

109TH CONGRESS  
1ST SESSION

# H. R. 1356

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. OBERSTAR (for himself, Mr. DINGELL, Mr. LEACH, Ms. PELOSI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. EHLERS, Mr. NADLER, Mr. BOEHLERT, Mr. MICHAUD, Mr. WOLF, Mr. HONDA, Mr. GILCHREST, Mr. BLUMENAUER, Mr. SHAYS, Mr. PASCRELL, Mr. SAXTON, Mr. FILNER, Mr. CASTLE, Mr. BISHOP of New York, Mr. CUMMINGS, Mr. DEFazio, Mr. CAPUANO, Ms. NORTON, Mr. MENENDEZ, Mr. WEINER, Mr. CHANDLER, Ms. CARSON, Mr. THOMPSON of California, Mrs. TAUSCHER, Mr. CARNAHAN, Ms. BERKLEY, Ms. SCHWARTZ of Pennsylvania, Mr. WALSH, Mr. VAN HOLLEN, Ms. JACKSON-LEE of Texas, Mr. LYNCH, Mr. KILDEE, Mr. GRIJALVA, Mr. OWENS, Mr. SABO, Mr. KUCINICH, Mr. McNULTY, Mr. CASE, Ms. LEE, Mr. ANDREWS, Mr. SHERMAN, Mr. PAYNE, Ms. WATERS, Mr. MCDERMOTT, Mr. SANDERS, Mr. LANGEVIN, Mr. ALLEN, Mrs. CAPPS, Ms. SLAUGHTER, Mr. PALLONE, Ms. MCCOLLUM of Minnesota, Mr. LEWIS of Georgia, Mr. LARSON of Connecticut, Mr. GORDON, Mr. GONZALEZ, Mrs. NAPOLITANO, Mr. WEXLER, Ms. WOOLSEY, Mr. GUTIERREZ, Ms. KILPATRICK of Michigan, Mr. MORAN of Virginia, Mr. FRANK of Massachusetts, Ms. ESHOO, Mr. GEORGE MILLER of California, Mr. HOLT, Mr. CROWLEY, Mr. HINCHEY, Mr. INSLEE, Mr. LEVIN, Ms. ZOE LOFGREN of California, Mr. VISCLOSKY, Mrs. LOWEY, Mr. NEAL of Massachusetts, Mr. FARR, Mr. KIND, Mr. RUPPERSBERGER, Mr. BROWN of Ohio, Mr. LANTOS, Ms. DELAURO, Mr. DOYLE, Mr. UDALL of Colorado, Mr. HASTINGS of Florida, Mr. MCGOVERN, Ms. SCHAKOWSKY, Ms. DEGETTE, Mr. SCHIFF, Mr. DOGGETT, Ms. LINDA T. SÁNCHEZ of California, Mr. SPRATT, Mr. MILLER of North Carolina, Mr. LIPINSKI, Mr. UDALL of New Mexico, Mr. ISRAEL, Mr. STARK, Mr. STRICKLAND, Mr. THOMPSON of Mississippi, Mr. DAVIS of Alabama, Mr. CARDIN, Mr. PRICE of North Carolina, Mrs. MCCARTHY, Mr. MARKEY, Mr. WU, Mr. CONYERS, Mr. SERRANO, Mr. RANGEL, Mr. STUPAK, Mr. BERMAN, Mr. BUTTERFIELD, Mr. RYAN of Ohio, Mr. ENGEL, Mrs. DAVIS of California, Mr. WAXMAN, Mr. JACKSON of Illinois, Mr. KENNEDY of Rhode Island, Mrs. CHRISTENSEN, Mrs. JONES of Ohio, Ms. WASSERMAN SCHULTZ, Mr. EVANS, Mr. BECERRA, Mr. KANJORSKI,

and Ms. SOLIS) 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.

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 2005”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are as follows:

8               (1) To reaffirm the original intent of Congress  
9               in enacting the Federal Water Pollution Control Act  
10              Amendments of 1972 (86 Stat. 816) to restore and  
11              maintain the chemical, physical, and biological integ-  
12              rity of the waters of the United States.

13             (2) To clearly define the waters of the United  
14             States that are subject to the Federal Water Pollu-  
15             tion Control Act.

16             (3) To provide protection to the waters of the  
17             United States to the fullest extent of the legislative  
18             authority of Congress under the Constitution.

1 **SEC. 3. FINDINGS.**

2 Congress finds the following:

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

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

11 (3) In enacting amendments to the Federal  
12 Water Pollution Control Act in 1972 and through  
13 subsequent amendment, including the Clean Water  
14 Act of 1977 (91 Stat. 1566) and the Water Quality  
15 Act of 1987 (101 Stat. 7), Congress established the  
16 national objective of restoring and maintaining the  
17 chemical, physical, and biological integrity of the wa-  
18 ters of the United States and recognized that achiev-  
19 ing this objective requires uniform, minimum na-  
20 tional water quality and aquatic ecosystem protec-  
21 tion standards to restore and maintain the natural  
22 structures and functions of the aquatic ecosystems  
23 of the United States.

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

1 system may affect the chemical, physical, and bio-  
2 logical integrity of other parts of the aquatic system.

3 (5) Protection of intrastate waters, along with  
4 other waters of the United States, is necessary to re-  
5 store and maintain the chemical, physical, and bio-  
6 logical integrity of all waters in the United States.

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

11 (7) Small and periodically-flowing streams com-  
12 prise the majority of all stream channels in the  
13 United States and serve critical biological and  
14 hydrological functions that affect entire watersheds,  
15 including reducing the introduction of pollutants to  
16 large streams and rivers, and especially affecting the  
17 life cycles of aquatic organisms and the flow of high-  
18 er order streams during floods.

19 (8) The pollution or other degradation of wa-  
20 ters of the United States, individually and in the ag-  
21 gregate, has a substantial relation to and effect on  
22 interstate commerce.

23 (9) Protection of the waters of the United  
24 States, including intrastate waters, is necessary to  
25 prevent significant harm to interstate commerce and

1 sustain a robust system of interstate commerce in  
2 the future.

3 (10) Waters, including wetlands, provide protec-  
4 tion from flooding, and draining or filling wetlands  
5 and channelizing or filling streams, including intra-  
6 state wetlands and streams, can cause or exacerbate  
7 flooding, placing a significant burden on interstate  
8 commerce.

9 (11) Millions of people in the United States de-  
10 pend on wetlands and other waters of the United  
11 States to filter water and recharge surface and sub-  
12 surface drinking water supplies, protect human  
13 health, and create economic opportunity.

14 (12) Millions of people in the United States  
15 enjoy recreational activities that depend on intra-  
16 state waters, such as waterfowl hunting, bird watch-  
17 ing, fishing, and photography and other graphic  
18 arts, and those activities and associated travel gen-  
19 erate billions of dollars of income each year for the  
20 travel, tourism, recreation, and sporting sectors of  
21 the economy of the United States.

22 (13) Activities that result in the discharge of  
23 pollutants into waters of the United States are com-  
24 mercial or economic in nature.

1           (14) States have the responsibility and right to  
2 prevent, reduce, and eliminate pollution of waters,  
3 and the Federal Water Pollution Control Act re-  
4 spects the rights and responsibilities of States by  
5 preserving for States the ability to manage permit-  
6 ting, grant, and research programs to prevent, re-  
7 duce, and eliminate pollution, and to establish stand-  
8 ards and programs more protective of a State's wa-  
9 ters than is provided under Federal standards and  
10 programs.

11           (15) Protecting the quality of and regulating  
12 activities affecting the waters of the United States  
13 is a necessary and proper means of implementing  
14 treaties to which the United States is a party, in-  
15 cluding treaties protecting species of fish, birds, and  
16 wildlife.

17           (16) 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           (17) 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. 4. DEFINITION OF WATERS OF THE UNITED STATES.**

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

7 (1) by striking paragraph (7);

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

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

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

1 **SEC. 5. CONFORMING AMENDMENTS.**

2 The Federal Water Pollution Control Act (33 U.S.C.  
3 1251 et seq.) is amended—

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

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

10 (3) by striking “navigable waters” each place it  
11 appears and inserting “waters of the United  
12 States”.

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