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**REGULATORY INTEGRITY PROTECTION ACT**

HOUSE TRANSPORTATION & INFRASTRUCTURE COMMITTEE



# Regulating Waters of the United States: A Successful Federal-State Partnership



For more than four decades, regulation of pollution and water quality for the Nation's waters has been achieved through a productive partnership between state governments and the federal government. This relationship has been successful because of the recognition that not all waters need to be subject to federal jurisdiction and that states have the primary responsibility of regulating waters within their individual boundaries.

This federal-state partnership was established under the 1972 Clean Water Act (CWA). The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are the co-regulators that carry out the federal government's responsibilities under this partnership.

The CWA clearly says up front that it is the "policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the [EPA] Administrator in the exercise of his authority under this Act."

The extent of the federal government's authority under the CWA was limited to "navigable waters," which under the CWA are defined as "waters of the United States" (WOTUS). Twice, the Supreme Court has reaffirmed the federal-state partnership under the CWA, when it told the federal agencies that there are limits to federal jurisdiction under the CWA, and that they had gone too far in asserting their authority.

The federal-state partnership, when parties have recognized and respected their roles and responsibilities, has led to significantly less pollution and cleaner water for the Nation.

# Flawed Rulemaking Process...



Despite the partnership established under the Clean Water Act and the limits to federal authority, the Administration in recent years has sought to expand the scope of federal jurisdiction under the CWA.

Most recently, in April 2014, the EPA and Corps put forward a proposed rule entitled “Definition of ‘Waters of the United States’ Under the Clean Water Act”, which the agencies claimed would “clarify” federal jurisdiction. However, 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.

The proposed rule misconstrues and manipulates the two relevant Supreme Court holdings, effectively turning those cases that placed limits on CWA jurisdiction into a justification for the agencies to broaden their authority over all waters. The proposed rule goes far beyond merely clarifying the scope of waters subject to CWA programs. Rather, it is aimed at increasing the scope of the federal government’s jurisdiction over more waters. There are also substantial flaws in the economic and scientific assumptions upon which the rule is based.

Many states and local governments have since objected to this erosion of that partnership and their authority. Instead of racing to pass down another federal edict, the agencies should have collaborated with states, local governments, and other affected stakeholders, held public hearings, and carefully considered the public comments received... before putting forward any proposal.

# ... Flawed Rule



The Administration's flawed rulemaking process has understandably led to a flawed proposed rule.

The agencies' push to unilaterally broaden the scope of the Clean Water Act and the federal government's reach into Americans' everyday lives threatens to undermine the integrity of the federal-state partnership and erode state authority by granting sweeping new federal jurisdiction over waters never intended for regulation under the CWA, including ditches, man-made ponds, floodplains, riparian areas, and seasonally-wet areas.

This expansion of federal regulatory power also could have serious consequences for the Nation's economy, threaten jobs, invite costly litigation, and significantly restrict the ability of landowners to make decisions about their property and the rights of state and local governments to plan for their own development.

This flawed process has resulted in a rule that ignores the non-federal partners' concerns and input, and creates more uncertainty.

Regulation must be balanced in a manner that responsibly protects the environment and recognizes the rights of states and individuals, without an unnecessary and costly expansion of the federal government and unreasonable and burdensome regulation of our small businesses, farmers, and families.

# The Regulatory Integrity Protection Act

- The Regulatory Integrity Protection Act will uphold the integrity of the federal-state partnership to regulate the Nation's waters by preserving existing rights and responsibilities with respect to "waters of the United States" under the Clean Water Act.
- The Regulatory Integrity Protection Act gives the Environmental Protection Agency and the Army Corps of Engineers 30 days to withdraw the current proposed rule that defines "waters of the United States" under the Clean Water Act, and charges them with developing a new proposed rule.
- When developing the new proposed rule the agencies must take into consideration all of the comments received on the rule, the economic analysis of the rule, and the connectivity study which was used as the basis for the rule. They must also solicit recommendations from and consult with state and local officials, stakeholders, and other interested parties on how to define "waters of the United States" and prepare a new regulatory proposal that is consistent with the Clean Water Act, Supreme Court rulings, the feedback from the public comments, and recommendations from the state and local officials, stakeholders, and others.
- The bill requires the agencies to engage in outreach to stakeholders, including holding a federalism consultation with the states and local governments. The agencies are instructed to seek to reach consensus with the states and local governments on defining "waters of the United States," maintain the federal-state partnership in implementing the Clean Water Act, and take into consideration state and local input regarding geography, hydrology, and legal frameworks.
- The agencies are also to consult with and solicit recommendations from stakeholders that represent a broad range of perspectives who could be impacted either directly or indirectly by the new rule. The agencies are to promote transparency in these processes by making all of the communications, records, and documents available to the public, and prepare a report that responds to the comments received and provides a detailed explanation of how the agencies have used the comments and stakeholder processes in the new rule.
- By fixing the process and working with state and local governments and stakeholders, the EPA and the Corps have an opportunity to craft a rule that will actually provide clarity on the scope of jurisdiction under the Clean Water Act.