

108TH CONGRESS  
1ST SESSION

# S. 561

To preserve the authority of States over water within their boundaries, to delegate to States the authority of Congress to regulate water, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 6, 2003

Mr. CRAPO (for himself, Mr. ENZI, Mr. CRAIG, Mr. DOMENICI, Mr. BURNS, and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To preserve the authority of States over water within their boundaries, to delegate to States the authority of Congress to regulate water, and for other purposes.

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 “State Water Sov-  
5 ereignty Protection Act”.

6 **SEC. 2. DEFINITION OF STATE.**

7 In this Act, the term “State” includes the District  
8 of Columbia, the Commonwealth of Puerto Rico, the Com-

1 monwealth of the Northern Mariana Islands, American  
 2 Samoa, Guam, and the Virgin Islands.

3 **SEC. 3. USE OF STATE LAW BY UNITED STATES FOR AC-**  
 4 **QUIRING AND EXERCISING WATER RIGHTS.**

5 (a) IN GENERAL.—When the United States seeks to  
 6 appropriate water or acquire a water right in a State or  
 7 to exercise any right with respect to a water right in a  
 8 State, the United States shall be subject to all procedural  
 9 and substantive laws of the State relating to the alloca-  
 10 tion, adjudication, appropriation, acquisition, use, and ex-  
 11 ercise of water rights to the same extent as a private per-  
 12 son is subject to those laws.

13 (b) CONSENT TO JOINDER.—

14 (1) IN GENERAL.—Consent is given to join the  
 15 United States in any administrative or judicial pro-  
 16 ceeding of a State relating to the allocation, adju-  
 17 dication, appropriation, acquisition, use, or exercise  
 18 of a water right to the same extent as any private  
 19 person may be joined in such a proceeding.

20 (2) WAIVER.—The United States, when a party  
 21 to a proceeding described in paragraph (1)—

22 (A) shall be deemed to have waived any  
 23 right to plead that the State laws are inappli-  
 24 cable or that the United States is not amenable

1 to the State laws by reason of the sovereignty  
2 of the United States; and

3 (B) shall be subject to the judgments, or-  
4 ders, and decrees issued in any such pro-  
5 ceeding, and may obtain review of those judg-  
6 ments, orders, and decrees in the same manner  
7 and to the same extent as a private person  
8 under like circumstances.

9 (c) NO IMPLIED FEDERAL RESERVED WATER  
10 RIGHTS.—The withdrawal, designation, or other reserva-  
11 tion of land by the United States for any purpose (whether  
12 by statute or administrative action) does not give rise by  
13 implication to a Federal reserved right to water relating  
14 to that purpose.

15 **SEC. 4. MANAGEMENT AND CONTROL OF WATER IN A**  
16 **STATE.**

17 (a) IN GENERAL.—Notwithstanding any other provi-  
18 sion of law—

19 (1) management and control over water in a  
20 State shall be subject to and in accordance with the  
21 laws of the State in which the water is located;

22 (2) Congress delegates to each State the au-  
23 thority to regulate water, including the authority to  
24 regulate water in interstate commerce (including

1 regulation of usufructuary rights, trade, and trans-  
2 portation); and

3 (3) the United States, and any agency or officer  
4 on behalf of the United States, may exercise man-  
5 agement and control over water in a State only in  
6 compliance with the laws of the State in which the  
7 water is located.

8 (b) **SUIT BY PRIVATE PARTIES.**—The United States  
9 waives sovereign immunity with respect to any claim for  
10 declaratory, equitable, or injunctive relief brought by a  
11 nongovernmental entity against the United States under  
12 the laws of a State relating to the management or control  
13 of water in the State.

14 **SEC. 5. COSTS AND FEES RELATING TO ADMINISTRATIVE**  
15 **OR JUDICIAL PROCEEDINGS.**

16 In any administrative or judicial proceeding in which  
17 the United States participates under this Act or section  
18 208 of the Act of July 10, 1952 (commonly known as the  
19 “McCarran Amendment”) (43 U.S.C. 666), the United  
20 States shall be subject to the imposition of costs and fees  
21 to the same extent as costs and fees may be imposed on  
22 a private person.

23 **SEC. 6. SAVINGS PROVISIONS AND DISCLAIMERS.**

24 (a) **IN GENERAL.**—Nothing in this Act—

1           (1) permits an appropriation of water under  
2 State law that interferes with any treaty or other  
3 international agreement to which the United States  
4 is a party; or

5           (2) affects, impairs, diminishes, subordinates,  
6 or enlarges—

7           (A) any right of the United States or any  
8 State to water under any treaty or other inter-  
9 national agreement to which the United States  
10 is a party or under any interstate compact; or

11           (B) any obligation of the United States to  
12 any Indian or Indian tribe relating to water, or  
13 any claim or right owned or held by or for any  
14 Indian or Indian tribe relating to water, includ-  
15 ing any obligation, claim, or right under any In-  
16 dian water compact.

17       (b) NO EFFECT ON OTHER ACTS.—Nothing in this  
18 Act affects or modifies—

19           (1) section 208 of the Act of July 10, 1952 (43  
20 U.S.C. 666);

21           (2) the Submerged Lands Act (43 U.S.C. 1301  
22 et seq.); or

23           (3) the Outer Continental Shelf Lands Act (43  
24 U.S.C. 1331 et seq.).

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