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(Original Signature of Member)

114TH CONGRESS  
1ST SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

Mr. SHUSTER (for himself and Mr. GIBBS) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Integrity  
5 Protection Act of 2015”.

6 **SEC. 2. WITHDRAWAL OF EXISTING PROPOSED RULE.**

7 Not later than 30 days after the date of enactment  
8 of this Act, the Secretary of the Army and the Adminis-  
9 trator of the Environmental Protection Agency shall with-

1 draw the proposed rule described in the notice of proposed  
2 rule published in the Federal Register entitled “Definition  
3 of ‘Waters of the United States’ Under the Clean Water  
4 Act” (79 Fed. Reg. 22188 (April 21, 2014)) and any final  
5 rule based on such proposed rule (including RIN 2040-  
6 AF30).

7 **SEC. 3. DEVELOPMENT OF NEW PROPOSED RULE.**

8 (a) IN GENERAL.—The Secretary of the Army and  
9 the Administrator of the Environmental Protection Agen-  
10 cy shall develop a new proposed rule to define the term  
11 “waters of the United States” as used in the Federal  
12 Water Pollution Control Act (33 U.S.C. 1251 et seq.).

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

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

18 (A) the proposed rule referred to in section  
19 2;

20 (B) the accompanying economic analysis of  
21 the proposed rule entitled “Economic Analysis  
22 of Proposed Revised Definition of Waters of the  
23 United States” (dated March 2014); and

24 (C) the report entitled “Connectivity of  
25 Streams & Wetlands to Downstream Waters: A

1           Review & Synthesis of Scientific Evidence”  
2           (EPA/600/R-14/475F; dated January 2015);

3           (2) jointly consult with and solicit advice and  
4           recommendations from representative State and  
5           local officials, stakeholders, and other interested par-  
6           ties on how to define the term “waters of the United  
7           States” as used in the Federal Water Pollution Con-  
8           trol Act; and

9           (3) prepare a regulatory proposal that will, con-  
10          sistent with applicable rulings of the United States  
11          Supreme Court, specifically identify those waters  
12          covered under, and those waters not covered under,  
13          the Federal Water Pollution Control Act —

14                 (A) taking into consideration—

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

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

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

23          (c) FEDERALISM CONSULTATION REQUIREMENTS.—

24          As part of consulting with and soliciting advice and rec-

1 ommendations from State and local officials under sub-  
2 section (b), the Secretary and the Administrator shall—

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

7           (2) provide the State and local officials with no-  
8           tice and an opportunity to participate in the con-  
9           sultation process under subsection (b);

10           (3) consult with State and local officials that  
11           represent a broad cross-section of regional, eco-  
12           nomic, policy, and geographic perspectives in the  
13           United States;

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

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

18           (6) recognize, preserve, and protect the primary  
19           rights and responsibilities of the States to protect  
20           water quality under the Federal Water Pollution  
21           Control Act, and to plan and control the develop-  
22           ment and use of land and water resources in the  
23           States;

1           (7) protect the authorities of State and local  
2 governments and rights of private property owners  
3 over natural and manmade water features;

4           (8) incorporate the advice and recommendations  
5 of the State and local officials regarding matters in-  
6 volving differences in State and local geography, hy-  
7 drology, climate, legal frameworks, economies, prior-  
8 ities, and needs; and

9           (9) ensure transparency in the consultation  
10 process, including promptly making accessible to the  
11 public all communications, records, and other docu-  
12 ments of all meetings that are part of the consulta-  
13 tion process.

14       (d) **STAKEHOLDER CONSULTATION REQUIRE-**  
15 **MENTS.**—As part of consulting with and soliciting rec-  
16 ommendations from stakeholders and other interested par-  
17 ties under subsection (b), the Secretary and the Adminis-  
18 trator shall—

19           (1) identify representatives of public and pri-  
20 vate stakeholders and other interested parties, in-  
21 cluding small entities (as defined in section 601 of  
22 title 5, United States Code), representing a broad  
23 cross-section of regional, economic, and geographic  
24 perspectives in the United States, which could poten-  
25 tially be affected, directly or indirectly, by the new

1 proposed rule under subsection (a), for the purpose  
2 of obtaining advice and recommendations from those  
3 representatives about the potential adverse impacts  
4 of the new proposed rule and means for reducing  
5 such impacts in the new proposed rule; and

6 (2) ensure transparency in the consultation  
7 process, including promptly making accessible to the  
8 public all communications, records, and other docu-  
9 ments of all meetings that are part of the consulta-  
10 tion process.

11 (e) TIMING OF FEDERALISM AND STAKEHOLDER  
12 CONSULTATION.—Not later than 3 months after the date  
13 of enactment of this Act, the Secretary and the Adminis-  
14 trator shall initiate consultations with State and local offi-  
15 cials, stakeholders, and other interested parties under sub-  
16 section (b).

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

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

21 (A) the proposed rule referred to in section  
22 2;

23 (B) the accompanying economic analysis of  
24 the proposed rule entitled “Economic Analysis

1 of Proposed Revised Definition of Waters of the  
2 United States” (dated March 2014); and

3 (C) the report entitled “Connectivity of  
4 Streams & Wetlands to Downstream Waters: A  
5 Review & Synthesis of Scientific Evidence”  
6 (EPA/600/R-14/475F; dated January 2015);

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

10 (3) describes in detail—

11 (A) the advice and recommendations ob-  
12 tained from the State and local officials con-  
13 sulted under this section;

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

17 (C) the areas and issues of continuing dis-  
18 agreement that resulted in the failure to reach  
19 consensus; and

20 (D) the reasons for the continuing dis-  
21 agreements;

22 (4) provides a detailed explanation of how the  
23 new proposed rule addresses the advice and rec-  
24 ommendations provided by the State and local offi-  
25 cials consulted under this section, including the

1 areas and issues where consensus was reached with  
2 the State and local officials;

3 (5) describes in detail—

4 (A) the advice and recommendations ob-  
5 tained from the stakeholders and other inter-  
6 ested parties, including small entities, consulted  
7 under this section about the potential adverse  
8 impacts of the new proposed rule and means for  
9 reducing such impacts in the new proposed rule;  
10 and

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

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

15 (A) recognizes, preserves, and protects the  
16 primary rights and responsibilities of the States  
17 to protect water quality and to plan and control  
18 the development and use of land and water re-  
19 sources in the States; and

20 (B) is consistent with the applicable rul-  
21 ings of the United States Supreme Court re-  
22 garding the scope of waters to be covered under  
23 the Federal Water Pollution Control Act; and

24 (7) provides comprehensive regulatory and eco-  
25 nomic impact analyses, utilizing the latest data and

1 other information, on how definitional changes in  
2 the new proposed rule will impact, directly or indi-  
3 rectly—

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

7 (B) public and private stakeholders and  
8 other interested parties, including small enti-  
9 ties, regulated under each such program.

10 (g) PUBLICATION.—

11 (1) FEDERAL REGISTER NOTICE.—Not later  
12 than 3 months after the completion of consultations  
13 with and solicitation of recommendations from State  
14 and local officials, stakeholders, and other interested  
15 parties under subsection (b), the Secretary and the  
16 Administrator shall publish for comment in the Fed-  
17 eral Register—

18 (A) the new proposed rule under sub-  
19 section (a);

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

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

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

4                   (A) the new proposed rule under sub-  
5                   section (a);

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

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

9           (h) PROCEDURAL REQUIREMENTS.—Subchapter II  
10          of chapter 5, and chapter 7, of title 5, United States Code  
11          (commonly known as the “Administrative Procedure Act”)  
12          shall apply to the development and review of the new pro-  
13          posed rule under subsection (a).

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