 715*
19 *(June 19, 2006), which have resulted in confusion,*
20 *permitting delays, increased costs, litigation, and re-*
21 *duced protections for waters of the United States;*

22 *(4) this Act reaffirms Federal jurisdiction over*
23 *all waters of the United States, as the Federal Water*
24 *Pollution Control Act was applied and interpreted in*
25 *the regulations, guidance, and interpretations of the*
26 *Environmental Protection Agency and the Corps of*

1 *Engineers prior to the rulings of the United States*
2 *Supreme Court in Solid Waste Agency of Northern*
3 *Cook County v. United States Army Corps of Engi-*
4 *neers, 531 U.S. 159 (January 9, 2001), and Rapanos*
5 *v. United States, 547 U.S. 715 (June 19, 2006) and*
6 *overturns the decisions of the Supreme Court in those*
7 *cases;*

8 (5) *Congress supports the policy in effect under*
9 *section 101(g) of the Federal Water Pollution Control*
10 *Act (33 U.S.C. 1251(g)), which states that “the au-*
11 *thority of each State to allocate quantities of water*
12 *within its jurisdiction shall not be superseded, abro-*
13 *gated or otherwise impaired by this Act. It is the fur-*
14 *ther policy of Congress that nothing in this Act shall*
15 *be construed to supersede or abrogate rights to quan-*
16 *tities of water which have been established by any*
17 *State. Federal agencies shall co-operate with State*
18 *and local agencies to develop comprehensive solutions*
19 *to prevent, reduce and eliminate pollution in concert*
20 *with programs for managing water resources.”;*

21 (6) *protection of intrastate waters, including*
22 *geographically isolated waters, is necessary to restore*
23 *and maintain the chemical, physical, and biological*
24 *integrity of all waters in the United States;*

1 (7) *the regulation of discharges of pollutants into*
2 *intrastate waters is an integral part of the com-*
3 *prehensive clean water regulatory program of the*
4 *United States;*

5 (8) *small and intermittent streams, including*
6 *ephemeral streams, which have been jeopardized by*
7 *the decisions referred to in paragraph (3)—*

8 (A) *comprise the majority of all stream*
9 *miles in the United States;*

10 (B) *serve critical biological and*
11 *hydrological functions that affect entire water-*
12 *sheds;*

13 (C) *reduce the introduction of pollutants to*
14 *large streams and rivers;*

15 (D) *provide and purify drinking water sup-*
16 *plies;*

17 (E) *are especially important to the life cy-*
18 *cles of aquatic organisms; and*

19 (F) *aid in flood prevention, including re-*
20 *ducing the flow of higher-order streams;*

21 (9) *the pollution or other degradation of waters*
22 *of the United States, individually and in the aggre-*
23 *gate, has a substantial relation to and effect on inter-*
24 *state commerce;*

1 (10) *protection of intrastate waters is necessary*
2 *to prevent substantial harm to interstate commerce*
3 *and sustain a robust system of interstate commerce in*
4 *the future;*

5 (11)(A) *waters, including streams and wetlands,*
6 *provide protection from flooding; and*

7 (B) *draining or filling intrastate wetlands and*
8 *channelizing or filling intrastate streams can cause or*
9 *exacerbate flooding that causes billions of dollars of*
10 *damages annually, placing a significant burden on*
11 *interstate commerce;*

12 (12) *millions of individuals in the United States*
13 *depend on streams, wetlands, and other waters of the*
14 *United States to filter water and recharge surface and*
15 *subsurface drinking water supplies, protect human*
16 *health, and create economic opportunity;*

17 (13) *source water protection areas containing*
18 *small or intermittent streams provide water to public*
19 *drinking water supplies serving more than*
20 *110,000,000 individuals in the United States;*

21 (14)(A) *millions of individuals in the United*
22 *States enjoy recreational activities that depend on*
23 *intrastate waters, such as waterfowl hunting, bird*
24 *watching, fishing, and photography; and*

1 (B) those activities and associated travel gen-
2 erate hundreds of billions of dollars of income each
3 year for the travel, tourism, recreation, and sporting
4 sectors of the economy of the United States;

5 (15) activities that result in the discharge of pol-
6 lutants into waters of the United States are commer-
7 cial or economic in nature, and, in the aggregate,
8 have a substantial effect on interstate commerce;

9 (16) a substantial number of the sources regu-
10 lated under the Federal Water Pollution Control Act
11 discharge into headwater streams that may be inter-
12 mittent or seasonal;

13 (17) more than 40 percent of those sources, or
14 14,800 facilities with individual permits issued in ac-
15 cordance with the Federal Water Pollution Control
16 Act (33 U.S.C. 1251 et seq.), including industrial
17 plants and municipal sewage treatment systems, dis-
18 charge into small or intermittent streams;

19 (18) protecting the quality of and regulating ac-
20 tivities affecting the waters of the United States is a
21 necessary and proper means of implementing treaties
22 to which the United States is a party, including trea-
23 ties protecting species of fish, birds, and other wild-
24 life;

1 (19) *approximately half of North American mi-*
2 *gratory birds depend upon or are associated with wet-*
3 *lands and small and intermittent streams, including*
4 *ephemeral streams;*

5 (20) *approximately half of all threatened and en-*
6 *dangered species in the United States depend on wet-*
7 *lands;*

8 (21) *for those reasons, the protection of wetlands*
9 *and other waters providing breeding, feeding, and*
10 *sheltering habitat for migratory birds and endangered*
11 *species is essential to enable the United States to ful-*
12 *fill the obligations of the United States under inter-*
13 *national treaties for the conservation of those species;*

14 (22) *protecting the quality of and regulating ac-*
15 *tivities affecting the waters of the United States is a*
16 *necessary and proper means of protecting Federal*
17 *land, including hundreds of millions of acres of park-*
18 *land, refuge land, and other land under Federal own-*
19 *ership and the wide array of waters encompassed by*
20 *that land;*

21 (23) *protecting the quality of and regulating ac-*
22 *tivities affecting the waters of the United States is*
23 *necessary to protect Federal land and waters from*
24 *discharges of pollutants and other forms of degrada-*
25 *tion; and*

1 (24) *nothing in this Act or any amendment*
 2 *made by this Act establishes any new right of access*
 3 *to private property for recreational purposes.*

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

5 *Section 502 of the Federal Water Pollution Control Act*
 6 *(33 U.S.C. 1362) is amended—*

7 (1) *by striking paragraph (7);*

8 (2) *by redesignating paragraphs (8) through (25)*
 9 *as paragraphs (7) through (24), respectively; and*

10 (3) *by adding at the end the following:*

11 “(25) *WATERS OF THE UNITED STATES.—*

12 “(A) *IN GENERAL.—The term ‘waters of the*
 13 *United States’ means all waters subject to the*
 14 *ebb and flow of the tide, the territorial seas, and*
 15 *all interstate and intrastate waters, including*
 16 *lakes, rivers, streams (including intermittent*
 17 *streams), mudflats, sandflats, wetlands, sloughs,*
 18 *prairie potholes, wet meadows, playa lakes, and*
 19 *natural ponds, all tributaries of any of the above*
 20 *waters, and all impoundments of the foregoing.*

21 “(B) *EXCLUSIONS.—*

22 “(i) *PRIOR CONVERTED CROPLAND.—*
 23 *Waters of the United States do not include*
 24 *prior converted cropland. Notwithstanding*
 25 *the determination of an area’s status as*

1 *prior converted cropland by any other Fed-*
2 *eral agency, for the purposes of this Act, the*
3 *final authority regarding jurisdiction under*
4 *this Act remains with the Environmental*
5 *Protection Agency.*

6 “(ii) *WASTE TREATMENT SYSTEMS.—*
7 *Waste treatment systems, including treat-*
8 *ment ponds or lagoons designed to meet the*
9 *requirements of this Act (other than cooling*
10 *ponds which also meet the criteria of this*
11 *definition) are not waters of the United*
12 *States. This exclusion applies only to man-*
13 *made bodies of water which neither were*
14 *originally created in waters of the United*
15 *States (such as disposal areas in wetlands)*
16 *nor resulted from the impoundment of wa-*
17 *ters of the United States.”.*

18 **SEC. 5. CONFORMING AMENDMENTS.**

19 *The Federal Water Pollution Control Act (33 U.S.C.*
20 *1251 et seq.) is amended—*

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

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

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

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

7 *Nothing in this Act (or an amendment made by this*
 8 *Act) affects the applicability of the following provisions of*
 9 *the Federal Water Pollution Control Act:*

10 (1) *Section 402(l)(1) (33 U.S.C. 1342(l)(1)).*

11 (2) *Section 402(l)(2) (33 U.S.C. 1342(l)(2)).*

12 (3) *Section 404(f)(1)(A) (33 U.S.C.*
 13 *1344(f)(1)(A)).*

14 (4) *Section 404(f)(1)(B) (33 U.S.C.*
 15 *1344(f)(1)(B)).*

16 (5) *Section 404(f)(1)(C) (33 U.S.C.*
 17 *1344(f)(1)(C)).*

18 (6) *Section 404(f)(1)(D) (33 U.S.C.*
 19 *1344(f)(1)(D)).*

20 (7) *Section 404(f)(1)(E) (33 U.S.C.*
 21 *1344(f)(1)(E)).*

22 (8) *Section 404(f)(1)(F) (33 U.S.C.*
 23 *1344(f)(1)(F)).*

1 **SEC. 7. REGULATIONS.**

2 (a) *PROMULGATION.*—Not later than 18 months after
3 the date of enactment of this Act, the Administrator of the
4 Environmental Protection Agency and the Secretary of the
5 Army shall promulgate such regulations as are necessary
6 to implement this Act and the amendments made by this
7 Act.

8 (b) *RULES OF CONSTRUCTION.*—Subject to the exclu-
9 sions in paragraph (25)(B) of section 502 of the Federal
10 Water Pollution Control Act (33 U.S.C. 1362) (as amended
11 by section 4), the term “waters of the United States” shall
12 be construed consistently with—

13 (1) *the scope of Federal jurisdiction under that*
14 *Act, as interpreted and applied by the Environmental*
15 *Protection Agency and the Corps of Engineers prior*
16 *to January 9, 2001 (including pursuant to the final*
17 *rules and preambles published at 53 Fed. Reg. 20764*
18 *(June 6, 1988) and 51 Fed. Reg. 41206 (November*
19 *13, 1986)); and*

20 (2) *the legislative authority of Congress under*
21 *the Constitution.*

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11TH CONGRESS
2^D SESSION

S. 787

[Report No. 111-361]

A BILL

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

DECEMBER 10, 2010

Reported with an amendment