AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Define WOTUS Act of 2019''.

SEC. 2. WATERS OF THE UNITED STATES AND NAVIGABLE WATERS.

(a) WATERS OF THE UNITED STATES RULE REPEAL.—The final rule issued by the Administrator of the Environmental Protection Agency and the Secretary of the

Army entitled ''Clean Water Rule: Definition of 'Waters of the United States' '' (80 Fed. Reg. 37054 (June 29, 2015)) is void.

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

''(7) NAVIGABLE WATERS.—

''(A) IN GENERAL.—The term 'navigable waters' means—

''(i) the territorial seas;

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

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

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

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

''(B) EXCLUSIONS.—The term 'navigable waters' does not include—

''(i) intermittent or ephemeral waters, including features that flow only in response to precipitation or melt from snowpack;

''(ii) subsurface waters, such as groundwater or underground streams, including subsurface waters drained through subsurface drainage systems, such as drain tiling;

''(iii) intrastate waters, unless the waters meet the requirements described in subparagraph (A);

''(iv) a man-made channel or ditch, including irrigation, distribution, and drainage systems;

''(v) prior converted cropland;

''(vi) artificially irrigated areas;

''(vii) artificial lakes and ponds constructed in upland;

''(viii) water-filled depressions created in upland, including water-filled depres-

sions incidental to mining or construction activity;

''(ix) stormwater control features excavated or constructed in upland to convey, treat, infiltrate, or store stormwater runoff;

''(x) wastewater recycling structures constructed in upland;

''(xi) waste treatment systems;

''(xii) waters that require the use of means beyond visual inspection by the naked eye, including aerial photographs, satellite imaging, or hydrological testing, to determine if the waters meets the requirements described in subparagraph (A); or

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

''(I) previously met or would have met those requirements; or

''(II) may in the future meet those requirements.

''(C) ASSOCIATED DEFINITIONS.—For the purposes of this paragraph:

"(i) CONTINUOUS SURFACE WATER CONNECTION.—The term 'continuous surface water connection' means a connection with respect to which an ordinary person would not be able to visually determine by the naked eye, by looking at the water surface, where 1 body of water ends and the other begins.

"(ii) RELATIVELY PERMANENT, STANDING, OR CONTINUOUSLY FLOWING BODIES OF WATER.—The term 'relatively permanent, standing, or continuously flowing bodies of water' means waters that, except in cases of extreme events (such as a drought)—

"(I) stand or have continuous flow for not less than 185 days each year; and

"(II) exhibit a bed and banks.".

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

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

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

"SEC. 520. JURISDICTIONAL DETERMINATIONS.

''(a) DEFINITIONS.—In this section:

''(1) AFFECTED PERSON.—The term 'affected person' means an applicant for a permit under section 404, landowner, or other affected person with an identifiable and substantial legal interest in a property.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Army.

''(b) BINDING DETERMINATION.—On written request of an affected person, the Secretary shall provide a binding determination of whether the waters on the property of the affected person are navigable waters that meet the requirements described in section 502(7)(A)(iv).

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

''(d) TIMING.—

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

''(2) EFFECT OF NONRESPONSE.—If the Secretary does not make a determination by the end of the period described in paragraph (1), the waters on the property of the affected person shall not be considered to be navigable waters.

''(e) TERM OF DETERMINATION.—

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

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

''(f) JUDICIAL REVIEW.—

''(1) IN GENERAL.—An affected person may obtain expedited judicial review of a determination of the Secretary under subsection (b).

''(2) TIMING.—To obtain expedited judicial review under paragraph (1), the affected person shall submit a claim under that paragraph not later than 30 days after the date on which the Secretary makes the determination under subsection (b).

''(3) JURISDICTION.—A district court of the United States with appropriate venue for the State in which the affected person resides or in which a substantial part of the property of the affected person is located shall have jurisdiction over an action under this subsection.''.

○