

115TH CONGRESS  
2D SESSION

# H. R. 7194

To repeal the Waters of the United States rule and amend the Federal Water Pollution Control Act definition of navigable waters, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2018

Ms. HERRERA BEUTLER (for herself and Mr. GIBBS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To repeal the Waters of the United States rule and amend the Federal Water Pollution Control Act definition of navigable waters, 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 Certainty  
5 for Navigable Waters Act”.

6 **SEC. 2. WATERS OF THE UNITED STATES AND NAVIGABLE**  
7 **WATERS.**

8 (a) WOTUS REPEAL.—The final rule issued by the  
9 Administrator of the Environmental Protection Agency

1 and the Secretary of the Army entitled “Clean Water  
2 Rule: Definition of ‘Waters of the United States’” (80  
3 Fed. Reg. 37053 (June 29, 2015)) is repealed.

4 (b) NAVIGABLE WATERS DEFINITION.—Section 502  
5 of the Federal Water Pollution Control Act (33 U.S.C.  
6 1362) is amended by striking paragraph (7) and inserting  
7 the following:

8 “(7) NAVIGABLE WATERS.—

9 “(A) IN GENERAL.—The term ‘navigable  
10 waters’ means—

11 “(i) the territorial seas;

12 “(ii) interstate waters which are pres-  
13 ently used, or are susceptible to use in  
14 their natural and ordinary condition, as a  
15 means to transport interstate or foreign  
16 commerce;

17 “(iii) relatively permanent, standing,  
18 or continuously flowing bodies of water  
19 that form geographical features commonly  
20 known as streams, rivers, or lakes, that  
21 flow directly into waters described in  
22 clause (ii); or

23 “(iv) wetlands that have a continuous  
24 surface water connection to waters de-  
25 scribed in clause (ii) or (iii).

1 “(B) EXCLUSIONS.—The term ‘navigable  
2 waters’ shall be limited to the waters described  
3 in subparagraph (A) and does not include—

4 “(i) intermittent or ephemeral waters;

5 “(ii) subsurface waters, including  
6 ground water or underground streams;

7 “(iii) any water that by itself does not  
8 meet the definition in subparagraph (A);

9 “(iv) an intrastate water, unless meet-  
10 ing the requirements of subparagraph (A);

11 “(v) a man-made channel or ditch, in-  
12 cluding irrigation, distribution, and drain-  
13 age systems;

14 “(vi) a water that does not meet the  
15 definition in subparagraph (A), including a  
16 water that in the past could have been a  
17 water that meets the definition in subpara-  
18 graph (A) or a water that in the future  
19 could be a water that meets the definition  
20 in subparagraph (A);

21 “(vii) a water that requires the use of  
22 means beyond visual inspection by the  
23 naked eye, including aerial photographs,  
24 satellite imaging, or hydrological testing, to

determine if it meets the definition in subparagraph (A);

“(viii) prior converted cropland; or

“(ix) waste treatment systems, including systems created in or with impounded waters described in subparagraph (A) and all features and components of any system designed to actively or passively retain or reduce or remove pollutants from wastewater or stormwater, including those that convey the pollutants into and out of the system.

“(C) CONTINUOUS SURFACE WATER CONNECTION.—For purposes of this paragraph, a continuous surface water connection is a connection with respect to which an ordinary person would not be able to visually determine by the naked eye, by looking at the water surface, where one body of water ends and the other begins.

“(D) RELATIVELY PERMANENT, STANDING, OR CONTINUOUSLY FLOWING.—For purposes of this paragraph, a water is relatively permanent, standing, or continuously flowing if it has continuous flow for at least 290 days of

1 the year, except in cases of extreme events,  
2 such as a drought.

3 “(E) WETLANDS.—For purposes of this  
4 paragraph, wetlands—

5 “(i) are areas that are inundated or  
6 saturated by surface or ground water at a  
7 frequency and duration sufficient to sup-  
8 port, and that under normal circumstances  
9 do support, a prevalence of vegetation typi-  
10 cally adapted for life in saturated soil con-  
11 ditions; and

12 “(ii) include swamps, marshes, bogs,  
13 and similar areas.

14 “(F) PRIOR CONVERTED CROPLAND.—For  
15 purposes of this paragraph, the term ‘prior con-  
16 verted cropland’—

17 “(i) means areas that, prior to De-  
18 cember 23, 1985, were drained or other-  
19 wise manipulated for the purpose, or hav-  
20 ing the effect, of making an agricultural  
21 product possible, and that are inundated  
22 for no more than 14 consecutive days dur-  
23 ing the growing season; and

24 “(ii) includes agricultural drainage  
25 features, including ditches and convey-

ances, that are the means by which the original conversion from wetlands to cropland took place and that are integral to the continued production of agricultural products by providing drainage or irrigation to maintain productive growing conditions.

“(G) JURISDICTIONAL DETERMINATION.—

The Secretary of the Army, at his cost, shall provide a binding determination upon the request of a permit applicant, landowner, or other affected person with an identifiable and substantial legal interest in a property, to determine whether a water is a navigable water under clause (iv) of subparagraph (A). The review process shall not exceed 60 days, beginning on the date of receipt of a written request from the affected person. If no determination has been made within the 60 day review period, the water shall not be considered a navigable water. A determination that a water is not a navigable water, or a failure to provide a determination, shall be binding on both the Secretary and the Administrator for as long as the person has an identifiable and substantial legal interest in the property. If a determination is

1           made that a water is a navigable water, the de-  
2           termination shall be binding for a period of no  
3           longer than 5 years. The affected person may  
4           obtain expedited judicial review not later than  
5           30 days after the date on which the determina-  
6           tion is made in a district court of the United  
7           States, of appropriate jurisdiction and venue,  
8           which is located within the State of the affected  
9           person seeking the review.”.

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