THE REPUBLICAN STUDY COMMITTEE
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# H.R. 1732—Regulatory Integrity Protection Act of 2015 (Rep. Shuster, R-PA)

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**FLOOR SCHEDULE: SCHEDULED FOR CONSIDERATION ON MAY 12, 2015 UNDER STRUCTURED RULE THAT PROVIDES FOR ONE HOUR OF DEBATE AND MAKES TWO AMENDMENTS IN ORDER. THE RULE ALSO SELF-EXECUTES A MANAGER'S AMENDMENT THAT PROVIDES THAT NO ADDITIONAL FUNDS ARE AUTHORIZED TO BE APPROPRIATED TO CARRY OUT THE BILL.**

**TOPLINE SUMMARY:** H.R. 1732 would prohibit the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers from implementing a proposed rule published in the Federal Register on April 21, 2014 that defines the scope of waters protected under the jurisdiction of the Clean Water Act (CWA).

**CONSERVATIVE CONCERNS:** There are no substantive conservative concerns.

- **Expand the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

**DETAILED SUMMARY AND ANALYSIS:** The Secretary of the Army and the Administrator of the Environmental Protection Agency (EPA) are required to 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), not later than 30 days after the bill's enactment.

**COST:** The Congressional Budget Office (CBO) estimates that H.R. 1732 would cost $5 million over the 2016-2020 period, subject to the availability of appropriations. The legislation would affect direct spending because it would reduce fees collected by the Corps for issuing permits under the Clean Water Act (CWA).

However, CBO estimates that the change in those fees would be negligible. Because the legislation would affect direct spending, pay-as-you-go procedures apply H.R. 1732 would not affect revenues.

Section 3 of the bill would require the Secretary of the Army and the Administrator of the EPA to develop a new proposed rule to define the term "waters of the United States."

The Secretary of the Army and the Administrator of the EPA are to 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 Unite States" as used in the Clean Water Act (CWA) and prepare a regulatory proposal that would specifically identify waters covered and not covered under the CWA.

The Secretary of the Army and the Administrator of the EPA are additionally required to identify representatives of public and private stakeholders and other interested parties which could potentially be affected, directly or indirectly, by the new proposed rule and to ensure transparency in the consultation process.

Both the EPA and the Secretary of the Army are also mandated to prepare a report in the Federal Register that identifies and responds to each of the public comments filed on the original proposed rule and that includes the rule's accompanying economic analysis.

The CWA requires permitting for certain activities (including the discharge of pollutants, dredged, or fill material) that take place in "navigable waters." Section 502(7) of the CWA defines navigable waters as "the waters of the United States, including the territorial seas." The term "waters of the United States" is defined by regulation as:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
- (All impoundments of waters otherwise defined as waters of the United States under this definition;
- Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
- The territorial sea;
- Wetlands adjacent to waters (other than waters that are themselves wetlands); waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds) are not waters of the United States.

In two cases (Solid Waste Association of Northern Cook County v. United States Corps of Engineers in 2001 and Rapanos v. United States in 2006) the Supreme Court ruled that jurisdiction under the CWA must be limited, although the court has not agreed on a clear standard for determining jurisdiction. In response to these decisions, the EPA and the Corps under the Bush Administration issued updated regulatory guidance regarding the jurisdiction of the CWA in 2007 and 2008.

In April 2014, the EPA and the Army Corps of Engineers published proposed regulations to change the definition of waters of the United States. The proposed definition would stipulate that:

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate wetlands;
- All impoundments of waters identified in paragraphs (s)(1) through (3) and (5) of the regulation;
- All waters, including wetlands, adjacent to a water identified in the regulation; and
- On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a water identified in paragraphs (s)(1) through (3) of the regulation.

According to the committee, "there are serious deficiencies with this rulemaking. Moreover, the sequence and timing of the actions that the federal agencies have taken to develop this rule undermine the credibility of the rule and the process to develop it, as well as the longstanding federal-state partnership to regulate waters. The administration developed the proposal without first properly consulting state and local authorities; without considering their rights, their responsibilities, their liabilities, and their budgets; and without realistically examining the potential economic and legal impacts on private citizens, farmers, and other stakeholders."

This regulation has been criticized by the Heritage Foundation as allowing regulation of "all ditches, except in narrow circumstances… even includ[ing] man-made ditches," and by the U.S. Chamber of Commerce that it would "subject farmers, ranchers, manufacturers, home builders, local governments—nearly any property owner—to new layers of reviews and permitting."

The House Report (H. Rept. 114-93) accompanying H.R. 1732 can be found here. A fact sheet on H.R. 1732 from the House Committee on Transportation and Infrastructure can be found here. A similar bill (H.R. 5078, Waters of the United States Regulatory Overreach Protection Act of 2014) was introduced in the 113th Congress and passed the House on September 9th, 2014, by the yeas and nays: 262 – 152. The RSC's legislative bulletin for H.R. 5078 can be found here.

## OUTSIDE ORGANIZATIONS:

- **In Support:**
  National Association of Home Builders (Key Vote)
  National Association of Realtors
  American Farm Bureau Federation
  Waters Advocacy Coalition
  Associated General Contractors of America
  U.S. Chamber of Commerce
  National Association of Wheat Growers
  American Road and Transportation Builders Association
  More letters of support provided by the House Committee on Transportation and Infrastructure can be found here.

## AMENDMENTS MADE IN ORDER:

- Kildee #1 would require the administration to review each permit program being administered by a State to determine whether the permit program complies with the terms of the final rule; and not later than 10 days after the review's completion, to notify the state of the administration's determination and of the actions required to bring the permit program into compliance. The amendment's requirements would only be mandated if the Administrator of the Environmental Protection Agency issues a final rule to define the term "waters of the United States" as used in the CWA. The EPA is prohibited from withdrawing approval of a state permit program on the basis that the permit program does not comply with the terms of a final rule, during the 2-year period beginning on the date the Administrator of the EPA provides notice to a state.
- Edwards #4 would prohibit the Secretary of the Army and the Administrator of the EPA from implementing any final rule that is based on the proposed rule described in the Federal Register notice entitled "Definition of 'Waters of the United States' Under the Clean Water Act" if the rule expands the scope of the CWA beyond those waterbodies covered prior to the United States Supreme Court decisions (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)). The amendment would further prohibit the Secretary of the Army and the EPA from implementing a final rule if it:

  (1) is inconsistent with the judicial opinions of Justice Scalia or Justice Kennedy in Rapanos v. United States; authorizes CWA jurisdiction over a waterbody based solely on the presence of migratory birds;
  (2) increases the regulation of ditches, including roadside ditches, when compared to existing CWA regulations or guidance;

(3) increases the scope of CWA with respect to municipal separate sanitary sewer systems, water supply canals, or other water delivery systems;
(4) eliminates historical statutory or regulatory exemptions for agriculture, silviculture, or ranching;
(5) increases the scope of CWA with respect to groundwater or water reuse or recycling projects;
(6) requires CWA regulation of erosional features, permits for land-use activities, or regulation of artificial farm and stock ponds, puddles, water on driveways, birdbaths, or playgrounds;
(7) is inconsistent with the latest peer-reviewed scientific studies; and
(8) was promulgated without consulting with State and local governmental entities or without public notice or comment.

**COMMITTEE ACTION:** This bill was introduced on April 13, 2015 and was referred to the House Committee on Transportation and Infrastructure on April 15, 2015 which ordered it to be reported (amended) by the yeas and nays: 36 - 22.

**ADMINISTRATION POSITION:** A statement of administration position can be found here. The administration has indicated that it would oppose the bill, and if presented with it, the president's senior advisors would recommend that he veto the bill.

**CONSTITUTIONAL AUTHORITY**: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution, specifically Clause 3 (related to regulation of Commerce among the several States)."

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**NOTE***: RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

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