

114TH CONGRESS
1ST SESSION

H. R. 594

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2015

Mr. GOSAR (for himself, Mr. AMODEI, Mr. ASHFORD, Mr. BARR, Mr. BENISHEK, Mr. BLUM, Mr. BOST, Mr. BOUSTANY, Mr. BRIDENSTINE, Mr. BROOKS of Alabama, Mr. BUCSHON, Mr. BURGESS, Mr. BYRNE, Mr. COLLINS of Georgia, Mr. COOK, Mr. CRAMER, Mr. CRAWFORD, Mr. DENHAM, Mr. DENT, Mr. EMMER, Mr. FARENTHOLD, Mr. FLEMING, Mr. FLORES, Mr. FRANKS of Arizona, Mr. GIBSON, Mr. GOHMERT, Mr. GOODLATTE, Mr. GRAVES of Missouri, Mr. GRIFFITH, Mr. GROTHMAN, Mr. HARPER, Mr. HANNA, Mr. JODY B. HICE of Georgia, Mr. HILL, Mr. HUDSON, Mr. HUELSKAMP, Mr. HUIZENGA of Michigan, Mr. HUNTER, Mr. HURD of Texas, Mr. HURT of Virginia, Mr. SAM JOHNSON of Texas, Mr. JOLLY, Mr. JOYCE, Mr. KELLY of Pennsylvania, Mr. KINZINGER of Illinois, Mr. LATTA, Mr. LAMALFA, Mr. LAMBORN, Mr. LONG, Mr. LUCAS, Mrs. LUMMIS, Mr. MARCHANT, Mr. McCLINTOCK, Mr. DUNCAN of South Carolina, Mr. MCKINLEY, Mrs. McMORRIS RODGERS, Mr. MEADOWS, Mr. NEWHOUSE, Mr. NEUGEBAUER, Mr. NUGENT, Mr. NUNES, Mr. OLSON, Mr. PEARCE, Mr. PETERSON, Mr. PITTENGER, Mr. POE of Texas, Mr. POMPEO, Mr. ROGERS of Kentucky, Mr. ROKITA, Mr. ROONEY of Florida, Mr. RYAN of Wisconsin, Mr. SALMON, Mr. SCHOCK, Mr. SENSENBRENNER, Mr. SHIMKUS, Mr. SMITH of Missouri, Mr. STEWART, Mr. STIVERS, Mr. THORNBERRY, Mr. TIBERI, Mr. TIPTON, Mr. HARDY, Mr. UPTON, Mr. VALADAO, Mr. WALBERG, Mr. WEBER of Texas, Mr. WENSTRUP, Mr. WESTERMAN, Mr. WHITFIELD, Mr. WILLIAMS, Mr. WOMACK, Mr. YOUNG of Alaska, Mr. ZINKE, Mr. WESTMORELAND, Mr. YOHO, Mr. ROE of Tennessee, Mr. STUTZMAN, Mr. CRENSHAW, Mrs. BLACKBURN, Mr. WEBSTER of Florida, Mr. PALAZZO, Mr. BABIN, Mr. FORBES, Mr. WALDEN, Mr. AMASH, Mr. SIMPSON, and Mr. PERRY) 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 2015”.

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

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

9 (1) IN GENERAL.—The Secretary and the Ad-
10 ministrator are prohibited from—

11 (A) developing, finalizing, adopting, imple-
12 menting, applying, administering, or enforce-
13 ing—

14 (i) the proposed rule described in the
15 notice of proposed rule published in the
16 Federal Register entitled “Definition of
17 ‘Waters of the United States’ Under the
18 Clean Water Act” (79 Fed. Reg. 22188
19 (April 21, 2014)); or

20 (ii) the proposed guidance submitted
21 to the Office of Information and Regu-
22 latory Affairs of the Office of Management

1 and Budget for regulatory review under
2 Executive Order 12866, entitled “Guidance
3 on Identifying Waters Protected By the
4 Clean Water Act” and dated February 17,
5 2012 (referred to as “Clean Water Protec-
6 tion Guidance”, Regulatory Identifier
7 Number (RIN) 2040–ZA11, received Feb-
8 ruary 21, 2012); or

9 (B) using the proposed rule or proposed
10 guidance described in subparagraph (A), any
11 successor document, or any substantially simi-
12 lar proposed rule or guidance, as the basis for
13 any rulemaking or decision regarding the scope
14 or enforcement of the Federal Water Pollution
15 Control Act (33 U.S.C. 1251 et seq.).

16 (2) USE OF RULES AND GUIDANCE.—The use
17 of the proposed rule or proposed guidance described
18 in paragraph (1)(A), any successor document, or any
19 substantially similar proposed rule or guidance, as
20 the basis for any rulemaking or decision regarding
21 the scope or enforcement of the Federal Water Pol-
22 lution Control Act shall be grounds for vacating the
23 final rule, decision, or enforcement action.

24 (b) EXEMPTION FOR CERTAIN AGRICULTURAL CON-
25 SERVATION PRACTICES.—

1 (1) IN GENERAL.—The Secretary and the Ad-
2 ministrator are prohibited from developing, final-
3 izing, adopting, implementing, applying, admin-
4 istering, or enforcing the interpretive rule described
5 in the notice of availability published in the Federal
6 Register entitled “Notice of Availability Regarding
7 the Exemption from Permitting Under Section
8 404(f)(1)(A) of the Clean Water Act to Certain Ag-
9 ricultural Conservation Practices” (79 Fed. Reg.
10 22276 (April 21, 2014)).

11 (2) WITHDRAWAL.—The Secretary and the Ad-
12 ministrator shall withdraw the interpretive rule de-
13 scribed in paragraph (1), and such interpretive rule
14 shall have no force or effect.

15 (3) APPLICATION.—Section 404(f)(1)(A) of the
16 Federal Water Pollution Control Act (33 U.S.C.
17 1344(f)(1)(A)) shall be applied without regard to the
18 interpretive rule described in paragraph (1).

19 **SEC. 3. FEDERALISM CONSULTATION.**

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

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

3 (2) the scope of waters not covered under such
4 Act.

5 (b) CONSULTATION REQUIREMENTS.—In developing
6 the recommendations under subsection (a), the Secretary
7 and the Administrator shall—

8 (1) provide relevant State and local officials
9 with notice and an opportunity to participate in the
10 consultation process under subsection (a);

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

15 (3) emphasize the importance of collaboration
16 with and among the relevant State and local offi-
17 cials;

18 (4) allow for meaningful and timely input by
19 State and local officials;

20 (5) be respectful of maintaining the Federal-
21 State partnership in implementing the Federal
22 Water Pollution Control Act;

23 (6) take into consideration the input of State
24 and local officials regarding matters involving dif-
25 ferences in State and local geography, hydrology, cli-

1 mate, legal frameworks, economies, priorities, and
2 needs;

3 (7) promote transparency in the consultation
4 process under subsection (a); and

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

9 (c) REPORTS.—

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

15 (2) CONSENSUS REQUIREMENT.—The Secretary
16 and the Administrator may include a recommenda-
17 tion in the draft report only if consensus has been
18 reached with regard to the recommendation among
19 the Secretary, the Administrator, and the State and
20 local officials consulted under subsection (a).

21 (3) FAILURE TO REACH CONSENSUS.—If the
22 Secretary, the Administrator, and the State and
23 local officials consulted under subsection (a) fail to
24 reach consensus on a regulatory proposal, the draft

1 report shall identify that consensus was not reached
2 and describe—

3 (A) the areas and issues where consensus
4 was reached;

5 (B) the areas and issues of continuing dis-
6 agreement that resulted in the failure to reach
7 consensus; and

8 (C) the reasons for the continuing dis-
9 agreements.

10 (4) DURATION OF REVIEW.—The Secretary and
11 the Administrator shall provide not fewer than 180
12 days for the public review and comment of the draft
13 report.

14 (5) FINAL REPORT.—The Secretary and the
15 Administrator shall, in consultation with the relevant
16 State and local officials, address any comments re-
17 ceived under paragraph (4) and prepare a final re-
18 port describing the final results of the consultation
19 process under subsection (a).

20 (d) SUBMISSION OF REPORT TO CONGRESS.—Not
21 later than 24 months after the date of enactment of this
22 Act, the Secretary and the Administrator shall jointly sub-
23 mit to the Committee on Transportation and Infrastruc-
24 ture of the House of Representatives and the Committee
25 on Environment and Public Works of the Senate and

1 make publicly available the final report prepared under
2 subsection (c)(5).

3 **SEC. 4. DEFINITIONS.**

4 In this Act, the following definitions apply:

5 (1) SECRETARY.—The term “Secretary” means
6 the Secretary of the Army.

7 (2) ADMINISTRATOR.—The term “Adminis-
8 trator” means the Administrator of the Environ-
9 mental Protection Agency.

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

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