

116TH CONGRESS
1ST SESSION

S. 2356

To provide a definition of navigable waters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. BRAUN (for himself and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide a definition of navigable waters, 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 “Define WOTUS Act
5 of 2019”.

6 **SEC. 2. WATERS OF THE UNITED STATES AND NAVIGABLE**
7 **WATERS.**

8 (a) WATERS OF THE UNITED STATES RULE RE-
9 PEAL.—The final rule issued by the Administrator of the
10 Environmental Protection Agency and the Secretary of the

1 Army entitled “Clean Water Rule: Definition of ‘Waters
2 of the United States’” (80 Fed. Reg. 37054 (June 29,
3 2015)) is void.

4 (b) NAVIGABLE WATERS DEFINITION.—Section 502
5 of the Federal Water Pollution Control Act (33 U.S.C.
6 1362) is amended by striking paragraph (7) and inserting
7 the following:

8 “(7) NAVIGABLE WATERS.—

9 “(A) IN GENERAL.—The term ‘navigable
10 waters’ means—

11 “(i) the territorial seas;

12 “(ii) interstate waters that are used,
13 or are susceptible to use in the natural and
14 ordinary condition of those waters, as a
15 means in transport of interstate or foreign
16 commerce;

17 “(iii) relatively permanent, standing,
18 or continuously flowing bodies of water
19 that form geographical features commonly
20 known as streams, rivers, or lakes, that
21 flow directly into waters described in
22 clause (ii); and

23 “(iv) wetlands that are adjacent to
24 and have a continuous surface water con-

1 nection to waters described in clause (ii) or
2 (iii).

3 “(B) EXCLUSIONS.—The term ‘navigable
4 waters’ does not include—

5 “(i) intermittent or ephemeral waters,
6 including features that flow only in re-
7 sponse to precipitation or melt from
8 snowpack;

9 “(ii) subsurface waters, such as
10 groundwater or underground streams, in-
11 cluding subsurface waters drained through
12 subsurface drainage systems, such as drain
13 tiling;

14 “(iii) intrastate waters, unless the
15 waters meet the requirements described in
16 subparagraph (A);

17 “(iv) a man-made channel or ditch,
18 including irrigation, distribution, and
19 drainage systems;

20 “(v) prior converted cropland;

21 “(vi) artificially irrigated areas;

22 “(vii) artificial lakes and ponds con-
23 structed in upland;

24 “(viii) water-filled depressions created
25 in upland, including water-filled depres-

1 sions incidental to mining or construction
2 activity;

3 “(ix) stormwater control features ex-
4 cavated or constructed in upland to convey,
5 treat, infiltrate, or store stormwater run-
6 off;

7 “(x) wastewater recycling structures
8 constructed in upland;

9 “(xi) waste treatment systems;

10 “(xii) waters that require the use of
11 means beyond visual inspection by the
12 naked eye, including aerial photographs,
13 satellite imaging, or hydrological testing, to
14 determine if the waters meets the require-
15 ments described in subparagraph (A); or

16 “(xiii) any other waters that do not
17 meet the requirements under subparagraph
18 (A), without regard to whether the water—

19 “(I) previously met or would have
20 met those requirements; or

21 “(II) may in the future meet
22 those requirements.

23 “(C) ASSOCIATED DEFINITIONS.—For the
24 purposes of this paragraph:

1 “(i) CONTINUOUS SURFACE WATER
2 CONNECTION.—The term ‘continuous sur-
3 face water connection’ means a connection
4 with respect to which an ordinary person
5 would not be able to visually determine by
6 the naked eye, by looking at the water sur-
7 face, where 1 body of water ends and the
8 other begins.

9 “(ii) RELATIVELY PERMANENT,
10 STANDING, OR CONTINUOUSLY FLOWING
11 BODIES OF WATER.—The term ‘relatively
12 permanent, standing, or continuously flow-
13 ing bodies of water’ means waters that, ex-
14 cept in cases of extreme events (such as a
15 drought)—

16 “(I) stand or have continuous
17 flow for not less than 185 days each
18 year; and

19 “(II) exhibit a bed and banks.”.

20 (c) JURISDICTIONAL DETERMINATION.—Title V of
21 the Federal Water Pollution Control Act is amended—

22 (1) by redesignating section 520 (33 U.S.C.
23 1251 note) as section 521; and

24 (2) by inserting after section 519 (33 U.S.C.
25 1377a) the following:

1 **“SEC. 520. JURISDICTIONAL DETERMINATIONS.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) AFFECTED PERSON.—The term ‘affected
4 person’ means an applicant for a permit under sec-
5 tion 404, landowner, or other affected person with
6 an identifiable and substantial legal interest in a
7 property.

8 “(2) SECRETARY.—The term ‘Secretary’ means
9 the Secretary of the Army.

10 “(b) BINDING DETERMINATION.—On written request
11 of an affected person, the Secretary shall provide a bind-
12 ing determination of whether the waters on the property
13 of the affected person are navigable waters that meet the
14 requirements described in section 502(7)(A)(iv).

15 “(c) COSTS.—A determination of the Secretary under
16 subsection (b) shall be made at the cost of the Secretary.

17 “(d) TIMING.—

18 “(1) IN GENERAL.—The Secretary shall make a
19 determination under subsection (b) not later than 60
20 days after the date on which the Secretary receives
21 a written request from an affected person.

22 “(2) EFFECT OF NONRESPONSE.—If the Sec-
23 retary does not make a determination by the end of
24 the period described in paragraph (1), the waters on
25 the property of the affected person shall not be con-
26 sidered to be navigable waters.

1 “(e) TERM OF DETERMINATION.—

2 “(1) FINDING OF NAVIGABLE WATERS.—If the
3 Secretary determines under subsection (b) that the
4 waters on the property of the affected person are
5 navigable waters, the determination shall be binding
6 on the Secretary and the Administrator for a period
7 to be determined by the Secretary, but in any case
8 not longer than 5 years after the date of the deter-
9 mination.

10 “(2) FINDING OF NONNAVIGABLE WATERS.—If
11 the Secretary determines under subsection (b) that
12 the waters on the property of the affected person are
13 not navigable waters, the determination shall be
14 binding on the Secretary and the Administrator for
15 as long as the affected person has an identifiable
16 and substantial legal interest in the property.

17 “(f) JUDICIAL REVIEW.—

18 “(1) IN GENERAL.—An affected person may ob-
19 tain expedited judicial review of a determination of
20 the Secretary under subsection (b).

21 “(2) TIMING.—To obtain expedited judicial re-
22 view under paragraph (1), the affected person shall
23 submit a claim under that paragraph not later than
24 30 days after the date on which the Secretary makes
25 the determination under subsection (b).

1 “(3) JURISDICTION.—A district court of the
2 United States with appropriate venue for the State
3 in which the affected person resides or in which a
4 substantial part of the property of the affected per-
5 son is located shall have jurisdiction over an action
6 under this subsection.”.

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