

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5078) TO PRESERVE EXISTING RIGHTS AND RESPONSIBILITIES WITH RESPECT TO WATERS OF THE UNITED STATES, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE RESOLUTION (H. RES. 644) CONDEMNING AND DISAPPROVING OF THE OBAMA ADMINISTRATION'S FAILURE TO COMPLY WITH THE LAWFUL STATUTORY REQUIREMENT TO NOTIFY CONGRESS BEFORE RELEASING INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, AND EXPRESSING NATIONAL SECURITY CONCERNS OVER THE RELEASE OF FIVE TALIBAN LEADERS AND THE REPERCUSSIONS OF NEGOTIATING WITH TERRORISTS

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SEPTEMBER 8, 2014.—Referred to the House Calendar and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 715]

The Committee on Rules, having had under consideration House Resolution 715, by a record vote of 7 to 3, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 5078, the Waters of the United States Regulatory Overreach Protection Act of 2014, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. The resolution waives all points of order against consideration of the bill. The resolution waives all points of order against provisions in the bill. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. The rule provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H. Res. 644, Condemning and disapproving of the Obama administration's failure to comply with the lawful statutory requirement to notify Congress before releasing individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and expressing national security concerns over the release of five Taliban leaders and the repercussions of negotiating with terrorists, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Armed Services. The resolution waives all points of order against consideration of the resolution. The resolution provides that the amendments to the resolution and the preamble recommended by the Committee on Armed Services now printed in the resolution shall be considered as adopted and the resolution, as amended, shall be considered as read. The resolution provides one motion to recommit with or without instructions.

#### EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 5078 includes a waiver of clause 4(a) of rule XIII, which prohibits consideration of legislation in the House until the third calendar day on which each report of a committee on that measure or matter has been available to Members, Delegates and the Resident Commissioner. The waiver is necessary because the Committee on Transportation and Infrastructure filed a supplemental report to accompany H.R. 5078 on September 8, 2014. However, it is important to note that the Congressional Budget Office cost estimate included in the supplemental report has been publicly available since August 1, 2014.

Although the resolution waives all points of order against provisions in H.R. 5078, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H. Res. 644, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

#### *Rules Committee record vote No. 185*

Motion by Ms. Foxx to report the rule. Adopted: 7–3

| Majority Members         | Vote  | Minority Members              | Vote  |
|--------------------------|-------|-------------------------------|-------|
| Ms. Foxx .....           | Yea   | Ms. Slaughter .....           | Nay   |
| Mr. Bishop of Utah ..... | ..... | Mr. McGovern .....            | Nay   |
| Mr. Cole .....           | Yea   | Mr. Hastings of Florida ..... | Nay   |
| Mr. Woodall .....        | Yea   | Mr. Polis .....               | ..... |
| Mr. Nugent .....         | Yea   |                               |       |
| Mr. Webster .....        | Yea   |                               |       |
| Ms. Ros-Lehtinen .....   | ..... |                               |       |
| Mr. Burgess .....        | Yea   |                               |       |

| Majority Members             | Vote | Minority Members | Vote |
|------------------------------|------|------------------|------|
| Mr. Sessions, Chairman ..... | Yea  |                  |      |

#### SUMMARY OF THE AMENDMENTS TO H.R. 5078 MADE IN ORDER

1. DeFazio (OR): Requires the Secretary of the Army and the Administrator of the EPA to withdraw both the proposed and interpretive rules published in April 2014, and to instead develop and issue for public comment a revised proposed rule to define Waters of the United States after consultation with States, local governments and stakeholders. (10 minutes)

2. Bishop, Tim (NY): Provides policy provisions that the Secretary and Administrator are prohibited from including in a final rule. (10 minutes)

3. Bishop, Tim (NY): States that provisions of the bill do not apply if it is determined implementation is likely to have an adverse impact on water quality. (10 minutes)

#### TEXT OF AMENDMENTS TO H.R. 5078 MADE IN ORDER

##### 1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DEFazio OF OREGON OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, strike line 3 and all that follows through line 23 on page 8 and insert the following (and redesignate the subsequent section accordingly):

##### **SECTION 1. WITHDRAWAL OF PROPOSED AND INTERPRETIVE RULES.**

Not later than 30 days after the date of enactment of this Act, the Secretary and the Administrator shall withdraw—

(1) the proposed rule described in the notice of proposed rule published in the Federal Register entitled “Definition of ‘Waters of the United States’ Under the Clean Water Act” (79 Fed. Reg. 22188 (April 21, 2014)); and

(2) the interpretive rule described in the notice of availability published in the Federal Register entitled “Notice of Availability Regarding the Exemption from Permitting Under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices” (79 Fed. Reg. 22276 (April 21, 2014)).

##### **SEC. 2. DEVELOPMENT OF REVISED RULE.**

(a) **IN GENERAL.**—The Secretary and the Administrator shall develop a revised proposed rule to define the term “waters of the United States” as used in the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and to identify—

(1) the scope or types of waters covered under that Act; and  
(2) the scope or types of waters not covered under that Act.

(b) **CONSULTATION.**—In developing the revised proposed rule, the Secretary and the Administrator shall—

(1) consider the public comments received on the proposed and interpretive rules referred to in section 1; and  
(2) consult with and solicit recommendations from State and local officials, stakeholders, and other interested parties.

(c) **PUBLICATION.**—Not later than 1 year after the date of withdrawal of the proposed and interpretive rules under section 1, the

Secretary and the Administrator shall publish the revised proposed rule in the Federal Register.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BISHOP OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Beginning on page 3, strike line 7 and all that follows through page 4, line 20, and insert the following:

(a) IN GENERAL.—The Secretary and the Administrator are prohibited from implementing any final rule that is based on the proposed rule described in the notice of proposed rule published in the Federal Register entitled “Definition of ‘Waters of the United States’ Under the Clean Water Act” (79 Fed. Reg. 22188 (April 21, 2014)) if such final rule—

(1) expands the scope of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) beyond those waterbodies covered prior to the decisions of the U.S. Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (531 U.S. 159 (2001)) and *Rapanos v. United States* (547 U.S. 715 (2006));

(2) is inconsistent with the judicial opinions of Justice Scalia or Justice Kennedy in the *Rapanos* decision;

(3) increases the regulation of ditches when compared to existing Federal Water Pollution Control Act regulations or guidance;

(4) eliminates historical statutory or regulatory exemptions for agriculture;

(5) increases the scope of the Federal Water Pollution Control Act with respect to groundwater;

(6) requires Federal Water Pollution Control Act regulation of erosional features;

(7) requires Federal Water Pollution Control Act permits for land-use activities;

(8) requires Federal Water Pollution Control Act regulation of farm ponds, puddles, water on driveways, birdbaths, or playgrounds;

(9) is inconsistent with the latest peer-reviewed studies; or

(10) was promulgated without public notice or comment.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BISHOP OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

**SEC. 5. LIMITATION ON APPLICABILITY.**

None of the provisions in this Act shall apply if the Administrator determines that the implementation of such provisions is likely—

(1) to increase the interstate movement of pollutants through surface waters;

(2) to increase the costs to be incurred by a State to maintain or achieve approved water quality standards for the State; or

(3) to cause or contribute to the impairment of surface or coastal waters of a State.

