

Quick comment: This has greater implications than most realize. You will find out when you cannot build because of new water regulations; or when they slap a water meter on your private well and send you a monthly bill for the gallons of water you use. As boring as some of this stuff seems, it will hit you in the pocket book big time and change your retirement plans. Please make the call today.

Yours truly, Ken Morse

PS - I work in the land development business [www.NetSeptic.com](http://www.NetSeptic.com) and I see this sort of thing regularly.

----- Forwarded message -----

From: **Dan and Gloria Clark**

Date: Wed, Dec 22, 2010 at 6:38 PM

Subject: Fw: Fred Kelly Grant: ALERT: Clean water expansion to "all" waters of the US is on general orders in the Senate

To:

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**From:** Katherine Lehman

**Sent:** Wednesday, December 22, 2010 1:46 PM

I've pasted the above WORD doc below for those who will not open attachments

Kathy

**From:** Fred Grant

**Sent:** Wednesday, December 22, 2010 10:45 AM

**WATCH OUT TODAY FOR THE DANGEROUS CLEAN WATER  
EXPANSION ACT**

Senator Boxer (D-Cal.) Has Reported S. 787 To The Floor of the Senate; The Bill Is Poised on General Orders And Could Be Brought Forth Just as the Food Safety Bill Was---It Puts Every Body of Water In the United States Under Federal Control by the Corps of Engineers

December 22, 2010

By: Fred Kelly Grant  
Fred Kelly Grant Ltd.  
President American Stewards of Liberty

**IT WILL TAKE AN OVERWHELMING OUTPOURING OF CALLS, FAXES AND EMAILS TO SENATORS TO STOP THE COMPLETE TURNOVER OF CONTROL OF ALL THE WATER IN AMERICA TO FEDERAL BUREAUCRATS!!**

The most dangerous bill of this session, and perhaps in our history, is in the magician's top hat, just waiting for Senator Harry Reid to begin his slight of hand act. The ever deceitful Mr. Reid has S. 787 sitting at about the same spot on General Orders in the Senate that the Food Safety Bill occupied just two weeks ago.

**Many may think that he can't pull the same stunts with this Clean Water expansion bill, with perhaps only a day left prior to the Christmas recess. Don't bet on it! Would you have believed two weeks ago that the Food Safety Bill would be on the way to the White House for signature?**

The sovereign rights of every state are on the line with S 787. Every citizen's property rights---to land and water use---are at stake.

The only way that Americans can prevent the broad brush stroke of federal power included in S 787 is personal contact and communication. Each citizen must call, fax, and email his/her two Senators and urge them to vote against S 787; each citizen must call and email friends from other states and ask them to contact their Senators and urge them to vote against S 787.

Politically, in the halls of the United States Senate, S 787 can be defeated; in court it will not be set aside. This is not a time to "let the other guy do it". Every Senator, Democrat or Republican, liberal or conservative, must be urged to reject federal land and water use control. Every citizen's property rights are at stake.

**Often we hear "we'll just have to count on the new Congress to repeal this mess." DON'T COUNT ON IT. The House may repeal it, but the Senate will still be under the same control of Harry Reid and a democrat majority. Even if both the House and Senate repeal it, the President will veto the repeal. And, neither the**

House nor the Senate will be able to get the sufficient numbers to override a veto. The fight has to be now, not in the new Congress.

RJ Smith, a noted expert on environmental laws and bureaucratic overreach, associated with a conservative "think tank" in Washington, says "Reid will do it if he can. . . .He has no compunctions about the reach or consequences of the bill. And it would be a nice farewell gift and legacy present for Oberstar and Feingold, capping their misgiven careers." (Rep. Oberstar of Minnesota and Senator Feingold of Wisconsin, original sponsors of the bill in the House and Senate)

It is up to the people of America---at the grassroots and local levels to take a strong stand and quickly!! This bill simply negates any limit on the interstate commerce clause of the United States Constitution, and turns over to federal control all water and land uses that affect water in America.

Why is S. 787 dangerous? Because it:

**ALL OUT FEDERAL WATER CONTROL**

Extends federal bureaucratic control to every body of water, no matter how small and no matter that it is dry 11 months of the year, in America (Section 4 (3) and Section 3, paragraphs 8 and 13);

**MOST EXPANSIVE FEDERAL LAND USE CONTROL**

Extends federal bureaucratic control to every land use that "affects" water---bringing federal land use control into being for the very first time in our history (Section 3, paragraphs 18, 22 and 23);

**MIGHTY EMPOWERMENT OF EPA AND CORPS**

Gives the Environmental Protection Agency and the Corps of Engineers authority to control every spot where there is water, might have been water and ever will be water (Section 4 (3);

Gives the EPA and the Corps authority to control through a permit process every agricultural activity and activities right down to fertilizing a home-owner's lawn (Section 4 (3) and section 3);

**TREATY ENFORCEMENT**

Gives the EPA and the Corps authority to use the permitting process as a "means of implementing treaties to which the United

States is a party, including treaties protecting species of fish, birds and other wildlife" (Section 3, paragraphs 18 and 21);

**REPLACES "COORDINATION" WITH "COOPERATION" for LOCAL GOVERNMENT**

Eliminates the obligation that EPA and the Corps "coordinate" with local government and simply requires "cooperation" (Section 3, paragraph 5);

**EXEMPTS BUT THEN INCLUDES GROUNDWATER**

Disingenuously exempts "groundwater" but then includes it through its findings that anything affecting any part of an aquatic system should be controlled (Section 3 paragraph 1);

**EXEMPTS CONVERTED CROPLAND BUT THEN EMPOWERS EPA TO INCLUDE IT**

Disingenuously exempts "prior converted croplands" (Section 4) but then in the same section provides that "final authority regarding jurisdiction under this Act remains with the Environmental Protection Agency."

**MILLIONS OF DOLLARS OF IMPACT ON CITIZENS AND LOCAL GOVERNMENTS**

Impacts on private property could exceed \$139 MILLION DOLLARS and on intergovernmental relations could exceed \$69 MILLION DOLLARS (Congressional Budget Office has insufficient basis for even estimating whether the Unfunded Mandates Reform Act will be violated)

**ALLOWS BUREAUCRATS TO EXCEED CONSTITUTIONAL AUTHORITY**

Expands federal bureaucratic authority far beyond what the Constitution allows (Minority Report states: "although the limits of the Commerce Clause have been determined and reinforced over the decades through numerous judicial decisions, the bill's proponents want to remove this limitation on federal authority");

**DESTROYS FEDERALISM AND TENTH AMENDMENT RIGHTS OF STATES ON WATER ISSUES**

Destroys the principle of federalism regarding water by removing state authority over intrastate bodies of water (Minority Report states: "The [bill] reverses Congress' long-standing support for a federal-state partnership for water protection. . .[it removes]states' authority over waters that are traditionally within their jurisdiction. It erases distinctions between federal, state and private waters and categorizes all waters as waters of the United States, subjecting nearly all waters to the jurisdiction of federal agencies." NOTE: We can find no waters that would not be subjected to federal bureaucratic control.)

## **ROADBLOCKS TO PROGRESS AND ECONOMIC VIABILITY**

The Minority Report written by Senators Crapo, Inhofe, Barrasso and Vitter states: "Rather than improving water quality, this bill would create federal roadblocks to local storm water management, unduly delay development and maintenance of local infrastructure, increase permit requests and litigation, create higher compliance costs, exacerbate wait times for CWA permits, and raise costs for farmers, ranchers, landowners, communities and businesses."

*On December 10, Senator Boxer reported the Bill to the Senate where it was placed on General Orders, available for call up by the Leader. The bill as reported was and is a complete substitute for the bill that was heard by the Committee Senator Boxer chairs.*

This bill changes the decades old balance between federal, state and private water controls---and puts total control of "all" water in the United States under the control of the Army Corps of Engineers and the Environmental Protection Agency.

"All" water means just that: "every" pond, stream and mudhole in America will be federally controlled. Gone will be the historic and constitutional standard that allowed federal control only over "navigable" waters.

Section 4 of S. 787 defines "waters of the United States" as:

"all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds, all tributaries of the above waters, and all impoundments of the foregoing."

In simple terms, all water and all places where there might be water, ever has been water or ever will be water. The minority report on the bill issued by Senators Crapo, Inhofe, Vitter, and Barrasso contends that the bill:

"expands the scope of federal power to all waters of the United States, stripping the states of much of their flexibility and subjecting our nation's waters to the blanket jurisdiction

of federal bureaucracies. It also invalidates almost 40 years of congressional intent and case law by restoring a fundamentally flawed executive branch interpretation of the Clean Water Act which defied congressional intent from the very beginning."

The point being made by the minority report is that the purpose of this Bill is to reverse two United States Supreme Court decisions that put a stranglehold on run-away federal bureaucrats who tried to control intra-state water, even though the Clean Water Act itself allowed control only if the water was navigable.

In Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159, and Rapanos v. United States, 547 U.S. 715 came down hard on the Environmental Protection Agency and the Corps for exceeding executive authority by controlling more broadly than allowed by Congress. In both cases, the Court struck down regulations that attempted to control non-navigable waters.

Senator Boxer and supporters of the Bill admit that they intend to reverse those Supreme Court decisions. But they contend that it was always the intent of Congress to allow control of "all" water, not just navigable water.

Senators Crapo, Inhofe, Vitter and Barrasso reject the contention, pointing out that the word "navigable" is used "85 times in legislation considered by three separate Congresses during a span of four decades." That is pretty strong evidence that Congress has never before intended to steer away from the Constitutional base that supports only control over navigable water.

The minority Senators point out that the majority is bothered with this worrisome detail of Constitutional law, and would change it by this Bill:

"For supporters of this Bill, the term 'navigable' has been particularly troubling since its origin rests with Congress' power to regulate interstate commerce under the Constitution.. The Bill's proponents want to remove this limitation on federal authority"

They say that the supporters of the Bill are "pointedly leapfrogging the limitations imposed by the Commerce Clause" of the United States Constitution.

Senator Boxer's claim that the intent of the Bill is simply to explain what the congressional intent has been in the past is also belied by language of the original sponsor of the bill in the House, Rep. Oberstar of Minnesota. He states that the purpose of the current bill is to complete the "unfinished agenda of the Clean Water Act" by expanding regulatory control to "non-point sources" of pollution.

"Non point sources" are defined by the United States Geological Service as places of discharge of pollutants coming from "land use activities". Oberstar made it clear that the Clean Water Act did not cover such land use sources.

He introduced the bill in the House to "expand regulatory authority" to cover land use activities such as "sediments, pesticides, and nutrients running off of farms and urban lawns; . . . farm animal wastes from barnyards and pet wastes from urban areas; and soil washed away from logging and construction areas."

Under S. 787, as viewed by its own sponsor, a home owner could be required to get a federal permit for irrigating a lawn where fertilizer has been used to feed the grass; a farmer could be required to get a federal permit to change his crop from a low water crop to a high water crop like watermelons; an intrastate builder/contractor could be required to get a federal land use permit, in addition to local zoning permit, for development of a subdivision which would might allow run-off; and an independent, small town logger who cuts from his own private property and never puts a log into interstate commerce could be required to get a permit.

Contrary to Senator Boxer's contentions, no Congress in history has ever considered extending federal bureaucracy this far toward total control of water even on private land---a control so total that it will allow regulation of activities even affecting water.

In the substitute S. 787 that Ms. Boxer reported, the definition of waters of the United States eliminated the original clause that included "activities affecting those waters." The deletion no doubt resulted from a flood of outrage by members of the public who bothered to read the Bill. But, Senator Inhofe noted that the deletion is only "cosmetic", stating:

"The superficial changes made to this bill don't change its underlying intention and ultimate effect: to radically expand federal power over farms, ranches and private property."

Of course, Senator Inhofe is correct. The bill still authorizes federal regulation of land uses. The purpose of the bill remains the restoration and maintenance of the "chemical, physical, and biological integrity" of all waters of the United States. Each of those elements directly involves land uses which affect the water.

The reported bill still contains findings which include in Section 3, paragraphs (18), (22) and (23) the following references to the necessity of regulating land uses:

"(18) protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of implementing treaties...[mainly referring in paragraphs 18 through 21 to the treaties related to endangered and special species]

. . .  
(22) protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of protecting Federal land..'

(23) protecting the quality of and regulating activities affecting the waters of the United States is necessary to protect the Federal land and water from discharges of pollutants and other forms of degradation..."

These Findings will be used by the EPA and the Corps to regulate land uses. They will be used by government counsel and by counsel representing anti-farming, anti-ranching, anti-logging, anti-development organizations to support those regulations. They will be used by activist, law-changing judges, to demonstrate the intent of Congress to regulate any land use that might "affect" any body of water. Immediately coming to mind are judges like Molloy in the Montana U.S. District Court and Winmill in Idaho.

Recreation organizations will be impacted by the Bill as will farmers, ranchers, loggers, homeowners and businesses. Every small lake and irrigation reservoir used by water skiers, boaters and fishermen will be under control of EPA and the Corps. Every intra-state stretch of river used by kayakers will be under the same controls. Use of motorized vehicles to reach water on private property and other purely intrastate water, or

to ride along streams on private property, will be subject to the same control because of the potential "pollution. . .or impairment. . .of any part of an aquatic system." (Section 3)

RJ Smith has carefully examined S. 787 and states:

"Almost every piece of land would have had enough water on it for enough time to qualify as a jurisdictional wetland of the US---and therefore require Federal permits to do anything. Put a new fence in, build a stock pond, attempt to create a small marsh for duck hunting, clean out a drainage ditch, whatever. And that is going to require more federal agents, inspectors, paper work and will slow up local rural economies for years."

He still believes there is a chance to defeat this expansive federal power grab:

"If various GOP and even a few Democrats hold on principles, [the bill] could be kept out of a last minute insertion into the Omnibus Land Grab or some other vehicle. There is already reported push back on the water/estuary bills in the Omnibus, such as the Chesapeake Bay bill. They all give EPA/Corps authority to require Fed permits for any and all non-point discharges into waterways, which is total national land use control. . .Anything a landowner does, even cutting a Christmas tree or Hanukkah bush and dragging it back to the farm house is going to disturb the soil. Imagine if you're a tree farmer! All those water bills in the Omnibus are the toe in the door on National Land Use Control."

And, S. 787 is not just the "toe in the door"---it IS NATIONAL LAND USE CONTROL!!!

Senator Mike Crapo (R-Idaho), pledging to filibuster this bill, says "the bill would grant federal regulators new and expanded authority over activities affecting these waters, which has serious implications for commerce. I intend to use every tool and privilege afforded to slow or stop this ill-conceived attack on Idaho's sovereignty over managing its water."

He will be aided by Senators Inhofe, Vitter and Barrasso. But they will need help from every citizen who believes in the federalism created by our Constitution and now endangered by S.787.

Chuck Cushman of American Land Rights Association has sent out an extensive alert naming the key Senators to be contacted. Use his alert, contact those Senators and urge them to vote no. Contact the four Senators who wrote the minority report and give them your support and encouragement: Crapo, Inhofe, Vitter and Barrasso.