

Union Calendar No. 422

113TH CONGRESS
2D SESSION

H. R. 5078

[Report No. 113-568]

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

JULY 31, 2014

Additional sponsors: Mr. DENHAM, Mr. MEADOWS, Mr. PERRY, Mr. YOUNG of Alaska, Mr. CRAMER, Mr. BRIDENSTINE, Mr. COLLINS of Georgia, Mr. HANNA, Mr. SMITH of Missouri, Mr. MCCLINTOCK, Mr. COLLINS of New York, Mr. SMITH of Texas, Mr. GRIFFIN of Arkansas, Mr. HUELSKAMP, Mr. LANKFORD, Mr. JONES, Mr. GOSAR, Mr. BARLETTA, Mr. GRAVES of Missouri, Mr. BROOKS of Alabama, Mr. COTTON, Mr. WOMACK, Mr. RODNEY DAVIS of Illinois, Mr. MARINO, Mr. TIPTON, Mrs. NOEM, Mr. THORNBERRY, Mr. LATTA, Mr. ROKITA, Mr. PEARCE, Mr. KLINE, Mr. STEWART, Mr. LUETKEMEYER, Mr. HURT, Mr. ROSS, Mr. NUGENT, Mr. ROONEY, Mrs. BLACKBURN, Mr. MCKINLEY, Mr. HASTINGS of Washington, Mr. UPTON, Mr. POMPEO, Mr. LATHAM, Mr. KELLY of Pennsylvania, Mr. BRADY of Texas, Mr. MULVANEY, Mr. GRAVES of Georgia, Mr. SIMPSON, Mr. CHABOT, Mr. POE of Texas, Mr. MILLER of Florida, Mr. HECK of Nevada, Mr. CULBERSON, Mr. STUTZMAN, Mr. REED, Mrs. ROBY, Mrs. MILLER of Michigan, Mr. BUCHANAN, Mr. AMODEI, Mr. GOWDY, Mr. WESTMORELAND, Mr. NUNES, Mr. VALADAO, Mr. SCHOCK, Mr. WEBSTER of Florida, Mr. FORBES, Mr. LONG, Mr. SCHWEIKERT, Mr. LABRADOR, Mr. DIAZ-BALART, Mr. WHITFIELD, Mr. DENT, Mrs. LUMMIS, Mr. WALDEN, Mr. DUFFY, Mr. KINZINGER of Illinois, Mr. DESANTIS, Mr. YOHIO, Mr. HUIZENGA of Michigan, Mr. TIBERI, Mrs. BACHMANN, Mr. GARDNER, Mr. SHIMKUS, Mr. BILIRAKIS, Mr. RIGELL,

Mr. WALBERG, Mr. CALVERT, Mr. PITTENGER, Mr. FLEMING, Mr. SALMON, Mr. WEBER of Texas, Mr. LAMALFA, Mr. POSEY, Mr. COLE, Mr. FLORES, Mr. JOYCE, Mr. WENSTRUP, Mr. AMASH, Mr. GOODLATTE, Mr. SENSENBRENNER, Mrs. HARTZLER, Mr. GIBSON, Mr. ROGERS of Kentucky, Mr. GINGREY of Georgia, Mr. NEUGEBAUER, Mr. GUTHRIE, and Mr. HARRIS

JULY 31, 2014

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

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.—

9 (1) IN GENERAL.—The Secretary and the Ad-
10 ministrators 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
23 and Budget for regulatory review under
24 Executive Order 12866, entitled “Guidance
25 on Identifying Waters Protected By the

Clean Water Act” and dated February 17, 2012 (referred to as “Clean Water Protection Guidance”, Regulatory Identifier Number (RIN) 2040–ZA11, received February 21, 2012); or

(B) using the proposed rule or proposed guidance described in subparagraph (A), any successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(2) USE OF RULES AND GUIDANCE.—The use of the proposed rule or proposed guidance described in paragraph (1)(A), any successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the Federal Water Pollution Control Act shall be grounds for vacating the final rule, decision, or enforcement action.

(b) EXEMPTION FOR CERTAIN AGRICULTURAL CONSERVATION PRACTICES.—

(1) IN GENERAL.—The Secretary and the Administrator are prohibited from developing, finalizing, adopting, implementing, applying, admin-

1 istering, or enforcing the interpretive rule described
2 in the notice of availability published in the Federal
3 Register entitled “Notice of Availability Regarding
4 the Exemption from Permitting Under Section
5 404(f)(1)(A) of the Clean Water Act to Certain Ag-
6 ricultural Conservation Practices” (79 Fed. Reg.
7 22276 (April 21, 2014)).

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

12 (3) APPLICATION.—Section 404(f)(1)(A) of the
13 Federal Water Pollution Control Act (33 U.S.C.
14 1344(f)(1)(A)) shall be applied without regard to the
15 interpretive rule described in paragraph (1).

16 **SEC. 3. FEDERALISM CONSULTATION.**

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

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

24 (2) the scope of waters not covered under such
25 Act.

1 (b) CONSULTATION REQUIREMENTS.—In developing
2 the recommendations under subsection (a), the Secretary
3 and the Administrator shall—

4 (1) provide relevant State and local officials
5 with notice and an opportunity to participate in the
6 consultation process under subsection (a);

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

11 (3) emphasize the importance of collaboration
12 with and among the relevant State and local offi-
13 cials;

14 (4) allow for meaningful and timely input by
15 State and local officials;

16 (5) be respectful of maintaining the Federal-
17 State partnership in implementing the Federal
18 Water Pollution Control Act;

19 (6) take into consideration the input of State
20 and local officials regarding matters involving dif-
21 ferences in State and local geography, hydrology, cli-
22 mate, legal frameworks, economies, priorities, and
23 needs;

24 (7) promote transparency in the consultation
25 process under subsection (a); and

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

5 (c) REPORTS.—

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

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

17 (3) FAILURE TO REACH CONSENSUS.—If the
18 Secretary, the Administrator, and the State and
19 local officials consulted under subsection (a) fail to
20 reach consensus on a regulatory proposal, the draft
21 report shall identify that consensus was not reached
22 and describe—

23 (A) the areas and issues where consensus
24 was reached;

1 (B) the areas and issues of continuing dis-
2 agreement that resulted in the failure to reach
3 consensus; and

4 (C) the reasons for the continuing dis-
5 agreements.

6 (4) DURATION OF REVIEW.—The Secretary and
7 the Administrator shall provide not fewer than 180
8 days for the public review and comment of the draft
9 report.

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

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

24 **SEC. 4. DEFINITIONS.**

25 In this Act, the following definitions apply:

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

3 (2) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

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

Union Calendar No. 422

113TH CONGRESS
2^D Session

H. R. 5078

[Report No. 113-568]

A BILL

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

JULY 31, 2014

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed