REGULATORY INTEGRITY PROTECTION ACT OF 2015

GENERAL LEAVE

Mr. SHUSTER. Mr. Speaker, I ask unanimous consent that Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 1732.

The SPEAKER pro tempore (Mr. RODNEY DAVIS of Illinois). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 231 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1732.

The Chair appoints the gentleman from Iowa (Mr. YOUNG) to preside over the Committee of the Whole.

□ 1602

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1732) to preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes, with Mr. YOUNG of Iowa in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Pennsylvania (Mr. SHUSTER) and the gentleman from Oregon (Mr. DEFAZIO) each will control 30 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I rise today in strong support of H.R. 1732, the Regulatory Integrity Protection Act.

The Federal-State partnership Congress created under the Clean Water Act has led to significantly improved water quality over the past four decades. This is because Congress recognized that States should have the primary responsibility of regulating waters within their own boundaries and that not all waters need to be subjected to Federal jurisdiction. These limits on Federal power have also been reaffirmed by the Supreme Court not once, but twice.

However, last year, the EPA and the Corps of Engineers proposed a new rule that discards these limits. This purposefully vague rule will only increase confusion, increase uncertainty, increase lawsuits, and open up just about any water or wet area to Federal regulation.

Don't just take my word for it. At least 32 States, including Pennsylvania, are objecting to the rule as proposed. More than 1 million comments have been filed on this proposed rule, with approximately 70 percent of the substantive comments asking for the rule to be withdrawn or significantly modified.

Mr. Chair, 370 individual counties and the National Association of Counties oppose the rule. The National League of Cities, the U.S. Conference of Mayors, and the National Association of Towns and Townships all oppose this rule.

The majority of the regulated community opposes the rule, including the American Farm Bureau, the National Association of Home Builders, the Associated General Contractors of America, the U.S. Chamber of Commerce, the National Association of Manufacturers, the Edison Electric Institute, the National Mining Association, and the American Road and Transportation Builders Association.

This list of those opposed to this rule goes on and on and on. Not only do all these groups oppose the rule, but they all support H.R. 1732, the Regulatory Integrity Protection Act.

I will insert the list of supporters in the CONGRESSIONAL RECORD at this time.

LETTERS OF SUPPORT FOR H.R. 1732

AgriMark, American Farm Bureau Federation, American Public Works Association, American Road and Transportation Builders Association, Associated Builders and Contractors, Associated General Contractors of America, Association of American Railroads, Family Farm Alliance, International Council of Shopping Centers.

National Alliance of Forest Owners, National Association of Counties, National Association of Homebuilders, National Association of Realtors, National Association of Regional Councils, National Association of Wheat Growers, National League of Cities, National Multifamily Housing Council, National Water Resources Association.

Northeast Dairy Farmers Cooperatives, Oregon Dairy Farmers Association, Portland Cement Association, Select Milk Producers Inc, Small Business and Entrepreneurship Council, The American Sugarbeet Growers Association, The United States Conference of Mayors, Virginia Poultry Federation, Waters Advocacy Coalition.

National Association of Manufacturers.

LIST OF SUPPORTERS FOR H.R. 1732

Agricultural Retailers Association, American Exploration & Mining Association, American Farm Bureau Federation, American Forest & Paper Association, American Gas Association, American Iron and Steel Institute, American Petroleum Institute, American Public Power Association, American Road & Transportation Builders Association, American Society of Golf Course Architects.

Associated Builders and Contractors, The Associated General Contractors of America, Association of American Railroads, Association of Oil Pipe Lines, Club Managers Association of America, Corn Refiners Association, CropLife America, Edison Electric Institute, Federal Forest Resources Coalition, The Fertilizer Institute.

Florida Sugar Cane League, Foundation for Environmental and Economic Progress (FEEP), Golf Course Builders Association of America, Golf Course Superintendents Association of America, The Independent Petroleum Association of America (IPAA), Industrial Minerals Association—North America, International Council of Shopping Centers (ICSC), International Liquid Terminals Association (ILTA), Interstate Natural Gas Association of America (INGAA), Irrigation Association.

Leading Builders of America, NAIOP, the Commercial Real Estate Development Association, National Association of Home Builders, National Association Association of Manufacturers, National Association of REALTORS®, National Association of State Department of Agriculture, National Cattlemen's Beef Association, National Club Association, National Corn Growers Association, National Cotton.

National Cotton Council, National Council of Farmer Cooperatives, National Golf Course Owners Association of America, National Industrial Sand Association, National Mining Association, National Multifamily Housing Council, National Oilseed Processors Association, National Pork Producers Council (NPPC), National Rural Electric Cooperative Association, National Stone, Sand and Gravel Association (NSSGA).

Portland Cement Association, Public Lands, Responsible Industry for a Sound Environment (RISE), Southeastern Lumber Manufacturers Association Southern Crop Production Association, Sports Turf Managers Association, Texas Wildlife Association, Treated Wood Council, United Egg Producers, U.S. Chamber of Commerce.

Mr. SHUSTER. I next want to read a quote from a constituent of mine, Marty Yahner, a farmer from Cambria County, Pennsylvania.

''This illegal power grab clearly goes far beyond the power granted to the EPA by Congress through the Clean Water Act. Farmers, like me, are very concerned about the proposal giving unprecedented power to government agencies over how farmers can use their land. I'm also worried that the proposed rules will adversely impact the next generation being able to farm.''

That is not a Member of Congress. That is not a government official. That is a real-life farmer, and he has real concerns.

This rule will have serious economic consequences not just for our farmers, but for many others. This rule will threaten jobs and result in costly litigation. It will restrict the rights of landowners and the rights of States and local governments to carry out their economic development plans.

H.R. 1732, the Regulatory Integrity Protection Act, requires the agencies to withdraw the flawed rule, consult with States and local governments and other stakeholders, and then use that input to develop and repropose a new rule that works.

This bill gives the agencies, their State partners, and stakeholders another chance to work together and develop a rule that does what was intended, provide clarity. This is a chance to find the thoughtful, balanced regulatory approach that is necessary.

We all want to protect our waters. With this bill, we have a chance to do that by restoring integrity to the rulemaking process and restore common sense.

With this bill, we have a chance to tell the administration, the EPA, and the Corps to do it right this time.

I urge all Members to support H.R. 1732, and I reserve the balance of my time.

Mr. DEFAZIO. Mr. Chairman, I yield myself such time as I may consume.

I rise in opposition to this bill, H.R. 1732, very aptly name the RIP Act, rest

in peace—oh, no, the Regulatory Integrity Protection Act. It will rest in peace. It would be inevitably vetoed if the Senate chose to take it up, which I don't believe they will.

We are being asked to vote on things here that no one has seen or read, and that is why we are here today.

Now, the President wants us to vote on trade policy for the United States of America. I have read parts of it. Many Members haven't read any of it, but nobody—probably very few have read all of it. The public hasn't seen any of it.

Here we are again today. We are being asked to vote on killing something that nobody has read. No one in this Chamber knows what is in this rule.

Now, I would not rise to support the rule as initially proposed. It was garbled, poorly presented, and I believe there were many problems that it would have created, and that was especially distressing because it was a rule that was trying to fix something done in the Bush era. We are still dealing with the Bush era.

Because of a 4–1–4 Supreme Court decision, with two different tests for jurisdictional waters and total confusion, the Bush administration decided to write a rule to interpret the Clean Water Act.

When it was unveiled, it was opposed by all the groups that are supporting this bill today. They said: This is ridiculous. It is confusing. It just leaves way too much to interpretation. It can be applied in different ways in different parts of the country. There is no certainty here. It is a mess. Get rid of it.

Well, that didn't happen, and the Obama administration, in response to the requests of all those groups, said: Okay. We will take a cut at it.

Now, as I say, the first version was not very well done, and it raised more questions than it answered, but we now have at least some idea of some of the things this bill is going to do.

It is not going to regulate your birdbaths and ditches and all these other things that are out there on the Internet. In fact, it may solve real problems. We don't know that, but we are going to repeal it before it happens.

Now, here is a problem. This farmer in the South was made to go through the environmental review process and get a permit; yet farming and agricultural practices are supposed to be exempt.

I showed this to the Republicans who were using this in a joint hearing with the Senate. I asked the EPA Administrator and secretary of the Corps: Would this land, knowing it is agricultural land, be jurisdictional—they can't tell us what is in their rule—under your rule?

They said: No, that land would be exempt.

This person who had to go through a lengthy permitting process because of the confusion of the Bush guidance would not, under the proposed rule, have to go through any of that and could just go on farming.

Thank you very much.

Now, we are going to prevent him or her from getting that relief. Now, that is just one of the aspects of this rule that we know a little bit about—or at least we know the Administrator's interpretation of that part of the rule, that it would fix a problem for farmers.

I would suggest that there is a better way to proceed in the House, which would be let them publish the rule. If it solves a bunch of problems, great. If it solves a bunch of problems but still needs some tweaks, great. Let's intervene. Let's give them direction.

If it is something that you and everybody else feels we just can't live with, that it is poorly done—instead of this confusing process we are going through here, which I am about to explain contradicts legislation just passed 2 weeks ago—we can do this: I have already had it drafted for you. You don't need to take the time. It is less than a page. It is called a joint congressional resolution of disapproval.

Any major rule—this is a major rule—Congress has the right, under legislation that is 20 years old now, to reject it within 60 days. If the rule is not well written, once we see it and read it, you could reject it. What is the rush to repeal it before we have read it and we know what is in it?

Well, there is a lot of political stuff going on around here. I would say it is just politics playing to the crowd and the fears of people who haven't seen it or read it yet either, but they are worried about what it might be.

Well, it doesn't go into effect immediately, I will say to them. If it is bad, you can ask the same people that introduced this resolution, pass it forthwith, send it to the Senate, pass it forthwith, and that is the end of it, and we would start over.

Now, there is one other confusing aspect here, and that is that, just 2 weeks ago, the House voted on this language, which says that the bill before us purports to start the process over again, the fourth attempt at writing the rule with a whole lot more public hearings and everything, despite everything that has gone on to this point in time.

Two weeks ago, an amendment to the Energy and Water appropriations said there can be no new rule development, so that is already in the bill. Unless that were taken out of the bill, what we are doing here today can't happen.

You can't develop a new rule when it is precluded in the appropriations process, as passed by many of the people who are going to vote for this today. You have sort of contradicted yourself a little bit.

It makes it a little problematic. Do a new rule, but you can't do a new rule, so forget about it. What does that mean? We are stuck with the Bush guidance, which everybody hates and doesn't work and subjects farmers to unnecessary permitting processes.

I don't call that exactly progress or acting in the best interest of the American people and agriculture and a whole host of other people who might be impacted. I would just suggest that we forgo this little political demonstration today, just wait patiently for another 2 weeks when the trolls at OMB finally release the rule.

It has been down there for months. We need to reform OMB, and I hope some on the other side of the aisle would like to help me there. We need a more transparent rulemaking process in this country.

We should not rush ahead and not allow a rule to be published that might help people; and, if it doesn't help people, then you can kill it.

I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, it is now my honor to yield 1 minute to the gentleman from Texas (Mr. CONAWAY), the chairman of the Agriculture Committee.

Mr. CONAWAY. Mr. Chairman, I appreciate Chairman SHUSTER's leadership on this issue. It is important that we go ahead and kill this proposed rule now because it will go final coming out of OMB, and that is a wreck.

I rise today in support of H.R. 1732, the Regulatory Integrity Protection Act of 2015. I cannot stress enough the importance of this legislation to stop the Obama administration's Waters of the U.S. proposed rule and its damaging impacts on our country.

This rule, in its current form, is a massive overreach of EPA's authority and will impact nearly every farmer and rancher in America. It gives the EPA the ability to regulate essentially any body of water they want, including farm ponds and even ditches that are dry for most of the year.

□ 1615

Bottom line: under the EPA's proposed rule, nearly every body of water in the United States can be controlled by Federal regulators.

Mr. Chairman, I strongly support this legislation that forces the EPA and the Corps to stop moving forward with the proposed Waters of the U.S. rule and do as they should have done from the beginning—working with States and local stakeholders to develop a new and proper set of recommendations.

I urge support for H.R. 1732. It is imperative that the administration listen to rural America.

Mr. DEFAZIO. Mr. Chairman, as I said earlier, that gentleman hasn't read the rule, I haven't read the rule, and I don't know how one can assert very specifically what it might or might not do if you haven't read it when we have heard there have been major changes.

Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Mrs. NAPOLITANO), the ranking member of the subcommittee of jurisdiction.

Mrs. NAPOLITANO. Mr. Chairman, I thank Ranking Member DEFAZIO for the opportunity to rise in strong opposition to H.R. 1732, the Regulatory Integrity Protection Act, for several reasons. First, frankly speaking, I oppose

the bill because it simply does not work. Just before the recess, the House passed the Energy and Water Appropriations, as was pointed out by Mr. DEFAZIO, that included a rider which I opposed that would prohibit the Army Corps of Engineers from using any appropriated funds to develop or implement a change to the current rules that define the scope of Clean Water Act protections. Yet that is what the sponsors of H.R. 1732 say this bill is meant to do.

The sponsors of this bill claim that it will not kill the ongoing rulemaking but only tells the Corps and EPA to do the rulemaking over again. Yet just 2 weeks ago, as was pointed out, the House voted to prevent the agency from taking any action to change the current rules. So which is it? Does the majority want the agencies to do the rulemaking over? Or do they want to kill any effort to change the current process that has been uniformly criticized by farmers, developers, other industries, and environmental organizations as unworkable, arbitrary, and costly?

Secondly, I am opposed to H.R. 1732 because it is yet another attempt to delay needed clarification to the scope of the Clean Water Act. Remember, the executive branch has been trying to clarify the scope of the Clean Water Act since January 2003. Now that is what, 15 years ago, roughly, since the Bush administration released their Advance Notice of Proposed Rulemaking for public comment. Since that time there have been six—again six—attempts by the executive branch to release their interpretation of the Waters of the United States.

We have waited 12 years for clarity. For 12 long years, Mr. Chairman, our Nation's streams and rivers have been vulnerable to pollution and degradation. For 12 years our government has spent millions of dollars working on bringing clarity to the decisions made by the Supreme Court. Delaying this further would cost our American taxpayers—all of us—many more millions of dollars and a lot of wasted time.

Intervening now and forcing the administration to start over again, particularly when we are on the cusp of clarity, is reckless. For example, stopping the administration's rulemaking to clarify the Clean Water Act could further impact the already dire circumstances Western States are facing with prolonged drought.

Mr. Chairman, 99.2 percent of my State in California drink water from public drinking water systems that rely on intermittent, ephemeral, and headwater streams. These streams are drying up in the West. And, to add insult to injury, our actions today would force the administration to withdraw a rule that protects those streams that provide drinking water for 117 million Americans.

The Acting CHAIR (Mr. EMMER of Minnesota). The time of the gentlewoman has expired.

Mr. DEFAZIO. Mr. Chairman, I yield the gentlewoman an additional 1 minute.

Mrs. NAPOLITANO. I thank the gentleman.

Mr. Chairman, this legislation puts the legislative agenda of a well-heeled few ahead of the Nation's—our taxpayers'—drinking water. It aims to protect the rights of speculators and developers over the need to conserve and reuse every precious drop of water that falls in our State. The bill potentially creates new opportunities for individuals to overturn decades of Western water law for their own personal benefit.

Mr. Chairman, many of us have had many concerns with the proposed rule—the original one. But I appreciate that the administration has addressed those concerns and most of the concerns of the States and the stakeholders. The administration has pledged to work with stakeholders on implementation of the rule once it is final, which should happen in the next few months.

So, today, we will hear many platitudes that this bill is not about killing the rule but about simply asking for public comment. Yet such statements ignore the fact that the House just passed a rider, as was pointed out, in the Energy and Water bill to block the bill from taking effect and blocking any change to the existing rulemaking or guidance.

So, Mr. Chairman, today's rhetoric that this is simply an attempt to gather more public comment is simply that—just words. I urge my colleagues to vote against H.R. 1732.

Mr. SHUSTER. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. GIBBS), the chairman of the Water Resources and Environment Subcommittee, a gentleman who has put lots and lots of work into this issue over the past several months.

Mr. GIBBS. Mr. Chairman, I rise in strong support today for H.R. 1732, the Regulatory Integrity Protection Act of 2015.

One of the reasons that we are doing this bill today is to provide clarity and certainty for the regulated community. Following the SWANCC and Rapanos Supreme Court decisions, determining the appropriate scope of jurisdiction under the Clean Water Act has been confusing and unclear. Both the regulated community and the Supreme Court have called for a rulemaking that will provide such clarity.

Last April, the EPA and Army Corps of Engineers published a rule in the Federal Register that, according to the agencies, would clarify the scope of Federal jurisdiction under the Clean Water Act. But in reality, this rule goes far beyond merely clarifying the scope of Federal jurisdiction under Clean Water Act programs. It amounts to a vast expansion of Federal jurisdiction.

To the agencies, clarity is simple: everything is in. This is a clear expansion of the EPA's jurisdiction under the Clean Water Act and flies in the face of two Supreme Court decisions, both of which told the agencies there are limits to Federal jurisdiction.

The proposed rule misconstrues and manipulates the legal standards announced in the SWANCC and Rapanos Supreme Court cases, effectively turning those cases that place limits on Federal Clean Water Act jurisdiction into a justification for the agencies to expand their assertion of Federal authority over all waters and wet areas nationally.

The agencies had an opportunity to develop clear and reasonable bright-line rules on which is jurisdictional versus not, but they instead chose to write many of the provisions in the proposed rule vaguely, in order to give Federal regulators substantial discretion to claim Federal jurisdiction over most any water or wet area whenever they want. This is dangerous because this vagueness will leave the regulated community without any clarity and certainty as to their regulatory status and will leave them exposed to citizen lawsuits. In addition, since many of these jurisdictional decisions will be made on a case-by-case basis, this will give the Federal regulators free rein to find jurisdiction.

This rule, in essence, will establish a presumption that all waters are jurisdictional and will shift to property owners and others in the regulated community the burden of proving otherwise. This rule will set a very high bar for the regulated community to overcome.

Mr. Chairman, the administration even explicitly acknowledges in its recently issued Statement of Administration Policy for H.R. 1732 that it does not want the bill to constrain the agencies' regulatory discretion.

The Clean Water Act was originally intended as a cooperative partnership between States and the Federal Government, with States responsible for the elimination, prevention, and oversight of water pollution. This successful partnership has provided monumental improvements in water quality throughout the Nation since its 1972 enactment because not all waters need to be subject to Federal jurisdiction. However, this rule will undermine Federal-State partnership and erode State authority by granting sweeping new Federal jurisdiction to waters never intended for regulation under the Clean Water Act.

In promoting this rule, Mr. Chairman, the agencies are asserting that massive amounts of wetlands and stream miles are not being protected by the States and that this rule is needed to protect them. Yet the agencies continue to claim that no new waters will be covered by the rulemaking, which raises the question of how can the rule protect those supposedly unprotected waters without vastly expanding Federal jurisdiction over them? The agencies are talking

out of both sides of their mouths. In reality, however, States care about and are protective of their waters, and wetlands and stream miles are not being left unprotected.

Mr. Chairman, in addition to proposing a rule that has sweeping ramifications for the country, the agencies played fast and loose with the regulatory process. The sequence and timing of the actions the agencies have taken to develop this rule undermine the credibility of the rule and the process to develop it.

Among other things, State and local governments and the regulated community all have repeatedly expressed concern that the agencies have cut them out of the process and have failed to consult with them, first during the development of the agencies' jurisdiction guidance, and now, in the development of the rule.

Mr. Chairman, if the agencies had taken the time to consult with the State and local governments and actually listen up front to the issues that our counties, cities, and townships are facing, we might not have had a proposed rule which, the agencies have admitted to Congress in multiple hearings, creates confusion and uncertainty.

If the agencies had followed the proper regulatory process, we wouldn't have a proposed rule that cuts corners on the economic analysis, used incomplete data, and only looked at economic impacts of the rule on one of the many regulatory programs under the Clean Water Act. If the agencies had done things right the first time, the Transportation and Infrastructure Committee wouldn't have had to respond to the more than 30 States and almost 400 counties who have requested the EPA withdraw or significantly revise the proposed Waters of the United States rule. If the agencies had done things right, substantive comments filed on the rule wouldn't have been nearly 70 percent opposed to the rule.

The Acting CHAIR. The time of the gentleman has expired.

Mr. SHUSTER. Mr. Chairman, I yield the gentleman an additional 30 seconds.

Mr. GIBBS. But the agencies didn't do things right.

Mr. Chairman, H.R. 1732, the Regulatory Integrity Protection Act, gives the agencies, their State and local government partners, and other stakeholders another chance to work together to develop a rule that does what was intended—to provide clarity.

This bill requires the agencies to withdraw the proposed rule and enter into a transparent and cooperative process with States, local governments, and other stakeholders to write a new rule. This is what EPA should have done in the first place.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. SHUSTER. Mr. Chairman, I yield the gentleman an additional 1 minute.

Mr. GIBBS. The Regulatory Integrity Protection Act will ensure that the agencies cannot re-propose the same broken rule they released a year ago but does give the agencies an opportunity to get it right.

Mr. Chairman, I know my colleagues across the aisle all believe the agencies have heard the confusion and are committed to changing the rule to respond to the stakeholders' complaints. Unfortunately, the agencies have not provided Members of Congress or stakeholders with any real assurance that that will happen. All they tell us is to trust them.

In fact, at our joint hearing with the Senate earlier this year, when I asked Administrator McCarthy about whether the public would have a chance to review all of the changes they promised to make before the rule goes final, she said they weren't changing the rule enough to need to put it out for public comment again.

In our committee, Mr. Chairman, we have repeatedly heard from our friends on the other side of the aisle that we need to wait until the rule is finalized before taking action. If the agencies have not made the changes that they promised, or if the changes they have made do not work, we have congressional authority to disapprove of the rule.

While I appreciate my colleagues' interest in using the Congressional Review Act, waiting until the rule is finalized doesn't give us or the agencies a real chance to fix the problems that will be created.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. SHUSTER. Mr. Chairman, I yield the gentleman an additional 30 seconds.

Mr. GIBBS. Not only would the President have to sign any disapproval resolution we pass, but there are legal scholars who believe if the Congressional Review Act did pass, the agencies would be barred from ever going back and doing another rulemaking, which would leave us in the position of being stuck in the same regulatory uncertainty we are in today. I don't think I want this or any of my colleagues on the other side of the aisle want this.

As I said in the beginning, the reason we are voting on the Regulatory Integrity Protection Act today is to get a rule that provides real clarity, that works for the States, that works for local governments, and that protects our waters.

Nearly $220 billion in annual economic investment is tied to section 404 permits. Even more economic investment is tied to other Clean Water Act programs. I urge support for this bill.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. DEFAZIO. I yield myself such time as I may consume.

First, again, Mr. Chairman, I would remind the gentleman on the other side that we are not voting on the proposed rule. We are voting on a revised rule, and no Member of Congress nor any member of the potentially regulated community nor any member of any environmental group has seen or has knowledge of that rule.

The gentleman reports that this simply tells them to go back again because they didn't do enough. They had 700 days of public comments, and they accepted 1,429 public comments that went into this.

I would also remind the gentleman that I don't know how he voted on the amendment, but on the Republican Energy and Water bill 2 weeks ago, we precluded developing any new rule, none, zero. So kill the one we haven't seen, and you are stuck with the Bush guidance which everybody agrees is a disaster.

Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. NADLER), a member of the committee.

□ 1630

Mr. NADLER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition to H.R. 1732. This bill would halt efforts to clarify the scope of the Clean Water Act, a clarification necessary to protect the environment, to protect wetlands, and to protect drinking water for a third of the population.

For over a decade, there has been great uncertainty about the jurisdiction of the Clean Water Act, particularly as it applies to wetlands and streams, as a result of Supreme Court decisions in 2001 and 2006, and of guidance documents issued under the Bush administration.

In an effort to provide regulatory clarity—a goal universally shared by State and local governments, industry, agriculture, and environmental organizations—the EPA and the Army Corps of Engineers have conducted a formal rulemaking process.

The resulting clean water rule was proposed over a year ago and represents the culmination of years of study, independent scientific review, and unprecedented public comment and outreach. Just as the rule is at OMB and before it has even been published so people could read it, this bill guts all that work and requires EPA and the Corps, essentially, to start over.

The bill has no justifiable purpose. It kills the new rule before anyone has even had a chance to read it. It requires the agencies to conduct what appears to be two additional public comment periods, bringing the total up to six public comment periods in the last decade.

It requires the agencies to consult with stakeholders again, even though the rule was developed after 400 meetings with stakeholders, with comments filed by over 800,000 members of the public.

My Republican colleagues are always complaining about regulatory uncertainty, the resulting increased costs on businesses, bureaucratic delay, and waste of taxpayer dollars; yet this bill is unnecessary, repetitive, and serves no legitimate purpose other than to delay.

The harm it will cause is extensive. There is perhaps no greater responsibility than to protect the Nation's water supply. This bill would leave our environmental resources unprotected and the drinking water for 117 million Americans at risk. The rule is up in the air, unread, unseen, undecided, and unknown.

I urge my colleagues to vote ''no.''

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

My colleagues on the other side of the aisle, all of a sudden, want to see this rule; but, when we passed the ObamaCare bill, nobody seemed to care about what it said in it. Again, this is new for me from my colleagues from the other side.

I think one thing is for certain. When you have so many people, so many States—the State of New York, I believe, is one that asked for significant revision—the counties, all these stakeholders crying out to have this rule significantly changed or do away with it is important to the American people.

This bill does exactly what the gentleman said. It delays this rule from going into place because it is a bad rule and will cause great economic harm to this country.

I yield 1 minute to the gentleman from Illinois (Mr. RODNEY DAVIS).

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, I thank Chairman SHUSTER and Chairman GIBBS for your leadership on this important issue. I am an original cosponsor of this very important bill.

Everyone in this Chamber, Mr. Chairman, supports clean water. That is why I was such a strong advocate for the EPA to designate a portion of the Mahomet Aquifer in central Illinois as a sole source of drinking water, which was finalized just this past year.

This proposed rule on the Waters of the U.S., this attempt by the EPA to expand its authority under the Clean Water Act to lands that are traditionally dry is an overreach and must be reined in.

I am increasingly concerned of the trust gap between the EPA and the agricultural community. Earlier this year, EPA Administrator McCarthy apologized to ag producers for not bringing them to the table when the Agency put out its interpretive rule on conservation practices, which the EPA and the Corps of Engineers ultimately withdrew.

Unfortunately, this is just more evidence of the haste with which the proposed rule was developed, without appropriately seeking and implementing all necessary stakeholder input.

H.R. 1732 would require both the EPA and the Corps to withdraw the proposed rule, go back to the drawing board, and write a new rule with all stakeholders together. Frankly, this is what they should have done in the first place.

Mr. DEFAZIO. Mr. Chairman, I yield myself such time as I may consume.

First, I would correct the Record—and far be it for me to correct the chairman—but, actually, the attorney general of New York, on behalf of the State of New York, as one of our witnesses, testified in favor of going forward with the rule, so there were others who objected.

Mr. SHUSTER. Will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. The implementing agencies with their comments rejected the rule from New York. It sounds like New York is confused.

Mr. DEFAZIO. New York may be confused, and everybody is confused because they have not seen what it is that they are objecting to and would, again, suggest that the best course of action would be to actually see it.

The gentleman from Ohio brought up something very weird, saying that, somehow, if we used a simple resolution of disapproval, they couldn't write a new rule.

He is confusing it with the bill you passed last year, which said that the rule is rejected and you can't use anything you use to write that rule to write a new rule. A number of us raised questions about that at the time. You did pass that last year. That is probably what he is thinking of.

This is a simple resolution of disapproval. It would not have any impact on future actions of the Agency.

I yield 5 minutes to the gentlewoman from Maryland (Ms. EDWARDS).

Ms. EDWARDS. Mr. Chairman, I thank my colleague for yielding.

I think the American public, Mr. Chairman, must be quite confused. This rulemaking that we are talking about is actually about clean water; it is about a rulemaking process that hasn't been completed yet, and it is about a rule that we haven't seen, so it seems sort of odd that we are standing here commenting on it.

I just want to remind the other side that, thanks to the Clean Water Act, billions of pounds of pollution have been kept out of our rivers, and the number of waters that now meet clean water goals nationwide has actually doubled with direct benefits for drinking water, public health, recreation, and wildlife.

This is especially true from my home State of Maryland that is within the six-State Chesapeake Bay Watershed and several of its tributaries, including the Anacostia, the Patuxent, Potomac, and Severn Rivers that flow through the Fourth Congressional District.

The Chesapeake Bay Watershed is fed by 110,000 miles of creeks, rivers, and streams; and 70 percent of Marylanders get our drinking water from sources that rely on headwater or seasonal streams. Nationwide, 117 million people, or over a third of the total population, get our water from these waters.

However, due to the two Supreme Court decisions that have been referenced, there is, in fact, widespread confusion as to what falls under the protection of the Clean Water Act. That is precisely why this administration is working to finalize their joint proposed rule clarifying the limits of Federal jurisdiction under the act.

In fact, on April 6, the Army Corps of Engineers and the Environmental Protection Agency submitted a revised clean water protection rule to the Office of Management and Budget for final review. From my understanding, the final rule may be published in the Federal Register later this spring. I share the view that we want OMB to just get on with it.

Mr. Chairman, the chairman has complained about the confusion in the litigation. That is precisely why we need to get through a final rulemaking, which has been years in the making. If the gentleman seeks clarity, let the administration just finish its job.

That is what the Supreme Court instructed the Federal Government to do 14 years ago with the 2001 SWANCC decision and, subsequently, the 2006 Rapanos case.

Along with those Supreme Court decisions, the Bush administration, as has been said, followed the exact same process in issuing two guidance documents in 2003 and 2008. In fact, they remain in force today.

It is, in fact, these two Bush-era guidance documents that have compounded the confusion, uncertainty, and increased compliance costs faced by our constituents—opponents and proponents alike—who all just say they want clarity.

You don't actually have to take my word for it. In fact, let me quote from the comments made by the American Farm Bureau Federation, something I don't do quite often:

> With no clear regulatory definitions to guide their determinations, what has emerged is a hodgepodge of ad hoc and inconsistent jurisdictional theories.

Those are the words of the American Farm Bureau Federation.

We all agree that it is confusing. Let the Obama administration finish what the Bush administration started and failed to do, and that is publish a rule that finalizes the rule that gives stakeholders the clarity they have been seeking for 14 years.

Quite oddly, H.R. 1732 would actually halt the current rulemaking and require the agencies to withdraw the proposed rule and restart the rulemaking process. This is after 1 million public comments, a 208-day comment period, and over 400 public meetings.

In appearances before the Senate, House, and joint committees, high-ranking Agency officials have testified that the revised rule will address many of the concerns expressed during the public comment period. They have also stated that the revised rule will provide greater clarity to the current permitting process, reduce regulatory cost, and ensure more exacting protections over U.S. waters.

The bill that we are talking about would actually force the agencies to

meet with the same stakeholders again and talk about the same issues again that they have already discussed several times over the last 14 years since the first Supreme Court decision—what a colossal waste of time and taxpayer money. Actually, the other side should be ashamed if they put a cost to restarting the procedure.

In fact, the rulemaking has been more than a decade, as we have described, in development. We need to let the administration get on with its work. As others have pointed out, just 2 weeks ago, the House passed—and I opposed it; many of our colleagues opposed it—the Energy and Water Appropriations bill

It contained a policy rider that explicitly prohibits the Corps from spending any money to develop the same new clean water rule that this bill wants us to restart. Let me repeat that. The House has already passed a provision that states the Corps can use no money not just this fiscal year, but in future fiscal years, going forward in perpetuity.

Republicans try to make it sound as if all they want is for the EPA and the Corps to develop new rules right away, but it is really clear that what they want to do is stop these agencies from doing their jobs at all—no new rules and no clean water, what a shame.

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

I have great regard for the gentlewoman from Maryland. I know that the Chesapeake Bay is incredibly important to not only Maryland, but the United States. The watershed I live in, much of it drains into the Susquehanna that flows into the Chesapeake, so we are very concerned in Pennsylvania about wanting to have clean water.

We also want to have an agriculture community prospering in Pennsylvania. They spent millions of dollars to try to clean it up.

Again, this notion that we haven't seen the rule is not that clear because we have. It is not clear to what the Democrats are saying. What we are saying is we have seen a proposed rule. We have seen a proposed rule.

Because they are not going to make substantial changes to the proposed rule, that means, if they were making substantial changes, they would have to come back and reopen this up and have a significant comment period, but they are not doing that.

Basically, the proposed rule is going to be very similar to the final rule. That is what scares the heck out of people—the farmers, builders, people across this country, landowners. This bill does force the EPA and the Corps to go back in and talk to the stakeholders because of the million comments. Seventy percent were ignored. They said revise or significantly change this. They ignored 70 percent of those million comments.

I am encouraging all Members to support this.

I yield 1 minute to the gentleman from Louisiana (Mr. GRAVES), a leader on this issue.

Mr. GRAVES of Louisiana. Mr. Chairman, I support wetlands, and I support clean water. I spent much of my career actually working to restore coastal wetlands in Louisiana.

The irony here is that the agencies that are proposing this rule are actually the same agencies that right now are the largest cause of wetlands loss in the United States on the way they manage the Mississippi River system. The hypocrisy here is absolutely unbelievable.

This proposed rule goes outside the bounds of the law, the law which states ''navigable waters.'' Read this definition. It clearly goes beyond the scope of the parameters of the law. It goes outside the scope of jurisprudence.

Taking a pass right now would be a dereliction of duty. An ounce of prevention is worth a pound of cure. We know what this rule is. We have had the EPA; we have had the Corps of Engineers before our committee, and it is crystal clear the direction this is going in.

Even the sister agency of the EPA and the Corps of Engineers, the Small Business Administration, has indicated that the cost estimate complying with this regulation goes well beyond the higher cost than that done by the EPA and the Corps of Engineers.

The Acting CHAIR. The time of the gentleman has expired.

Mr. SHUSTER. I yield an additional 30 seconds to the gentleman.

Mr. GRAVES of Louisiana. The home State I represent, Louisiana, the watershed goes from the State of Montana to New York and comes all the way down. You can take this proposed definition, and you can basically apply it to 90 percent of the lands in south Louisiana.

This bill simply requires consultation with stakeholders, consultation with the property owners. This is a tax. This is a taking of private property. Mr. Chairman, I want to state: This is private property; this is people's homes; it is people's farms; it is people's small businesses, and it is impeding their ability to achieve the American Dream.

Mr. Chairman, I urge support of this bill.

Mrs. NAPOLITANO. Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina (Mr. ROUZER).

□ 1645

Mr. ROUZER. Mr. Chairman, the EPA has, once again, lost all common sense as it has decided unilaterally to redefine Waters of the U.S.

Under its proposed rule change, Waters of the U.S. would now be defined to include smaller bodies of water and even some dry land. This new definition would extend the EPA's regulatory reach to seemingly any body of water, including that water puddled in your ditch after a rainstorm. You heard me right.

Let me put it another way for an even better understanding. This rule is so broad that it could very well require you to get permission from a Federal bureaucrat before acting on your property. Small-business owners, farmers, Realtors, and homebuilders all agree that this bill is bad for business in southeastern North Carolina.

For those reasons, I am a cosponsor of this bill, the Regulatory Integrity Protection Act, which requires the EPA to scrap its current proposal and start anew by engaging stakeholders who are actually affected by this rule.

Mr. Chairman, common sense has had its share of setbacks in this country. Let's not let this rule be another one. I encourage my colleagues to vote for this bill, and I thank the chairman for his fine leadership.

Mrs. NAPOLITANO. Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, it is now my pleasure to yield 1 minute to the gentleman from California (Mr. MCCARTHY), the distinguished majority leader.

Mr. MCCARTHY. I thank the gentleman for yielding, and I thank the chairman for his work on this issue.

Mr. Chairman, there is a simple truth that exists at all times and in every place: the bigger the government, the smaller the citizen. That is especially true when it comes to regulations. When the bureaucracy makes more rules, those rules limit the freedom and opportunities of real people—people who are just trying to work hard, make a living, and support themselves and their families.

Frankly, the EPA has crossed the line with this proposed water rule. It has crossed the line constitutionally, and it has crossed a line by hurting people and threatening their livelihoods and private property.

Let me tell you a story about a place back in my district called Sandy Creek. It is named Sandy Creek for a reason; it has been dry for over 30 years. With the drought in California, there is no time soon that water is coming.

Now, long before this proposed rule that would expand the EPA's power even more, the EPA tried to regulate Sandy Creek. That would have added more costs to the people who owned the land. It would have meant more paperwork, Federal permits, compliance, and Federal regulators snooping around.

It took me years to finally get the EPA to stop. Do you know how I got them to stop? I had to have an individual come to Taft, California, get in my car, drive out, and walk in Sandy Creek, throughout the sand, before he believed there was no water to regulate.

Mr. Chairman, can you imagine what the EPA would try and do if they even had more authority to regulate things outside their jurisdiction?

These are the actions of an administration that is unaccountable and that

doesn't care about the freedom and prosperity of its citizens. This is an administration that cares more about regulation than reform, that cares more about power than it does about people.

The House is going to pass a bill to stop this rule, this abuse of power. We are going to stop this regulation for all of the hard-working Americans who are tired of this Agency's power grabs just for the sake of power.

We are going to try to do it for all who wish they could have control over their own lives. The EPA doesn't need any more power, Mr. Chairman, the people do.

Mrs. NAPOLITANO. Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, I yield 90 seconds to the gentleman from Iowa (Mr. YOUNG).

Mr. YOUNG of Iowa. I thank the chairman for his leadership on this issue.

Mr. Chairman, I rise today to speak in favor of H.R. 1732, the Regulatory Integrity Protection Act of 2015.

We hear that this is all about clean water. This is about clean water, and we all want clean water. It is an issue that should not be demagogued in this debate. We all want clean water. We have kids, and we have mothers and fathers and grandparents.

This is about a process. It is about a process that needs to be transparent, and it is about where stakeholders are at the table. Who are these stakeholders? They are Americans. They are our farmers, our ranchers, the folks who put food on our tables; they are developers and construction workers who build our homes.

This has amazing implications if we don't get this rule right, Mr. Chairman. Can you imagine the EPA's requiring farmers to have to get a permit to tile during a season? Can you imagine how long that could take? Your season could be too late to plant. What would that do to land value? to commodity prices?

We have to get this right. I rise in support of this bill as it is a commonsense, smart bill. We can do it together. We can get it right. The American people must be heard.

Mrs. NAPOLITANO. Mr. Chairman, how much time do I have remaining?

The Acting CHAIR. The gentlewoman from California has 10½ minutes remaining.

Mrs. NAPOLITANO. Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. I thank the chairman for his leadership on this issue as it is so important to our farmers and businesses in Georgia.

Mr. Chairman, I rise today to address the gross regulatory overreach of the Environmental Protection Agency and the Army Corps of Engineers regarding the proposed Waters of the United States rule.

Under the rule's proposed changes to the Clean Water Act, the Federal Government would have the power to regulate virtually any place water flows in the United States. This is not about clean water.

This includes things like creeks, streams, and groundwater but also manmade waterways like a fish pond, irrigation pipes, and dry ditching to harvest timber. If not stopped, this overreach will have damaging consequences for economic growth and jobs.

In Georgia's 12th District, many farmers and businesses are concerned about their ability to comply with these Federal mandates while maintaining their livelihoods. The Waters of the United States rule will grant the Federal Government power to dictate land use decisions, as well as farming practices, making it even more difficult to maintain a competitive and profitable farm or business.

I am proud to cosponsor H.R. 1732, and I urge my colleagues to support this important legislation.

Mrs. NAPOLITANO. Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, may I inquire as to how much time I have remaining?

The CHAIR. The gentleman from Pennsylvania has 9 minutes remaining.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. MIMI WALTERS).

Mrs. MIMI WALTERS of California. Mr. Chairman, there is something terribly wrong when the Federal Government is attempting to regulate our Nation's puddles, streams, and ditches.

The proposed rule that the Obama administration issued last year would, unfortunately, give the EPA the power to do just that. This rule would redefine the Waters of the United States under the Clean Water Act and significantly increase the Federal Government's jurisdiction over waters never intended for regulation.

The blatant power grab and regulatory overreach would not only dismantle a longstanding partnership between the States and the Federal Government, but it would also threaten American jobs, increase the costs of doing business, and heighten the likelihood of costly lawsuits.

The Regulatory Integrity Protection Act, of which I am proud to be an original cosponsor, would require the Obama administration to withdraw its proposed rule and replace it with one that considers stakeholders' input and maintains the State-Federal partnership to regulate our waters. I urge my colleagues to support this vital bill.

Mrs. NAPOLITANO. Mr. Chairman, I yield myself such time as I may consume.

You have heard a lot about the EPA, that it is a bad agency doing bad things; but, if it weren't for the EPA, many of our communities would be facing undrinkable water because of the pollution that is left behind, without any followup.

We discussed this during the committee, and one of the issues that was brought out was that some of the EPA's regional offices were being a little heavyhanded. I suggested they may be able to take it up with the administrators, themselves, to figure out how we could really bring that to the forefront. Mr. Chairman, I would like to start off with a few facts, and we have covered them already.

There are broad environmental and conservation organizations that also oppose the bill. For the RECORD, I will submit 59 of them that are in opposition.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE H.R. 1732, REGULATORY INTEGRITY PROTECTION ACT OF 2015 OUTSIDE GROUP LETTERS OF OPPOSITION MAY 12, 2015

Alliance for the Great Lakes, American Rivers, American Whitewater, Arkansas Wildlife Federation, Audubon Naturalist Society, California River Watch, Citizens Campaign for the Environment, Clean Oceans Competition, Clean Water Action, Coalition to Protect Blacksburg Waterways, Earthjustice, Earthworks, Eastern PA Coalition for Abandoned Mine Reclamation, Endangered Habitats League, Environment America, Environmental Law and Policy Center, Environmental Working Group, Freshwater Future, Friends of Accotink Creek, Friends of Dyke Marsh.

Friends of the Nanticoke River, Friends of the Weskeag, Galveston Bay Foundation, Great Lakes Environmental Law Center, Gulf Restoration Network, Izaak Walton League of America, Jesus People Against Pollution, Lake Erie Region Conservancy, League of Conservation Voters, Little Falls Watershed Alliance, Loudoun Wildlife Conservancy, Maryland Conservation Council, Midshore Riverkeeper Conservancy, Milwaukee Riverkeeper, Minnesota Center for Environmental Advocacy, Montgomery Countryside Alliance, Natural Resources Defense Council, National Audubon Society, National Wildlife Federation, Nature Abounds.

Neighbors of the Northwest Branch, Anacostia River, Ocean River Institute, Ohio Environmental Council, Ohio Wetlands Association, People to Save the Sheyenne, Piedmont Environmental Council, Potomac Riverkeeper Network, Protecting Our Waters, River Network, Sierra Club, Southern Environmental Law Center, St. Mary's River Watershed Association, Surfrider Foundation, Tip of the Mitt Watershed Council, Trout Unlimited, Virginia Conservation Network, WasteWater Education, Waterkeepers Chesapeake, West Virginia Highlands Conservancy.

Mrs. NAPOLITANO. The Army Corps of Engineers—the Corps—and the EPA have testified that their revised clean water protection rule will provide more certainty and clarity to the current clean water permitting process, that it will reduce regulatory confusion and costs, and that it will protect our Nation's waters, our economy, and our American way of life, as was stressed in the committee hearing which we all attended. I believe that it is something that they were very sure they wanted to do.

Fact: on April 6, 2015, the Corps and the EPA submitted this revised clean water protection rule to OMB for final review, bringing it closer to publication later this spring, but my Republican colleagues are attempting to stop

the rulemaking without even seeing the final product. As Mr. MCCARTHY just said, we are going to stop this regulation.

Fact: H.R. 1732 would halt the near final rulemaking needed to clarify Clean Water Act protection for countless streams and wetlands, many of which serve as primary sources of drinking water for one in three Americans. If you want to put it in millions, it would be 117 million people.

Fact: rather than allow the Agency to provide additional regulatory certainty and clarity, it would leave in place 2003 and 2008 Bush guidance documents, which have been uniformly criticized by industry as confusing, costly, and frustrating that provide little environmental benefit.

Fact: it is simply a bureaucratic redo, forcing the agencies to repeat steps in what has been a nearly decadelong rulemaking process of unprecedented public outreach, for no other reason than to prevent this administration from finalizing clean water protection rulemaking.

The last fact: if it is released, it fails to protect our water resources and our economy, and Congress simply has multiple avenues with which to address those concerns.

Mr. Chairman, I submit for the RECORD the facts and the myths. I have five of them.

The proposed rulemaking, the Federal Clean Water Act authority over ditches—it reduces Federal authority over ditches by specifically excluding ditches, including roadside ditches that are constructed in dry lands, et cetera, and it goes on.

Myth number two, it is not based on sound science. Fact, in 2015, the Office of R&D—Research and Development—released its ''Connectivity of Streams and Wetlands to Downstream Waters'' report of more than 1,200 existing peer-reviewed publications which support this.

Myth number four, a power grab by the EPA to exert greater Federal authority—fact, it preserves existing statutory and regulatory exemptions for common farming, ranching, and forestry practices, and it goes on.

Myth number five, the EPA did not adequately consult with States and did not take local concerns into consideration. Fact, again, there were 900,000 public comments, and 19,000 provided substantive comments, and they reached out to other States.

MARCH 19, 2015.

MYTHS VS. FACTS: EPA AND CORPS' CLEAN WATER RULE MYTH # 1—EXPANDED REGULATION OF DITCHES

DEAR COLLEAGUE: Last April, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed a Clean Water rule to clarify the jurisdictional scope of the Clean Water Act. This proposal was intended to simplify and improve the process for determining what waters (and wetlands) are, and are not, protected by the Act, consistent with the decisions of the U.S. Supreme Court.

Since that time, a number of questions or misconceptions about this proposal have been raised. This is the first in a series of Dear Colleagues to address these questions or misconceptions.

MYTH #1

The proposed rule expands Federal Clean Water Act authority over ditches.

FACT

The proposed rule reduces federal authority over ditches by specifically excluding ditches (including roadside ditches) that are constructed in dry lands and either (1) contain water less than year-round, or (2) do not flow into another waterbody subject to the Act.

The proposed rule retains existing authority over certain ditches that once were, and continue to function as, natural streams.

Recently, the agencies testified that they are reviewing over one million public comments submitted on the proposed rule and will make revisions to further clarify the regulation (including its application to ditches) in order to make it more effective in implementing the Clean Water Act, consistent with the science and the law.

If you have any questions or would like to learn more about the proposal, please see (http://democrats.transportation.house.gov/legislation/waters-united-states) or call the Subcommittee on Water Resources and Environment.

PETER A. DEFAZIO, M.C.,
Ranking Member, Committee on Transportation and Infrastructure.
GRACE F. NAPOLITANO, M.C.,
Ranking Member, Subcommittee on Water Resources and Environment.

MARCH 19, 2015.

MYTHS VS. FACTS: EPA AND CORPS' CLEAN WATER RULE MYTH # 2—THE PROPOSED RULE IS NOT BASED ON THE SCIENCE

DEAR COLLEAGUE: Last April, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed a Clean Water rule to clarify the jurisdictional scope of the Clean Water Act. This proposal was intended to simplify and improve the process for determining what waters (and wetlands) are, and are not, protected by the Act, consistent with the decisions of the U.S. Supreme Court. Yet, critics of this proposed rule have questioned the science behind the proposal.

MYTH #2

The proposed rule is not based on sound science.

FACTS

In January 2015, EPA's Office of Research and Development released its ''Connectivity of Streams and Wetlands to Downstream Waters'' report—a review and synthesis of more than 1,200 existing peer-reviewed publications from the scientific literature.

This Connectivity report noted that ''the scientific literature unequivocally demonstrates that streams, individually or cumulatively, exert a strong influence on the integrity of downstream waters. All tributary streams, including perennial, intermittent, and ephemeral streams, are physically, chemically, and biologically connected to downstream rivers via channels and associated alluvial deposits where water and other materials are concentrated, mixed, transformed, and transported.''

The Connectivity report also noted that ''the incremental effects of individual streams and wetlands are cumulative across entire watersheds and therefore must be evaluated in context with other streams and wetlands.''

In October 2014, EPA's Science Advisory Board completed its own scientific review of the Connectivity report, and concluded that the report is ''a thorough and technically accurate review of the literature on the connectivity of streams and wetlands to downstream waters'' and found that the scientific literature provides enough information to support a more definitive statement on the degree of connection between certain, geographically-isolated waters and downstream waters.

If you have any questions or would like to learn more about the proposal, please see (http://democrats.transportation.house.gov/legislation/waters-united-states) or call the Subcommittee on Water Resources and Environment.

EDDIE BERNICE JOHNSON, M.C.,
Ranking Member, Committee on Science, Space, and Technology.

MARCH 24, 2015

MYTHS VS. FACTS: EPA AND CORPS' CLEAN WATER RULE MYTH # 4—EPA IS SEIZING GREATER POWER OVER AGRICULTURE

DEAR COLLEAGUE: Last April, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed a Clean Water rule to clarify the jurisdictional scope of the Clean Water Act. This proposal was intended to simplify and improve the process for determining what waters (and wetlands) are, and are not, protected by the Act, consistent with two decisions of the U.S. Supreme Court. Since that time, a number of questions or misconceptions about this proposal have been raised.

MYTH #4

The proposed rule is a ''power grab'' by the EPA to exert greater Federal authority over farming, ranching, and forestry operations.

FACTS

The proposed rule provides greater certainty to farmers, ranchers, and forestry operations and would preserve existing statutory and regulatory exemptions for common farming, ranching, and forestry practices, including exemptions for prior converted cropland, irrigation return flows, and normal farming, ranching, and silvicultural activities.

The proposed rule would not affect an existing Clean Water Act exemption for the construction and maintenance of farm or stock ponds constructed on dry lands, and would, for the first time, specifically exclude artificial stock watering and irrigation ponds constructed on dry lands from Clean Water Act jurisdiction.

The proposed rule does not just respect the current exemptions for ditches but it would expand the definition of ditches to make the exemption clearer.

No Clean Water Act permit is required today for the application of pesticides or fertilizer to dry land, and this will not change under the proposed rule.

Puddles on crop fields are not subject to the Clean Water Act today, and this will not change under the proposed rule.

In short, if you can plow, plant, or harvest today without a Clean Water permit, you will not need a permit for these activities under the proposed rule.

If you have any questions or would like to learn more about the proposal, please see http://democrats.transportation.house.gov/legislation/waters-united-states or call the Subcommittee on Water Resources and Environment.

Sincerely,

DONNA F. EDWARDS,
Member of Congress.

April 13, 2015

MYTHS VS. FACTS: EPA AND CORPS CLEAN WATER RULE MYTH # 5—EPA AND THE CORPS DID NOT CONSULT THE STATES

DEAR COLLEAGUE: Last April, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed a Clean Water rule to clarify the jurisdictional scope of the Clean Water Act. This proposal was intended to simplify and improve the process for determining what waters (and wetlands) are, and are not, protected by the Act, consistent with the decisions of the U.S. Supreme Court. However, questions and misconceptions about this proposal continue to be raised.

MYTH #5

During the rulemaking process, EPA and the Corps did not adequately consult with states and did not take local concerns into consideration when developing this rule.

FACTS

EPA consulted with various stakeholders, particularly with those from the agricultural community, and received over 900,000 public comments. Of these, approximately 19,000 provided substantive comments on the proposed rule.

In total, EPA held over 400 meetings throughout the country on the proposed rulemaking, and the agencies extended the public comment period twice for a total of 207 days, to listen to concerns and draft a better, clearer rule.

EPA developed a special process for engaging the states during the public comment period, engaging with Environmental Council of the States, the Association of Clean Water Administrators, and the Association of State Wetland Managers.

At a March 22, 2015, hearing before the Subcommittee on Water Resources and Environment, the EPA's Deputy Assistant Administrator for the Office of Water characterized EPA's outreach efforts as ''unprecedented.''

Further, when describing EPA's meetings with state representatives, the Deputy Assistant Administrator stated, ''At the last meeting, which was scheduled for two hours, it was a little over an hour, and that meeting ended because, quite frankly, the states (ran) out of things they wanted to talk about.''

Since 2003, the agencies have received an estimated 1,429,000 total public comments during six separate rulemakings, lasting a total 700 days, or approximately 2 years.

''Quite candidly, I will tell you that there is not a lot of new in the way of issues that are being raised. Many of the issues that are being raised are the same ones that have been raised for several years.''—Quote from Ken Kopocis, EPA Deputy Assistant Administrator for the Office of Water (3/18/15 Hearing of the Water Resources and Environment Subcommittee)

If you have any questions or would like to learn more about the rule, please see (http://democrats.transportation.house.gov/legislation/waters-united-states) or call the Subcommittee on Water Resources and Environment.

Sincerely,

ELEANOR HOLMES NORTON,
Member of Congress.

Mrs. NAPOLITANO. Also, for the RECORD, I submit the Statement of Administration Policy from the Office of the President, which states at the end: ''If the President were presented with H.R. 1732, his senior advisors would recommend that he veto the bill.''

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, April 29, 2015.

STATEMENT OF ADMINISTRATION POLICY

H.R. 1732—REGULATORY INTEGRITY PROTECTION ACT

The Administration strongly opposes H.R. 1732. If the President were presented with H.R. 1732, his senior advisers would recommend that he veto the bill, which would require the Environmental Protection Agency (EPA) and the Department of the Army (Army) to withdraw and re-propose specified draft regulations needed to clarify the jurisdictional boundaries of the Clean Water Act (CWA). The agencies' rulemaking, grounded in science, is essential to ensure clean water for future generations, and is responsive to calls for rulemaking from Congress, industry, and community stakeholders as well as decisions of the U.S. Supreme Court. The proposed rule has been through an extensive public engagement process.

Clean water is vital for the success of the Nation's businesses, agriculture, energy development, and the health of our communities. More than one in three Americans get their drinking water from rivers, lakes, and reservoirs that are at risk of pollution from upstream sources. The protection of wetlands is vital for hunting and fishing. When Congress passed the CWA in 1972, to restore the Nation's waters, it recognized that to have healthy communities downstream, we need to protect the smaller streams and wetlands upstream.

Clarifying the scope of the CWA helps to protect clean water, safeguard public health, and strengthen the economy. Supreme Court decisions in 2001 and 2006 focused on specific jurisdictional determinations and rejected the analytical approach that the Army Corps of Engineers was using for those determinations, but did not invalidate the underlying regulation. This has created ongoing questions and uncertainty about how the regulation is applied consistent with the Court's decisions. The proposed rule would address this uncertainty.

If enacted, H.R. 1732 would derail current efforts to clarify the scope of the CWA, hamstring future regulatory efforts, and deny businesses and communities the regulatory certainty needed to invest in projects that rely on clean water. H.R. 1732 also would delay by a number of years any action to clarify the scope of the CWA, because it would: (1) require the agencies to re-propose a rule that has already gone through an extensive public comment process; and (2) create a burdensome advisory process that would complicate the agencies' rulemaking and potentially constrain their discretion. The agencies have already conducted an extensive and lengthy outreach to a broad range of stakeholders who will continue to be engaged in the current process. Duplicative outreach and consultation would impose unnecessary burdens and excessive costs on all parties.

The final rule should be allowed to proceed. EPA and Army have sought the views of and listened carefully to the public throughout the extensive public engagement process for this rule. It would be imprudent to dismiss the years of work that have already occurred and no value would be added. The agencies need to be able to finish their work.

In the end, H.R. 1732, like its predecessors, would sow more confusion and invite more conflict at a time when our communities and businesses need clarity and certainty around clean water regulation. Simply put, this bill is not an act of good government; rather, it would hinder the ongoing rulemaking process and the agencies' ability to respond to the public as well as two Supreme Court rulings.

Mrs. NAPOLITANO. There you are, Mr. Chairman.

We still oppose H.R. 1732, but I would really like to ensure that we continue to work with the EPA to get in place something that is really going to help America's farmers and industry.

I yield back the balance of my time.

Mr. SHUSTER. Mr. Chairman, I yield myself the balance of my time.

Forty years ago, the Clean Water Act established a partnership between States and the Federal Government to regulate waters. The limits on Federal power under this partnership have also been reaffirmed by the Supreme Court not once, but twice, and I might add that my colleagues, when they were the majority party, tried twice to do what this rule is going to do, but they couldn't get it out of committee because there was not the support for it.

I am not sure what has changed except for the fact that Republicans are in the majority, but there is still a lot of opposition out there to it.

The administration's proposed rule abandons a successful partnership in favor of a vast expansion of the Federal Government's authority to regulate. This proposed rule was developed without consulting States and local governments or regulated communities, and it will have dire economic consequences.

In fact, as the gentlewoman mentioned, there have been 20,000 substantive comments on this, and 70 percent of them have opposed this rule.

As I made the point earlier, the proposed rule is out there. If they were going to change it, they would have to go back and reopen the comment period, but they are not changing it significantly.

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The proposed rule will be very, very similar to what the final rule is. That is why we need to stop it. Two-thirds of the States object to this law rule, two-thirds of the States object to it. Local governments, farmers, builders, job creators, and stakeholders object to this rule. As mentioned, of those 20,000 substantial comments, 70 percent of them rejected this rulemaking. The Regulatory Integrity Protection Act rejects this flawed rule and flawed process that created it.

This bipartisan bill restores the integrity of the rulemaking process and the Federal and State partnership. The agencies simply need to go back and do it right. We cannot protect our waters and provide more regulatory clarity without sacrificing common sense and balance. Mr. Chairman, I encourage all Members to support this bill.

I yield back the balance of my time.

Mr. CALVERT. Mr. Chair, the proposed Waters of the U.S. rule is critically flawed and needs to be rewritten. After following the rulemaking process very closely, I have no confidence that that the current rule will give any

clarity for those who will be greatly impacted by this proposed rule. If anything, Mr. Speaker, the only clarity I can find in the proposed rule is that we will see an increase in the number of permits that the Corps of Engineers and EPA will need to issue for landowners to develop their land, and any litigation that may result.

The proposed rule would automatically regulate all tributaries that connect to a downstream water body and all streams and wetlands in floodplains or riparian areas of regulated water bodies unless they are deemed not navigable by the EPA or Army Corps. To me, that sounds like a dream for lawyers and a nightmare for everyone else. We must curb regulatory overreach and protect our economy as well as the rights of landowners.

During the public comment period, more than a million comments were submitted. Earlier this year during an Energy and Water Appropriations hearing the Corps informed us that 58 percent of the comments were in opposition to the rule, then later that month at an Interior Appropriations hearing the EPA informed us that 87% of the comments supported the rule. If the two agencies responsible for developing and implementing the rule cannot even agree on the number of comments submitted supporting the rule, how can they be trusted to implement the rule?

In the FY15 Omnibus we included Congressional direction to the EPA and the Army Corps to withdraw the flawed 'Interpretive Rule' that EPA had issued in conjunction with the proposed Waters of the US rule and the Administration withdrew the 'Interpretive Rule'. It's now time that we enact Congressional direction to withdraw the entire Waters of the US rule as proposed, and start fresh following the comment period.

Therefore, Mr. Chair I support this bill and I encourage all my fellow members to vote for it.

Mr. BLUM. Mr. Chair, I rise today on behalf of Iowans in my district to support H.R. 1732, the Regulatory Integrity Protection Act of 2015, to prohibit the implementation of the rule concerning ''Waters of the United States (WOTUS)'' by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE).

The rule permitting the expansion of WOTUS grants EPA and U.S. Army Corps of Engineers jurisdiction over traditionally state regulated water under the auspices of the Clean Water Act. This includes water previously unregulated by the federal government, such as dry ditches and intrastate rivers.

These regulations simply defy common sense. Every constituent in my district desires clean water, but the EPA and USACE are transferring authority from state and local officials, who know the needs of stakeholders, to Washington bureaucrats.

In response, I am proud to join the 69 other Members as a cosponsor of this bipartisan bill along with the hundreds of organized stakeholders nationwide, along with thousands of individual farmers, raising serious concerns or issued public statements in opposition to adoption of these proposals. These regulations unnecessarily burden farmers and small business owners and prevent job creation, wage increases, and economic growth. I cannot permit such proposals to go unchallenged.

I thank so many of my colleagues for standing with me in this effort and rest assured, I will continue to fight against government overreach on behalf of Iowa's hard working farming families.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

In lieu of the amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee print 114–13 modified by the amendment printed in part A of House Report 114–98. That amendment in the nature of a substitute shall be considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1732

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 ''Regulatory Integrity Protection Act of 2015''.

SEC. 2. WITHDRAWAL OF EXISTING PROPOSED RULE.

Not later than 30 days after the date of enactment of this Act, the Secretary of the Army and the Administrator of the Environmental Protection Agency shall withdraw 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 any final rule based on such proposed rule (including RIN 2040–AF30).

SEC. 3. DEVELOPMENT OF NEW PROPOSED RULE.

(a) IN GENERAL.—The Secretary of the Army and the Administrator of the Environmental Protection Agency shall develop a new 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.).

(b) DEVELOPMENT OF NEW PROPOSED RULE.—In developing the new proposed rule under subsection (a), the Secretary and the Administrator shall—

(1) take into consideration the public comments received on—

(A) the proposed rule referred to in section 2;

(B) the accompanying economic analysis of the proposed rule entitled ''Economic Analysis of Proposed Revised Definition of Waters of the United States'' (dated March 2014); and

(C) the report entitled ''Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of Scientific Evidence'' (EPA/600/R–14/475F; dated January 2015);

(2) jointly consult with and solicit advice and recommendations from representative State and local officials, stakeholders, and other interested parties on how to define the term ''waters of the United States'' as used in the Federal Water Pollution Control Act; and

(3) prepare a regulatory proposal that will, consistent with applicable rulings of the United States Supreme Court, specifically identify those waters covered under, and those waters not covered under, the Federal Water Pollution Control Act—

(A) taking into consideration—

(i) the public comments referred to in paragraph (1); and

(ii) the advice and recommendations made by the State and local officials, stakeholders, and other interested parties consulted under this section; and

(B) incorporating the areas and issues where consensus was reached with the parties.

(c) FEDERALISM CONSULTATION REQUIREMENTS.—As part of consulting with and soliciting advice and recommendations from State and local officials under subsection (b), the Secretary and the Administrator shall—

(1) seek to reach consensus with the State and local officials on how to define the term ''waters of the United States'' as used in the Federal Water Pollution Control Act;

(2) provide the State and local officials with notice and an opportunity to participate in the consultation process under subsection (b);

(3) consult with State and local officials that represent a broad cross-section of regional, economic, policy, and geographic perspectives in the United States;

(4) emphasize the importance of collaboration with and among the State and local officials;

(5) allow for meaningful and timely input by the State and local officials;

(6) recognize, preserve, and protect the primary rights and responsibilities of the States to protect water quality under the Federal Water Pollution Control Act, and to plan and control the development and use of land and water resources in the States;

(7) protect the authorities of State and local governments and rights of private property owners over natural and manmade water features, including the continued recognition of Federal deference to State primacy in the development of water law, the governance of water rights, and the establishment of the legal system by which States mediate disputes over water use;

(8) incorporate the advice and recommendations of the State and local officials regarding matters involving differences in State and local geography, hydrology, climate, legal frameworks, economies, priorities, and needs; and

(9) ensure transparency in the consultation process, including promptly making accessible to the public all communications, records, and other documents of all meetings that are part of the consultation process.

(d) STAKEHOLDER CONSULTATION REQUIREMENTS.—As part of consulting with and soliciting recommendations from stakeholders and other interested parties under subsection (b), the Secretary and the Administrator shall—

(1) identify representatives of public and private stakeholders and other interested parties, including small entities (as defined in section 601 of title 5, United States Code), representing a broad cross-section of regional, economic, and geographic perspectives in the United States, which could potentially be affected, directly or indirectly, by the new proposed rule under subsection (a), for the purpose of obtaining advice and recommendations from those representatives about the potential adverse impacts of the new proposed rule and means for reducing such impacts in the new proposed rule; and

(2) ensure transparency in the consultation process, including promptly making accessible to the public all communications, records, and other documents of all meetings that are part of the consultation process.

(e) TIMING OF FEDERALISM AND STAKEHOLDER CONSULTATION.—Not later than 3 months after the date of enactment of this Act, the Secretary and the Administrator shall initiate consultations with State and local officials, stakeholders, and other interested parties under subsection (b).

(f) REPORT.—The Secretary and the Administrator shall prepare a report that—

(1) identifies and responds to each of the public comments filed on—

(A) the proposed rule referred to in section 2;

(B) the accompanying economic analysis of the proposed rule entitled ''Economic Analysis of Proposed Revised Definition of Waters of the United States'' (dated March 2014); and

(C) the report entitled ''Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of Scientific Evidence'' (EPA/600/R–14/475F; dated January 2015);

(2) provides a detailed explanation of how the new proposed rule under subsection (a) addresses the public comments referred to in paragraph (1);

(3) describes in detail—

(A) the advice and recommendations obtained from the State and local officials consulted under this section;

(B) the areas and issues where consensus was reached with the State and local officials consulted under this section;

(C) the areas and issues of continuing disagreement that resulted in the failure to reach consensus; and

(D) the reasons for the continuing disagreements;

(4) provides a detailed explanation of how the new proposed rule addresses the advice and recommendations provided by the State and local officials consulted under this section, including the areas and issues where consensus was reached with the State and local officials;

(5) describes in detail—

(A) the advice and recommendations obtained from the stakeholders and other interested parties, including small entities, consulted under this section about the potential adverse impacts of the new proposed rule and means for reducing such impacts in the new proposed rule; and

(B) how the new proposed rule addresses such advice and recommendations;

(6) provides a detailed explanation of how the new proposed rule—

(A) recognizes, preserves, and protects the primary rights and responsibilities of the States to protect water quality and to plan and control the development and use of land and water resources in the States; and

(B) is consistent with the applicable rulings of the United States Supreme Court regarding the scope of waters to be covered under the Federal Water Pollution Control Act; and

(7) provides comprehensive regulatory and economic impact analyses, utilizing the latest data and other information, on how definitional changes in the new proposed rule will impact, directly or indirectly—

(A) each program under the Federal Water Pollution Control Act for Federal, State, and local government agencies; and

(B) public and private stakeholders and other interested parties, including small entities, regulated under each such program.

(g) PUBLICATION.—

(1) FEDERAL REGISTER NOTICE.—Not later than 3 months after the completion of consultations with and solicitation of recommendations from State and local officials, stakeholders, and other interested parties under subsection (b), the Secretary and the Administrator shall publish for comment in the Federal Register—

(A) the new proposed rule under subsection (a);

(B) a description of the areas and issues where consensus was reached with the State and local officials consulted under this section; and

(C) the report described in subsection (f).

(2) DURATION OF REVIEW.—The Secretary and the Administrator shall provide not fewer than 180 days for the public to review and comment on—

(A) the new proposed rule under subsection (a);

(B) the accompanying economic analysis for the new proposed rule; and

(C) the report described in subsection (f).

(h) PROCEDURAL REQUIREMENTS.—Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedure Act'') shall apply to the development and review of the new proposed rule under subsection (a).

(i) STATE AND LOCAL OFFICIALS DEFINED.—In this section, the term ''State and local officials'' means elected or professional State and local government officials or their representative regional or national organizations.

SEC. 4. NO ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

No additional funds are authorized to be appropriated to carry out this Act, and this Act shall be carried out using amounts otherwise available for such purpose.

The CHAIR. No amendment to the amendment in the nature of a substitute shall be in order except those printed in part B of House Report 114–98. Each such amendment may be offered only in the order printed in the report by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the 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.

AMENDMENT NO. 1 OFFERED BY MS. EDWARDS

The CHAIR. It is now in order to consider amendment No. 1 printed in part B of House Report 114–98.

Ms. EDWARDS. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike sections 2 and 3 and insert the following:

SEC. 2. LIMITATION.

The Secretary of the Army and the Administrator of the Environmental Protection Agency 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 United States Supreme Court in Solid Waste Agency of Northern Cook County v. United States 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 Rapanos v. United States;

(3) authorizes Federal Water Pollution Control Act jurisdiction over a waterbody based solely on the presence of migratory birds on such waterbody;

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

(5) increases the scope of the Federal Water Pollution Control Act with respect to municipal separate sanitary sewer systems, water supply canals, or other water delivery systems;

(6) eliminates historical statutory or regulatory exemptions for agriculture, silviculture, or ranching;

(7) increases the scope of the Federal Water Pollution Control Act with respect to groundwater or water reuse or recycling projects;

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

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

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

(11) is inconsistent with the latest peer-reviewed scientific studies;

(12) was promulgated without consulting with State and local governmental entities; or

(13) was promulgated without public notice or comment.

The CHAIR. Pursuant to House Resolution 231, the gentlewoman from Maryland (Ms. EDWARDS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Maryland.

Ms. EDWARDS. Mr. Chairman, despite nearly universal calls for increased clarity and certainty from certain stakeholders, my colleagues have made it a priority to halt the current clean water rulemaking and to force agencies to go back to the drawing board and start the process all over again, before the public will ever even see the final product.

After over a year of public outreach on a scale unprecedented in the history of the Clean Water Act, as well as countless congressional hearings, the agencies have submitted a revised clean water protection rule to the Office of Management and Budget for final interagency review, which is the last step before the revised final rule would be released to the general public later this spring.

This, in fact, is the basis of my amendment. You see, Mr. Chairman, to be fair, several of my constituents have expressed similar concerns with the substance of the proposed rule. In fact, Maryland farmers have visited with me on more than one occasion, and I have heard those concerns, and that is why I have pressed the agency witnesses who appeared before our subcommittees on several critical areas.

Indeed, in testimony to the Committee on Transportation and Infrastructure, the heads of both the Army Corps of Engineers and the Environmental Protection Agency have identified several specific areas where the proposed rulemaking may have lacked specificity and where the agencies have committed to clarifying changes in the final rule to address these areas.

For example, the American Farm Bureau and Maryland farmers expressed concern about the distinction between ephemeral—that is rain-dependent—streams, which are currently subject to the Clean Water Act, and erosional features, which are not. EPA has testified that the agencies expect the final rule to clarify the distinction between ephemeral streams and erosional features to ensure that the final rule does not inadvertently bring erosional features under the scope of the act.

Numerous groups, including the National Association of Counties, have expressed concern about the impact of the proposed rule on ''ditches.'' In response, the agencies testified that the proposed rule not only codified the current exemption for ditches but also ''expanded the definition of ditches that would be exempt under the clean water rule to make it clearer, [including] ditches that basically drain dry along public lands and highways.'' Further, the agencies committed to provide greater certainty in the final rule

on what ditches are and are not protected by the act.

Other groups questioned whether the proposed clean water rule would capture municipal separate sanitary storm water sewer systems, that is, MS4s, or water reuse and recycling projects. The EPA Administrator testified before our committee that ''EPA has not intended to capture features . . . that have already been captured in . . . MS4 permits, [and it] is our intent to continue to encourage and respect those decisions and to encourage water reuse and recycling, which very much is consistent with the Clean Water Act and our overall intent.''

Further, the Administrator testified that the EPA would make it very clear that these exclusions are articulated in the final rule, ''so that people will see in writing what they have been asking us about.''

So my amendment simply addresses these concerns and claims. It says that if any of these claims prove to be true, then the Secretary and the Administrator are prohibited from issuing any final rule that would bring about these occurrences. Instead of using a legislative scalpel, my Republican colleagues have decided to use a meat cleaver. In my amendment, I have tried to address these concerns, and I have heard from my constituents and interested parties.

Under the amendment, the administration cannot expand the scope beyond those water bodies covered prior to the decisions of the U.S. Supreme Court in the two cases that have been mentioned before, and it cannot be inconsistent with either Justice Scalia's or Justice Kennedy's judicial opinions in Rapanos.

In addition to that, they can't increase the regulation of ditches, they can't eliminate any historical statutory or regulatory exemptions for agriculture, which do not exist under the 2003 and 2008 documents. There are questions about ditches under the 2003 and 2008 guidance, but they are interpreted differently in different parts of the country.

As a fallback and an assurance to the regulated committee, I urge my colleagues to support my amendment so that clear legislative restrictions on the final rulemaking addressing the range of concerns that have been expressed by stakeholders are included. It will ensure that the rule does not go further than the Supreme Court decision and does not exceed historical scope, while reaffirming longstanding and existing exclusions.

Both agencies have made it crystal clear in their testimony before our committee and other committees of the House and the Senate earlier this year in a joint hearing with the Senate that many of these concerns were unfounded or would be addressed in the final rule, and so what the amendment I am offering would do, it would be a backstop in the unlikely event that anyone would think differently about regulating streams, ditches, and farmland.

I would ask for support of my amendment under the rule.

I yield back the balance of my time.

Mr. GIBBS. I rise in opposition to the amendment.

The CHAIR. The gentleman from Ohio is recognized for 5 minutes.

Mr. GIBBS. Mr. Chairman, I must strongly oppose the gentlewoman's amendment because it seeks to gut this legislation. This amendment is misleading. It would allow the EPA to move forward and finalize its flawed rule expansion under Federal jurisdiction of the Clean Water Act regardless of the consequences. If the EPA determines entirely of its own discretion that the rule was consistent with the Supreme Court decisions and other factors listed in the amendment, the rule would be finalized.

This amendment gives the EPA the authority to nullify the Supreme Court decisions which reined in the EPA's expansive claims to Federal jurisdiction under the Clean Water Act and legally reinterpreted those decisions to be as broad and expansive as it would like.

The EPA has already stated that it believes its proposed rule is consistent with the Supreme Court decisions and with other factors listed in this amendment. Therefore, the effect of this amendment is to allow the EPA to finalize its flawed rule that many believe is not consistent with the Supreme Court decisions and the other listed factors.

This amendment will put the EPA solely in charge of America's waters and would undermine the Federal-State partnership that H.R. 1732 seeks to preserve. It would allow the EPA to finalize and implement its flawed rule without consultation with the States.

There has been a lot of debate and discussion today, and I want to just kind of address some of that because it goes to this amendment too, once they gut the bill. There was a lot of talk about the amendment that was included in the Energy and Water Appropriations bill. That was really a backstop to stop them from moving forward on the current proposed rule, and they cannot repropose the same rule, but if this bill is passed into law, they could move forward and do what H.R. 1732 directs them to do.

Administrator McCarthy said they don't need to put anything out because there are no new changes, or major changes; that is why they don't need to put out a supplemental to the proposed rule. That is the problem. That is why we have this bill here today, and that is why I am against the gentlewoman's amendment, because they are not being open or transparent about what changes they made.

I have a letter from the Executive Office of the President, Office of Management and Budget, talking about the administration policy in regard to H.R. 1732, and it talks about that they believe that this bill, passed into law, would constrain the Agency's discretion. That is the problem. We can't have a bunch of bureaucrats running around the country and deciding what are going to be waters of the United States and what are not going to be waters of the United States. We have to be clear about that and give clarity. All that H.R. 1732 says is for the EPA and the Corps to go back to the States and stakeholders and work out a rule to satisfy the Supreme Court decisions and that brings clarity and certainty and allows for economic expansion and protects waters at the same time, but if you open it up to having bureaucrats——

Ms. EDWARDS. Will the gentleman yield?

Mr. GIBBS. I yield to the gentlewoman from Maryland.

Ms. EDWARDS. Do you have a cost estimate of what it would cost to go back to the stakeholders for what you have described?

Mr. GIBBS. Mr. Chairman, I reclaim my time.

I know that the CBO put out $5 million or something like that. The problem we have here is that if this proposed rule goes forward, it costs at least $200-some billion to the economy. What this rule does, if it goes forward, under the Clean Water Act, it just makes it where farmers, landowners, homeowners would have to go through the Clean Water Act permit policy, permit provisions. All it does is create more red tape and bureaucracy and cost, and doesn't do anything to protect the water quality.

It is very important to remember that, I believe, if this rule goes forward as proposed, we could actually go backward in water quality because at some point when you layer on costs and red tape to farmers and businesses out there, they are going to throw their hands up in the air, and they are not going to do it, so it is going to stifle economic activity. It will possibly make us go backwards in water quality because if we don't have a growing economy, we don't have the resources to do the environmental stuff we want to do.

So it is very important that we kill this amendment that the gentlewoman offers because it guts the bill and support H.R. 1732 going forward. All it does is say to the EPA: Go back and work with the States, and don't propose the same rule you put out there that you won't tell us what your changes are, but go back and work with the States, do it in an open, transparent, and accountable process, and we can do something that protects water quality and the environment in this country and move this country forward.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentlewoman from Maryland (Ms. EDWARDS).

The question was taken; and the Chair announced that the ayes appeared to have it.

Ms. EDWARDS. Mr. Chairman, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the

amendment offered by the gentlewoman from Maryland will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. KILDEE

The CHAIR. It is now in order to consider amendment No. 2 printed in part B of House Report 114–98.

Mr. KILDEE. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill, add the following:

SEC. 4. EFFECT ON STATE PERMIT PROGRAMS.

(a) IN GENERAL.—If the Administrator of the Environmental Protection Agency, based on the proposed rule developed under section 3, issues a final 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.), the Administrator shall—

(1) not later than 90 days after the date of issuance of the final rule, review each permit program being administered by a State under section 402, 404, or 405 of that Act (33 U.S.C. 1342, 1344, or 1345) to determine whether the permit program complies with the terms of the final rule; and

(2) not later than 10 days after the date of completion of the review, notify the State of—

(A) the Administrator's determination under paragraph (1); and

(B) in any case in which the Administrator determines that a permit program does not comply with the final rule, the actions required to bring the permit program into compliance.

(b) COMPLIANCE PERIOD.—During the 2-year period beginning on the date on which the Administrator provides notice to a State under subsection (a)(2), the Administrator may not withdraw approval of a State permit program referred to in subsection (a)(1) on the basis that the permit program does not comply with the terms of a final rule described in subsection (a).

(c) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to limit or otherwise affect the authority of the Administrator under the Federal Water Pollution Control Act or any other provision of law—

(1) to withdraw approval of a State permit program referred to in subsection (a)(1), except as specifically prohibited by subsection (b); or

(2) to disapprove a proposed permit under a State permit program referred to in subsection (a).

The CHAIR. Pursuant to House Resolution 231, the gentleman from Michigan (Mr. KILDEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. KILDEE. Mr. Chair, as allowed under the Clean Water Act, Michigan, my home State, and many other States have successfully attained permitting responsibility for pollutant discharges into their waters through their State environmental departments, as we do in Michigan. These programs have been long a very successful Federal-State partnership, allowing States, who know their lands and waters better than anyone, to be able to keep local control of their permitting program to ensure protection of their waters in compliance with Federal law in their States. The scope and structure of these programs, of course, are determined by the definition of waters of the U.S.

So when the EPA comes out with a new definition of waters of the U.S., every State's program would go under review to ensure that it is compliant with that new definition. Though Michigan has had its authority to operate its own permitting program from the 1970s, its program has been under review by the EPA for several years. So, in response to the EPA's review of Michigan's program, Michigan passed a bipartisan law in 2013 to improve its State-run program to align with Federal law.

□ 1715

Maintaining these current State permitting programs—it is interesting—is supported in my State and other places both by environmental and agricultural interests, something that we don't often see. So it is really important to maintain these successful programs.

Interestingly enough, since the enactment of its 2013 law, Michigan has not lost any of our precious wetlands.

What my amendment would do is ensure that States that do this will be able to continue to control their State permitting program so that the people who know the States and its waters best can comply with their unique application of the law. Particularly in places like Michigan where we have the Great Lakes, that is important.

So here is what my amendment would do:

First, once a rule under this bill would be finalized, the EPA would have 90 days to determine if a State's program is still compliant under the new rule.

Second, the EPA would have a further 10 days to notify a State in writing if its permitting programs are compliant under that new rule.

And finally, if a State is not compliant, the EPA must allow States 2 years to comply with the new rule before they federalize a State's permitting program.

When a new rule for definition of waters of the U.S. comes out, it will automatically place every State's permitting program under review, running the risk of ending these successful partnerships. I believe, and I think others agree, we have to maintain the flexibility so that States can comply with the new rule before the EPA would remove a State's program.

Depending on the State, of course, statutory changes might be required. So we believe that 2 years would be a sufficient period of time for States like Michigan to work through the legislative process. It took Michigan over a year in 2013 to come to a conclusion of that reform.

In practice, to be fair, the EPA has granted broad discretion when reviewing a State's programs. What this amendment would do is simply codify into law that process so that States have the ability to come into compliance and maintain this important partnership. It is really important to the underlying purpose of the act.

With that, Mr. Chairman, I reserve the balance of my time.

Mr. GIBBS. Mr. Chairman, I claim the time in opposition to the amendment, though I am not opposed.

The CHAIR. Without objection, the gentleman from Ohio is recognized for 5 minutes.

There was no objection.

Mr. GIBBS. Mr. Chairman, I want to thank my colleague from Michigan for offering this thoughtful amendment. We are prepared to support this amendment since we believe it helps protect a State's role in administering the Clean Water Act, especially those States with delegated authorities under sections 402 and 404 of the act. We also believe this amendment strengthens H.R. 1732 and enhances the role of States in carrying out the Clean Water Act. I encourage Members to support the Kildee amendment.

I would also ask the sponsor of this amendment if he would support this underlying bill with the amendment included. The reason I argue he should is because, under the current rule, without the underlying bill being passed, States would have to change the processes under the 402 and 404 permitting, and they currently would have no grace period. With this amendment in the underlying bill and passage of the underlying bill, that would solve that problem. And so his amendment strengthens the bill, but also gives the States the flexibility that he is asking for. I would ask that the sponsor of the amendment support the underlying bill.

I yield back the balance of my time.

Mr. KILDEE. Mr. Chairman, I appreciate the gentleman's comments and his support. I do think it is important that whenever we can agree, we do express that agreement. I think this amendment is a good example.

I know we all support the underlying purpose of the act. This particular amendment would ensure that, when there is a rule, States that do operate under delegated authority would be able to continue to protect the waters of the U.S. and the waters within their own States with the best knowledge on the ground. It has been a good experience in the State of Michigan. I think it is good for other States as well. I think that this amendment would help to ensure that.

Mr. Chairman, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. KILDEE).

The amendment was agreed to.

Mr. GIBBS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DUNCAN of Tennessee) having assumed the

chair, Mr. YOUNG of Iowa, Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 1732) to preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes, had come to no resolution thereon.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

RAFAEL RAMOS AND WENJIAN LIU NATIONAL BLUE ALERT ACT OF 2015

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the bill (S. 665) to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty, is missing in connection with the officer's official duties, or an imminent and credible threat that an individual intends to cause the serious injury or death of a law enforcement officer is received, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 665

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 ''Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COORDINATOR.—The term ''Coordinator'' means the Blue Alert Coordinator of the Department of Justice designated under section 4(a).

(2) BLUE ALERT.—The term ''Blue Alert'' means information sent through the network relating to—

(A) the serious injury or death of a law enforcement officer in the line of duty;

(B) an officer who is missing in connection with the officer's official duties; or

(C) an imminent and credible threat that an individual intends to cause the serious injury or death of a law enforcement officer.

(3) BLUE ALERT PLAN.—The term ''Blue Alert plan'' means the plan of a State, unit of local government, or Federal agency participating in the network for the dissemination of information received as a Blue Alert.

(4) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' shall have the same meaning as in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b).

(5) NETWORK.—The term ''network'' means the Blue Alert communications network established by the Attorney General under section 3.

(6) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 3. BLUE ALERT COMMUNICATIONS NETWORK.

The Attorney General shall establish a national Blue Alert communications network within the Department of Justice to issue Blue Alerts through the initiation, facilitation, and promotion of Blue Alert plans, in coordination with States, units of local government, law enforcement agencies, and other appropriate entities.

SEC. 4. BLUE ALERT COORDINATOR; GUIDELINES.

(a) COORDINATION WITHIN DEPARTMENT OF JUSTICE.—The Attorney General shall assign an existing officer of the Department of Justice to act as the national coordinator of the Blue Alert communications network.

(b) DUTIES OF THE COORDINATOR.—The Coordinator shall—

(1) provide assistance to States and units of local government that are using Blue Alert plans;

(2) establish voluntary guidelines for States and units of local government to use in developing Blue Alert plans that will promote compatible and integrated Blue Alert plans throughout the United States, including—

(A) a list of the resources necessary to establish a Blue Alert plan;

(B) criteria for evaluating whether a situation warrants issuing a Blue Alert;

(C) guidelines to protect the privacy, dignity, independence, and autonomy of any law enforcement officer who may be the subject of a Blue Alert and the family of the law enforcement officer;

(D) guidelines that a Blue Alert should only be issued with respect to a law enforcement officer if—

(i) the law enforcement agency involved—

(I) confirms—

(aa) the death or serious injury of the law enforcement officer; or

(bb) the attack on the law enforcement officer and that there is an indication of the death or serious injury of the officer; or

(II) concludes that the law enforcement officer is missing in connection with the officer's official duties;

(ii) there is an indication of serious injury to or death of the law enforcement officer;

(iii) the suspect involved has not been apprehended; and

(iv) there is sufficient descriptive information of the suspect involved and any relevant vehicle and tag numbers;

(E) guidelines that a Blue Alert should only be issued with respect to a threat to cause death or serious injury to a law enforcement officer if—

(i) a law enforcement agency involved confirms that the threat is imminent and credible;

(ii) at the time of receipt of the threat, the suspect is wanted by a law enforcement agency;

(iii) the suspect involved has not been apprehended; and

(iv) there is sufficient descriptive information of the suspect involved and any relevant vehicle and tag numbers;

(F) guidelines—

(i) that information should be provided to the National Crime Information Center database operated by the Federal Bureau of Investigation under section 534 of title 28, United States Code, and any relevant crime information repository of the State involved, relating to—

(I) a law enforcement officer who is seriously injured or killed in the line of duty; or

(II) an imminent and credible threat to cause the serious injury or death of a law enforcement officer;

(ii) that a Blue Alert should, to the maximum extent practicable (as determined by the Coordinator in consultation with law enforcement agencies of States and units of local governments), be limited to the geographic areas most likely to facilitate the apprehension of the suspect involved or which the suspect could reasonably reach, which should not be limited to State lines;

(iii) for law enforcement agencies of States or units of local government to develop plans to communicate information to neighboring States to provide for seamless communication of a Blue Alert; and

(iv) providing that a Blue Alert should be suspended when the suspect involved is apprehended or when the law enforcement agency involved determines that the Blue Alert is no longer effective; and

(G) guidelines for—

(i) the issuance of Blue Alerts through the network; and

(ii) the extent of the dissemination of alerts issued through the network;

(3) develop protocols for efforts to apprehend suspects that address activities during the period beginning at the time of the initial notification of a law enforcement agency that a suspect has not been apprehended and ending at the time of apprehension of a suspect or when the law enforcement agency involved determines that the Blue Alert is no longer effective, including protocols regulating—

(A) the use of public safety communications;

(B) command center operations; and

(C) incident review, evaluation, debriefing, and public information procedures;

(4) work with States to ensure appropriate regional coordination of various elements of the network;

(5) establish an advisory group to assist States, units of local government, law enforcement agencies, and other entities involved in the network with initiating, facilitating, and promoting Blue Alert plans, which shall include—

(A) to the maximum extent practicable, representation from the various geographic regions of the United States; and

(B) members who are—

(i) representatives of a law enforcement organization representing rank-and-file officers;

(ii) representatives of other law enforcement agencies and public safety communications;

(iii) broadcasters, first responders, dispatchers, and radio station personnel; and

(iv) representatives of any other individuals or organizations that the Coordinator determines are necessary to the success of the network;

(6) act as the nationwide point of contact for—

(A) the development of the network; and

(B) regional coordination of Blue Alerts through the network; and

(7) determine—

(A) what procedures and practices are in use for notifying law enforcement and the public when—

(i) a law enforcement officer is killed or seriously injured in the line of duty;

(ii) a law enforcement officer is missing in connection with the officer's official duties; and

(iii) an imminent and credible threat to kill or seriously injure a law enforcement officer is received; and

(B) which of the procedures and practices are effective and that do not require the expenditure of additional resources to implement.