

113TH CONGRESS
2D SESSION

H. R. 5078

To preserve existing rights and responsibilities with respect to waters of
the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2014

Mr. SOUTHERLAND (for himself, Mr. SHUSTER, Mr. RAHALL, Mrs. CAPITO, Mr. PETERSON, Mr. CRAWFORD, Mr. MATHESON, Mr. GIBBS, Mr. SCHRADER, Mr. RIBBLE, Mr. ENYART, Mr. MULLIN, Mr. JOLLY, and Mr. LUCAS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To preserve existing rights and responsibilities with respect
to waters of the United States, 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 “Waters of the United
5 States Regulatory Overreach Protection Act of 2014”.

6 **SEC. 2. RULES AND GUIDANCE.**

7 (a) IDENTIFICATION OF WATERS PROTECTED BY
8 THE CLEAN WATER ACT.—

1 (1) IN GENERAL.—The Secretary and the Ad-
2 ministrators are prohibited from—

3 (A) developing, finalizing, adopting, imple-
4 menting, applying, administering, or enforce-
5 ing—

6 (i) the proposed rule described in the
7 notice of proposed rule published in the
8 Federal Register entitled “Definition of
9 ‘Waters of the United States’ Under the
10 Clean Water Act” (79 Fed. Reg. 22188
11 (April 21, 2014)); or

12 (ii) the proposed guidance submitted
13 to the Office of Information and Regu-
14 latory Affairs of the Office of Management
15 and Budget for regulatory review under
16 Executive Order 12866, entitled “Guidance
17 on Identifying Waters Protected By the
18 Clean Water Act” and dated February 17,
19 2012 (referred to as “Clean Water Protec-
20 tion Guidance”, Regulatory Identifier
21 Number (RIN) 2040–ZA11, received Feb-
22 ruary 21, 2012); or

23 (B) using the proposed rule or proposed
24 guidance described in subparagraph (A), any
25 successor document, or any substantially simi-

1 lar proposed rule or guidance, as the basis for
2 any rulemaking or decision regarding the scope
3 or enforcement of the Federal Water Pollution
4 Control Act (33 U.S.C. 1251 et seq.).

5 (2) USE OF RULES AND GUIDANCE.—The use
6 of the proposed rule or proposed guidance described
7 in paragraph (1)(A), any successor document, or any
8 substantially similar proposed rule or guidance, as
9 the basis for any rulemaking or decision regarding
10 the scope or enforcement of the Federal Water Pol-
11 lution Control Act shall be grounds for vacating the
12 final rule, decision, or enforcement action.

13 (b) EXEMPTION FOR CERTAIN AGRICULTURAL CON-
14 SERVATION PRACTICES.—

15 (1) IN GENERAL.—The Secretary and the Ad-
16 ministrators are prohibited from developing, final-
17 izing, adopting, implementing, applying, admin-
18 istering, or enforcing the interpretive rule described
19 in the notice of availability published in the Federal
20 Register entitled “Notice of Availability Regarding
21 the Exemption from Permitting Under Section
22 404(f)(1)(A) of the Clean Water Act to Certain Ag-
23 ricultural Conservation Practices” (79 Fed. Reg.
24 22276 (April 21, 2014)).

1 (2) WITHDRAWAL.—The Secretary and the Ad-
2 ministrators shall withdraw the interpretive rule de-
3 scribed in paragraph (1), and such interpretive rule
4 shall have no force or effect.

5 (3) APPLICATION.—Section 404(f)(1)(A) of the
6 Federal Water Pollution Control Act (33 U.S.C.
7 1344(f)(1)(A)) shall be applied without regard to the
8 interpretive rule described in paragraph (1).

9 **SEC. 3. FEDERALISM CONSULTATION.**

10 (a) IN GENERAL.—The Secretary and the Adminis-
11 trator shall jointly consult with relevant State and local
12 officials to develop recommendations for a regulatory pro-
13 posal that would, consistent with applicable rulings of the
14 United States Supreme Court, identify—

15 (1) the scope of waters covered under the Fed-
16 eral Water Pollution Control Act; and

17 (2) the scope of waters not covered under such
18 Act.

19 (b) CONSULTATION REQUIREMENTS.—In developing
20 the recommendations under subsection (a), the Secretary
21 and the Administrator shall—

22 (1) provide relevant State and local officials
23 with notice and an opportunity to participate in the
24 consultation process under subsection (a);

1 (2) seek to consult State and local officials that
2 represent a broad cross-section of regional, eco-
3 nomic, and geographic perspectives in the United
4 States;

5 (3) emphasize the importance of collaboration
6 with and among the relevant State and local offi-
7 cials;

8 (4) allow for meaningful and timely input by
9 State and local officials;

10 (5) be respectful of maintaining the Federal-
11 State partnership in implementing the Federal
12 Water Pollution Control Act;

13 (6) take into consideration the input of State
14 and local officials regarding matters involving dif-
15 ferences in State and local geography, hydrology, cli-
16 mate, legal frameworks, economies, priorities, and
17 needs;

18 (7) promote transparency in the consultation
19 process under subsection (a); and

20 (8) explore with State and local officials wheth-
21 er Federal objectives under the Federal Water Pollu-
22 tion Control Act can be attained by means other
23 than through a new regulatory proposal.

24 (c) REPORTS.—

1 (1) IN GENERAL.—Not later than 12 months
2 after the date of the enactment of this Act, the Sec-
3 retary and the Administrator shall publish in the
4 Federal Register a draft report describing the rec-
5 ommendations developed under subsection (a).

6 (2) CONSENSUS REQUIREMENT.—The Secretary
7 and the Administrator may include a recommenda-
8 tion in the draft report only if consensus has been
9 reached with regard to the recommendation among
10 the Secretary, the Administrator, and the State and
11 local officials consulted under subsection (a).

12 (3) FAILURE TO REACH CONSENSUS.—If the
13 Secretary, the Administrator, and the State and
14 local officials consulted under subsection (a) fail to
15 reach consensus on a regulatory proposal, the draft
16 report shall identify that consensus was not reached
17 and describe—

18 (A) the areas and issues where consensus
19 was reached;

20 (B) the areas and issues of continuing dis-
21 agreement that resulted in the failure to reach
22 consensus; and

23 (C) the reasons for the continuing dis-
24 agreements.

1 (4) DURATION OF REVIEW.—The Secretary and
2 the Administrator shall provide not fewer than 180
3 days for the public review and comment of the draft
4 report.

5 (5) FINAL REPORT.—The Secretary and the
6 Administrator shall, in consultation with the relevant
7 State and local officials, address any comments re-
8 ceived under paragraph (4) and prepare a final re-
9 port describing the final results of the consultation
10 process under subsection (a).

11 (d) SUBMISSION OF REPORT TO CONGRESS.—Not
12 later than 24 months after the date of enactment of this
13 Act, the Secretary and the Administrator shall jointly sub-
14 mit to the Committee on Transportation and Infrastruc-
15 ture of the House of Representatives and the Committee
16 on Environment and Public Works of the Senate and
17 make publicly available the final report prepared under
18 subsection (c)(5).

19 **SEC. 4. DEFINITIONS.**

20 In this Act, the following definitions apply:

21 (1) SECRETARY.—The term “Secretary” means
22 the Secretary of the Army.

23 (2) ADMINISTRATOR.—The term “Adminis-
24 trator” means the Administrator of the Environ-
25 mental Protection Agency.

1 (3) STATE AND LOCAL OFFICIALS.—The term
2 “State and local officials” means elected or profes-
3 sional State and local government officials or their
4 representative regional or national organizations.

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