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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R.

To amend the Federal Water Pollution Control Act to restore a national minimum standard of protection for the water resources of the United States while providing certainty to regulated entities.

IN THE HOUSE OF REPRESENTATIVES

Mr. LARSEN of Washington (for himself, Mrs. NAPOLITANO, Mr. BEYER, and Ms. STANSBURY) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal Water Pollution Control Act to restore a national minimum standard of protection for the water resources of the United States while providing certainty to regulated entities.

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 Act of
5 2023”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To reaffirm the commitment of Congress to
4 restore and maintain the chemical, physical, and bio-
5 logical integrity of the Nation's protected water re-
6 sources.

7 (2) To clearly define the Nation's protected
8 water resources that are subject to the Federal
9 Water Pollution Control Act (33 U.S.C. 1252 et
10 seq.) (commonly known as the "Clean Water Act")
11 based on the best available scientific evidence and
12 decades of partnership between the Federal, State,
13 and Tribal governments to protect water quality.

14 (3) To eliminate the confusion initiated by the
15 Supreme Court's overly narrow interpretation of the
16 term "navigable waters" and to reestablish the com-
17 prehensive authority necessary to meet the codified
18 objective of the Clean Water Act.

19 (4) To restore a national minimum standard of
20 protection of the Nation's protected water resources
21 to the fullest extent of the legislative authority of
22 Congress under the Constitution.

23 **SEC. 3. FINDINGS.**

24 Congress finds the following:

25 (1) Water is a singular and precious resource
26 that sustains all life and is fundamental to civiliza-

1 tion’s survival, cultural practices, and indigenous
2 ways of life.

3 (2) Clean and abundant water is important for
4 public health, agriculture, transportation, flood con-
5 trol, energy production, recreation, fishing, and mu-
6 nicipal and commercial uses.

7 (3) Rivers, streams, wetlands, and other water
8 bodies are hydrologically connected within their wa-
9 tersheds, and scientific evidence shows that the pol-
10 lution, impairment, or destruction of a water body in
11 one location may significantly affect the chemical,
12 physical, and biological integrity of other waters.

13 (4) The Supreme Court’s decision in *Sackett v.*
14 *EPA*, 598 U.S. 651 (2023), reduces the protections
15 of the Clean Water Act contrary to, and impairing,
16 the congressional objective of restoring and main-
17 taining the chemical, physical, and biological integ-
18 rity of the Nation’s protected water resources.

19 (5) The decision eliminates Clean Water Act
20 protections for tens of millions of acres of wetlands,
21 including wetlands that perform vital functions such
22 as storing water to help reduce flooding, improving
23 water quality by filtering pollutants, providing crit-
24 ical and important habitats for aquatic and other

1 species, and recharging groundwater that provides
2 drinking water and contributes to downstream flows.

3 (6) The decision also puts at risk Clean Water
4 Act protections for millions of miles of small, inter-
5 mittent, and ephemeral streams that—

6 (A) comprise the majority of stream miles
7 in the United States;

8 (B) transport large volumes of water to
9 downstream rivers;

10 (C) reduce the introduction of pollutants to
11 large streams and rivers;

12 (D) provide and purify drinking water sup-
13 plies;

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

16 (F) aid in flood prevention.

17 (7) The peer reviewed scientific literature un-
18 equivocally demonstrates that—

19 (A) streams, regardless of their size or fre-
20 quency of flow, are connected to, and strongly
21 influence the function of, downstream waters;
22 and

23 (B) wetlands, including wetlands that lack
24 surface water connections, are physically,
25 chemically, and biologically connected to, and

1 affect the integrity of, other protected water re-
2 sources.

3 (8) Restoring and maintaining the Nation's
4 protected water resources, including intrastate
5 waters, is necessary to prevent significant harm to
6 interstate commerce and sustain a robust system of
7 interstate commerce in the future.

8 (9) This Act restores Clean Water Act protec-
9 tions to the Nation's protected water resources to
10 ensure their chemical, physical, and biological integ-
11 rity.

12 (10) The pollution or other degradation of the
13 Nation's protected water resources, individually and
14 in the aggregate, has a substantial relation to and
15 effect on interstate commerce.

16 (11) Protected water resources, including
17 streams and wetlands, provide protection from flood-
18 ing, and draining or filling wetlands and channel-
19 izing or filling streams can cause or exacerbate
20 flooding, placing a significant burden on interstate
21 commerce.

22 (12) Millions of individuals in the United States
23 depend on the Nation's protected water resources,
24 including streams and wetlands, to filter water and
25 recharge surface and subsurface drinking water sup-

1 plies, protect human health, and create economic op-
2 portunity.

3 (13) Source water protection areas containing
4 small, intermittent, and ephemeral streams replenish
5 public drinking water supplies serving more than
6 110 million individuals in the United States.

7 (14)(A) Millions of individuals in the United
8 States enjoy recreational activities that depend on
9 protected water resources, including streams and
10 wetlands, such as waterfowl hunting, bird watching,
11 fishing, paddling, and photography.

12 (B) Those activities and associated travel gen-
13 erate hundreds of billions of dollars of income each
14 year for the travel, tourism, recreation, and sporting
15 sectors of the economy of the United States.

16 (15) Regionally specific protected water re-
17 sources, such as prairie potholes in the upper Mid-
18 western prairies, pocosins in the Atlantic coastal
19 plain, playa lakes in the southern High Plains, and
20 Carolina and Delmarva bays along the eastern coast
21 of the United States, provide unique and critical
22 benefits to their surrounding regions, including sus-
23 tainable water quality and availability, groundwater
24 recharge, wildlife habitat, and ecological benefits.

1 (16) Activities that result in the discharge of
2 pollutants into the Nation’s protected water re-
3 sources, including through dredging and filling, are
4 commercial or economic in nature, and, in the aggre-
5 gate, have a substantial effect on interstate com-
6 merce.

7 (17) Restoring and maintaining the quality of,
8 and regulating activities affecting, the Nation’s pro-
9 tected water resources is essential to fulfilling the
10 United States’ treaty obligations.

11 (18) Restoring and maintaining wetlands and
12 other protected water resources is essential to North
13 American wildlife, hunters, and anglers.

14 (19) Restoring and maintaining the quality of,
15 and regulating activities affecting, the Nation’s pro-
16 tected water resources is necessary to protect Fed-
17 eral land and waters from degradation.

18 **SEC. 4. PROTECTED WATER RESOURCES.**

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

21 (1) by amending paragraph (7) to read as fol-
22 lows:

23 “(7) PROTECTED WATER RESOURCES.—

24 “(A) IN GENERAL.—The term ‘protected
25 water resources’ means all waters subject to the

1 ebb and flow of the tide, the territorial seas,
2 and all interstate and intrastate waters (and
3 their tributaries), including lakes, rivers,
4 streams (including intermittent and ephemeral
5 streams), wetlands, and all impoundments of
6 the foregoing, to the fullest extent that these
7 waters are subject to the legislative power of
8 Congress under the Constitution.

9 “(B) EXCLUSIONS.—The term ‘protected
10 water resources’ does not include—

11 “(i) any category of water body or
12 feature listed in paragraphs (1) through
13 (8) of section 120.2(b) of title 40, Code of
14 Federal Regulations, as in effect on March
15 20, 2023; or

16 “(ii) any other category of water body
17 or feature excluded by the Administrator
18 in accordance with subparagraph (C).

19 “(C) REVIEW AND MODIFICATIONS.—

20 “(i) REVIEW REQUIRED.—Not later
21 than 1 year after the date of enactment of
22 the Clean Water Act of 2023, and periodi-
23 cally thereafter, the Administrator shall, by
24 rule, review the categories of water body or
25 feature excluded under subparagraph (B)

1 to determine, based on the best available
2 scientific evidence, whether the implemen-
3 tation of such exclusions, or any individual
4 exclusion, has a significant cumulative ad-
5 verse effect on—

6 “(I) the chemical, physical, or bi-
7 ological integrity of—

8 “(aa) the waters described
9 in subparagraph (A); or

10 “(bb) surface waters, other
11 than those described in subpara-
12 graph (A), that are sources of
13 water for public water systems,
14 as such term is defined in section
15 1401 of the Safe Drinking Water
16 Act (42 U.S.C. 300f);

17 “(II) environmental justice com-
18 munities; or

19 “(III) water resources described
20 in section 518(e)(2).

21 “(ii) MODIFICATIONS AND RE-
22 MOVAL.—If the Administrator determines
23 under clause (i) that the implementation of
24 the exclusions, or any individual exclusion,
25 under subparagraph (B) has a significant

1 adverse effect described in clause (i), the
2 Administrator shall, by rule and concur-
3 rent with such determination—

4 “(I) modify the category of water
5 body or feature so excluded to ensure
6 that, based on the best available sci-
7 entific evidence, the implementation of
8 such category will not have a signifi-
9 cant cumulative adverse effect de-
10 scribed in clause (i); or

11 “(II) remove such category.

12 “(iii) ADDITIONAL EXCLUSIONS.—The
13 Administrator may, by rule, exclude an ad-
14 ditional category of water body or feature
15 under subparagraph (B) if the Adminis-
16 trator determines, based on the best avail-
17 able scientific evidence, that the implemen-
18 tation of such additional exclusion will not
19 have a significant cumulative adverse effect
20 described in clause (i).”; and

21 (2) by adding at the end the following:

22 “(28) WETLANDS.—The term ‘wetlands’ means
23 those areas that are inundated or saturated by sur-
24 face or ground water at a frequency and duration
25 sufficient to support, and that under normal cir-

1 cumstances do support, a prevalence of vegetation
2 typically adapted for life in saturated soil condi-
3 tions.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) FEDERAL WATER POLLUTION CONTROL
6 ACT.—The Federal Water Pollution Control Act (33
7 U.S.C. 1251 et seq.) is amended—

8 (A) in sections 101, 102, 104, 106, 208,
9 301, 302, 303, 304, 319, 401, 404, 405, and
10 511(c), by striking “navigable waters” each
11 place it appears and inserting “protected water
12 resources”;

13 (B) in section 303(c)—

14 (i) in paragraph (2)(A), by striking
15 “such waters” and inserting “such pro-
16 tected water resources”; and

17 (ii) in paragraph (4)(A), by striking
18 “such waters” and inserting “such pro-
19 tected water resources”;

20 (C) in section 304(l)(1) by striking “NAVI-
21 GABLE WATERS” in the heading and inserting
22 “PROTECTED WATER RESOURCES”;

23 (D) in section 305—

- 1 (i) in subsection (a), by striking “nav-
2 igrable waters” each place it appears and
3 inserting “protected water resources”; and
- 4 (ii) in subsection (b)(1)—
- 5 (I) in subparagraph (A), by strik-
6 ing “navigable waters” and inserting
7 “protected water resources”; and
- 8 (II) in subparagraph (B), by
9 striking “navigable waters of” and in-
10 sserting “protected water resources
11 in”;
- 12 (E) in section 311—
- 13 (i) in subsections (a)(11), (b), and
14 (m), by striking “navigable waters of the
15 United States” each place it appears and
16 inserting “protected water resources”; and
- 17 (ii) in subsections (c) and (j), by
18 striking “navigable waters” each place it
19 appears and inserting “protected water re-
20 sources”;
- 21 (F) in section 312—
- 22 (i) in subsections (a) and (b), by
23 striking “navigable waters” each place it
24 appears and inserting “protected water re-
25 sources”; and

1 (ii) in subsections (h), (l), and (n), by
2 striking “navigable waters of the United
3 States” each place it appears and inserting
4 “protected water resources”;

5 (G) in section 319, by striking “such
6 waters” each place it appears and inserting
7 “such protected water resources”;

8 (H) in section 402—

9 (i) in subsection (a)(4), by striking
10 “into the navigable waters”;

11 (ii) in subsections (b), (g), and (n)(1),
12 by striking “navigable waters” each place
13 it appears and inserting “protected water
14 resources”; and

15 (iii) in subsection (n)(2), by striking
16 “navigable waters of” and inserting “pro-
17 tected water resources in”;

18 (I) in section 404—

19 (i) in subsection (f)(2), by striking
20 “such waters” and inserting “such pro-
21 tected water resources”; and

22 (ii) in subsection (g)(1)—

23 (I) by striking “those waters”
24 and inserting “those protected water
25 resources”; and

1 (II) by striking “all waters” and
2 inserting “all protected water re-
3 sources”;

4 (J) in paragraphs (11) and (12) of section
5 502, by striking “navigable waters” each place
6 it appears and inserting “protected water re-
7 sources”; and

8 (K) in section 511(b), by inserting “as dis-
9 charges of pollutants into protected water re-
10 sources” after “shall be regulated”.

11 (2) OIL POLLUTION ACT OF 1990.—Section
12 1001(21) of the Oil Pollution Act of 1990 (33
13 U.S.C. 2701(21)) is amended by striking “waters of
14 the United States, including the territorial sea” and
15 inserting “protected water resources (as defined in
16 section 502 of the Federal Water Pollution Control
17 Act)”.