

114TH CONGRESS  
1ST SESSION

# S. 1140

To require the Secretary of the Army and the Administrator of the Environmental Protection Agency to propose a regulation revising the definition of the term “waters of the United States”, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 30, 2015

Mr. BARRASSO (for himself, Mr. DONNELLY, Mr. INHOFE, Ms. HEITKAMP, Mr. ROBERTS, Mr. MANCHIN, Mr. SULLIVAN, Mr. ROUNDS, Mr. BLUNT, Mr. MCCONNELL, Mrs. CAPITO, Mrs. FISCHER, and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To require the Secretary of the Army and the Administrator of the Environmental Protection Agency to propose a regulation revising the definition of the term “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 “Federal Water Quality  
5       Protection Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) in section 101(b) of the Federal Water Pol-  
2           lution Control Act (33 U.S.C. 1251(b)), Congress  
3           adopted the principle of cooperative federalism, rec-  
4           ognizing that “[i]t is the policy of the Congress to  
5           recognize, preserve, and protect the primary respon-  
6           sibilities and rights of States to prevent, reduce, and  
7           eliminate pollution, to plan the development and use  
8           (including restoration, preservation, and enhance-  
9           ment) of land and water resources, and to consult  
10          with the Administrator in the exercise of his author-  
11          ity under this Act”;

12           (2) adequate consultation with States and local  
13          governments and affected entities is necessary—

14                   (A) to ensure that Federal departments  
15                   and agencies understand the scope and impacts  
16                   of regulatory proposals;

17                   (B) to maintain the cooperative federalism  
18                   foundation of the Federal Water Pollution Con-  
19                   trol Act (33 U.S.C. 1251 et seq.); and

20                   (C) to respect the limits on Federal au-  
21                   thority;

22           (3)(A) States have robust water quality protec-  
23          tion programs capable of greater regulatory controls  
24          on waters not covered by Federal jurisdiction; and

1 (B) an exclusion of waters from Federal juris-  
 2 diction does not mean that excluded waters will be  
 3 exempt from regulation and protection, but rather,  
 4 it recognizes the limits of Federal jurisdiction under  
 5 the Federal Water Pollution Control Act (33 U.S.C.  
 6 1251 et seq.) and the primary role of States in pro-  
 7 tecting State waters; and

8 (4) subchapter II of chapter 5, and chapter 7,  
 9 of title 5, United States Code (commonly known as  
 10 the “Administrative Procedure Act”), requires each  
 11 agency to provide notice and an opportunity to com-  
 12 ment regarding—

13 (A) information, including scientific and  
 14 technical findings, on which the agency relies in  
 15 taking a regulatory action; and

16 (B) definitions, exclusions, and standards  
 17 that determine the limits of Federal regulation.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) ADMINISTRATOR.—The term “Adminis-  
 21 trator” means the Administrator of the Environ-  
 22 mental Protection Agency.

23 (2) BODY OF WATER.—The term “body of  
 24 water” means a traditional navigable water, terri-  
 25 torial sea, river, stream, lake, pond, or wetlands.

1           (3) INTERSTATE WATERS.—The term “inter-  
2       state waters” means the water described in section  
3       328.3(a)(2) of title 33, Code of Federal Regulations  
4       (as in effect on the day before the date of enactment  
5       of this Act).

6           (4) ISOLATED.—The term “isolated”, with re-  
7       spect to a body of water, means the absence of a  
8       surface hydrologic connection to a traditional navi-  
9       gable water.

10          (5) MUNICIPALITY.—The term “municipality”  
11       means a city, town, borough, county, parish, district,  
12       association, or other public entity that—

13               (A) was established by, or pursuant to,  
14       State law; and

15               (B) has authority over the distribution of  
16       water or the disposal of sewage, industrial  
17       waste, or any other waste.

18          (6) NORMAL YEAR.—The term “normal year”  
19       means—

20               (A) the 30-year hydrologic normal, as that  
21       term is used by the Natural Resources Con-  
22       servaion Service of the Department of Agri-  
23       culture, based on data from a specific geo-  
24       graphic area; or

1 (B) if less than 30 years of data described  
2 in subparagraph (A) are available, the average  
3 of the observed monthly data from a specific ge-  
4 ographic area over the period of record.

5 (7) POINT SOURCE.—The term “point source”  
6 has the meaning given the term in section 502 of the  
7 Federal Water Pollution Control Act (33 U.S.C.  
8 1362).

9 (8) PUBLIC NOTICE AND AN OPPORTUNITY FOR  
10 COMMENT.—

11 (A) IN GENERAL.—The term “public no-  
12 tice and an opportunity for comment” means  
13 notice and opportunity for comment that meets  
14 the requirements of subchapter II of chapter 5,  
15 and chapter 7, of title 5, United States Code  
16 (commonly known as the “Administrative Pro-  
17 cedure Act”).

18 (B) INCLUSION.—The term “public notice  
19 and an opportunity for comment” includes the  
20 opportunity for public hearings in different geo-  
21 graphic regions with different hydrology, includ-  
22 ing separate meetings in the arid West.

23 (9) SECRETARY.—The term “Secretary” means  
24 the Secretary of the Army.

1           (10) STREAM.—The term “stream” means a  
2 natural channel formed by the flow of water that has  
3 a bed, bank, and ordinary high water mark (as de-  
4 fined in section 328.3(e) of title 33, Code of Federal  
5 Regulations (as in effect on the date of enactment  
6 of this Act)).

7           (11) SURFACE HYDROLOGIC CONNECTION.—

8           (A) IN GENERAL.—The term “surface hy-  
9 drologic connection” means a continuous sur-  
10 face connection through which water moves  
11 within a body of water or from 1 body of water  
12 to another.

13           (B) EXCLUSION.—The term “surface hy-  
14 drologic connection” does not include—

15           (i) overland flow of water outside a  
16 body of water (including sheetflow); or

17           (ii) the movement of water through  
18 soil, subsurface tiles, or a groundwater aq-  
19 uifer.

20           (C) DETERMINATION OF CONTINUOUS-  
21 NESS.—For purposes of this paragraph, a sur-  
22 face hydrologic connection shall be considered  
23 to be continuous if the connection is continuous,  
24 regardless of whether—

25           (i) water is not always present; and

1                   (ii) there is a break in the ordinary  
2                   high water mark of a stream that is unre-  
3                   lated to the flow regime of the stream, in-  
4                   cluding a break caused by a culvert, pipe,  
5                   dam, or by the flow of the stream under-  
6                   ground for a short distance, such as  
7                   through a cave.

8                   (12) TRADITIONAL NAVIGABLE WATER.—The  
9                   term “traditional navigable water” means the water  
10                  described in section 328.3(a)(1) of title 33, Code of  
11                  Federal Regulations (as in effect on the date of en-  
12                  actment of this Act).

13                  (13) WETLANDS.—The term “wetlands” has  
14                  the meaning given the term in section 328.3(b) of  
15                  title 33, Code of Federal Regulations (as in effect on  
16                  the date of enactment of this Act).

17 **SEC. 4. REVISED DEFINITION; PRINCIPLES AND PROCESS.**

18                  (a) REVISED DEFINITION.—A revision to or guidance  
19                  on a regulatory definition of the term “navigable waters”  
20                  or “waters of the United States” promulgated or issued  
21                  pursuant to the Federal Water Pollution Control Act (33  
22                  U.S.C. 1251 et seq.) after February 4, 2015, shall have  
23                  no force or effect—

24                         (1) unless the revision adheres to the principles  
25                         under subsection (b); and

1           (2) until after the Secretary and the Adminis-  
2           trator carry out each action described in subsection  
3           (c).

4           (b) PRINCIPLES.—In promulgating a revised regu-  
5           latory definition pursuant to this subsection, the Secretary  
6           and the Administrator shall adhere to the following prin-  
7           ciples:

8           (1) The Federal Water Pollution Control Act  
9           (33 U.S.C. 1251 et seq.) is an Act to protect tradi-  
10          tional navigable waters from water pollution.

11          (2) The term “waters of the United States”  
12          under the Federal Water Pollution Control Act (33  
13          U.S.C. 1251 et seq.) should identify bodies of water  
14          subject to Federal jurisdiction, and, except as pro-  
15          vided in paragraph (3), should include—

16                (A) traditional navigable waters and inter-  
17                state waters;

18                (B) the reach of a stream that is—

19                   (i) identified on 1 or more maps cre-  
20                   ated using the United States Geological  
21                   Survey National Hydrology Dataset Plus  
22                   at the 1:100,000 scale from Reach Address  
23                   Database Version 3.1, consistent with the  
24                   scale and reach address database used by  
25                   the Administrator during July 2009, in



1 conjunction with information on drinking  
2 water source protection areas, to identify  
3 potential sources of water for public drink-  
4 ing water systems; or

5 (ii) for any State for which a map at  
6 the scale described in clause (i) is not  
7 available, identified on a map using the  
8 United States Geological Survey National  
9 Hydrology Dataset Plus at the available  
10 scale that is closest to the scale described  
11 in clause (i);

12 (C) the reach of a stream that, through a  
13 surface hydrologic connection, contributes flow  
14 in a normal year to a traditional navigable  
15 water of sufficient volume, duration, and fre-  
16 quency that pollutants in that reach would de-  
17 grade the water quality of the traditional navi-  
18 gable water, based on a quantifiable and statis-  
19 tically valid measure of flow for that geographic  
20 area; and

21 (D) wetlands situated next to a water of  
22 the United States that, in a normal year, pro-  
23 tect the water quality of a navigable water by  
24 preventing the movement of pollutants to a nav-  
25 igable water.

1           (3) The term “waters of the United States”  
2 under the Federal Water Pollution Control Act (33  
3 U.S.C. 1251 et seq.) should not include—

4           (A) water that is located below the surface  
5 of the land, including soil water and ground-  
6 water;

7           (B) water that is not located within a body  
8 of water;

9           (C) an isolated pond, whether natural or  
10 manmade, including a farm pond, fish pond,  
11 quarry, mine pit, ornamental pond, swimming  
12 pool, construction pit, fire control pond, sedi-  
13 ment pond, and any other isolated facility or  
14 system that holds water;

15           (D) a system constructed or used for the  
16 purpose of collecting, conveying, holding, or  
17 treating—

18           (i) stormwater or floodwater within  
19 the boundaries of a State, tribal, munic-  
20 ipal, industrial, agricultural, silvicultural,  
21 residential, or Federal facility or operation,  
22 including ditches along agricultural fields,  
23 roads, runways, parking lots, and other in-  
24 frastructure;

1 (ii) wastewater within the boundaries  
2 of a State, tribal, municipal, industrial,  
3 commercial, agricultural, silvicultural, resi-  
4 dential, or Federal facility or operation;

5 (iii) municipal and industrial water  
6 supplies within the boundaries of a State,  
7 tribal, municipal, industrial, commercial,  
8 agricultural, silvicultural, residential, or  
9 Federal facility or operation—

10 (I) including spreading basins for  
11 aquifer storage and recovery or aqui-  
12 fer recharge and recovery; but

13 (II) not including instream res-  
14 ervoirs or other instream facilities; or

15 (iv) water for agricultural or silvicult-  
16 tural purposes by a municipality or at an  
17 agricultural or silvicultural facility or oper-  
18 ation, including irrigation water, a fish  
19 production pond, livestock watering pond,  
20 irrigated field, cranberry growing field, rice  
21 production field, manure lagoon, and farm  
22 pond;

23 (E) the reach of a stream that, through a  
24 surface hydrologic connection, does not con-  
25 tribute flow in a normal year to a traditional

1 navigable water of sufficient volume, duration,  
2 and frequency that pollutants in that reach  
3 would degrade the water quality of the tradi-  
4 tional navigable water, based on a quantifiable  
5 and statistically valid measure of flow for that  
6 geographic area;

7 (F) prior-converted cropland (as defined in  
8 section 12.2(a) of title 7, Code of Federal Reg-  
9 ulations (as in effect on the date of enactment  
10 of this Act)); and

11 (G) any water that is no longer a water of  
12 the United States pursuant to a permit issued  
13 under—

14 (i) section 10 of the Act of March 3,  
15 1899 (commonly known as the “Rivers and  
16 Harbors Appropriation Act of 1899”) (33  
17 U.S.C. 403); or

18 (ii) section 404 of the Federal Water  
19 Pollution Control Act (33 U.S.C. 1344).

20 (4) Unless a subparagraph of paragraph (3)  
21 other than subparagraph (D) applies, for purposes  
22 of the Federal Water Pollution Control Act (33  
23 U.S.C. 1251 et seq.), the term “waters of the United  
24 States” should include a system described in para-  
25 graph (3)(D), or a component of such a system, if

1 the Secretary or the Administrator demonstrates  
2 that—

3 (A) the system was a water of the United  
4 States that was converted for use for the pur-  
5 pose described in paragraph (3)(D) after Octo-  
6 ber 18, 1972, without a permit under section  
7 404 of that Act (33 U.S.C. 1344), unless the  
8 construction or use of the system—

9 (i) is described in subparagraph (A)  
10 or (C) of section 404(f)(1) of that Act (33  
11 U.S.C. 1344(f)(1)); or

12 (ii) was otherwise exempt from per-  
13 mitting under that Act; or

14 (B) the system was a traditional navigable  
15 water that was converted for use for the pur-  
16 pose described in paragraph (3)(D), unless—

17 (i) the system is identified as a point  
18 source in a permit issued under section  
19 402 of the Federal Water Pollution Con-  
20 trol Act (33 U.S.C. 1342);

21 (ii) the water managed in the system  
22 is—

23 (I) irrigation return flow exempt  
24 from permitting under section

1                   402(l)(1) of that Act (33 U.S.C.  
2                   1342(l)(1)); or

3                   (II) agricultural stormwater or  
4                   return flows from irrigated agriculture  
5                   exempt from permitting under section  
6                   502(14) of that Act (33 U.S.C.  
7                   1362(14));

8                   (iii) the construction or use of the sys-  
9                   tem is described in subparagraph (A) or  
10                  (C) of section 404(f)(1) of that Act (33  
11                  U.S.C. 1344(f)(1)); or

12                  (iv) the system is a waste treatment  
13                  system.

14                  (5) In promulgating a revised definition of  
15                  waters of the United States, the Secretary or the  
16                  Administrator shall take into consideration that—

17                         (A) the use of a body of water by an orga-  
18                         nism, including a migratory bird, does not pro-  
19                         vide a basis for establishing Federal jurisdiction  
20                         under the Federal Water Pollution Control Act  
21                         (33 U.S.C. 1251 et seq.);

22                         (B) the supply of water to a groundwater  
23                         aquifer and the storage of water in an isolated  
24                         body of water are issues that—

1 (i) pertain to the use of water re-  
2 sources that shall not be superseded, abro-  
3 gated, or otherwise impaired by the Fed-  
4 eral Water Pollution Control Act (33  
5 U.S.C. 1251 et seq.) pursuant to sections  
6 101(g) and 510(2) of that Act (33 U.S.C.  
7 1251(g), 1370(2)); and

8 (ii) do not provide a basis for estab-  
9 lishing Federal jurisdiction under that Act  
10 (33 U.S.C. 1251 et seq.); and

11 (C) evaporation, transpiration, condensa-  
12 tion, precipitation, the overland flow of water,  
13 and the movement of water in an aquifer are all  
14 part of the water cycle and may connect all  
15 water over sufficiently long periods of time and  
16 distances, but do not provide a basis for estab-  
17 lishing Federal jurisdiction under the Federal  
18 Water Pollution Control Act (33 U.S.C. 1251 et  
19 seq.).

20 (6) Waters that are waters of the United States  
21 should be identified on maps provided by the Sec-  
22 retary and the Administrator to promote certainty  
23 and transparency in jurisdictional determinations.

24 (c) CONSIDERATION, CONSULTATION, AND RE-  
25 PORT.—

1           (1) CONSIDERATION OF PUBLIC COMMENTS.—  
2       Before issuing a proposed regulation pursuant to  
3       subsection (a), the Secretary and the Administrator  
4       shall make available to the public, review, and pub-  
5       lish a response to comments filed regarding the pro-  
6       posed rule entitled “Definition of ‘Waters of the  
7       United States’ Under the Clean Water Act” of the  
8       Corps of Engineers and the Environmental Protec-  
9       tion Agency (79 Fed. Reg. 22188 (April 21, 2014)).

10           (2) FEDERALISM.—

11           (A) IN GENERAL.—In proposing and pro-  
12       mulgating a regulation pursuant to subsection  
13       (a), the Secretary and the Administrator shall  
14       ensure compliance with the federalism policy-  
15       making criteria and consultation in accordance  
16       with Executive Order 13132 (64 Fed. Reg.  
17       43255 (August 4, 1999)), regardless of whether  
18       the Secretary and the Administrator determine  
19       that the regulation would have any substantial  
20       and direct effect on—

21                   (i) States;

22                   (ii) the relationship between the Fed-  
23       eral Government and the States; or



1 (iii) the distribution of power and re-  
2 sponsibilities among the various levels of  
3 government.

4 (B) CONSULTATION.—

5 (i) IN GENERAL.—To be considered  
6 meaningful consultation described in sec-  
7 tion 101(b) of the Federal Water Pollution  
8 Control Act (33 U.S.C. 1251(b)), before  
9 publication of a proposed rule under this  
10 section, consultation shall include a discus-  
11 sion of alternative approaches with and a  
12 request for input and advice on the ap-  
13 proaches from States, including—

14 (I) Governors;

15 (II) State departments with au-  
16 thority over water supply and water  
17 quality;

18 (III) State departments of agri-  
19 culture; and

20 (IV) local governments, including  
21 elected officials, local governmental  
22 entities with authority over water sup-  
23 ply, stormwater, waste water, and  
24 flood control, irrigation districts, and  
25 conservation districts.

1 (ii) TOPICS.—The topics to be ad-  
2 dressed in the consultation under this  
3 paragraph should include—

4 (I) categories of waters, in addi-  
5 tion to those discussed in paragraphs  
6 (2) and (3) of subsection (b), that  
7 should be subject to Federal jurisdic-  
8 tion or should be subject solely to  
9 State regulation;

10 (II) what is the role of States in  
11 the identification of waters subject to  
12 Federal jurisdiction; and

13 (III) whether channels in which  
14 water is present only during or for a  
15 short time after a precipitation event  
16 are correctly categorized as  
17 geomorphological features rather than  
18 hydrologic features.

19 (3) REGULATORY FLEXIBILITY.—In proposing  
20 and promulgating a regulation pursuant to sub-  
21 section (a), and regardless of whether the Secretary  
22 and the Administrator determine that the regulation  
23 would have a significant impact on a substantial  
24 number of small entities, the Secretary and the Ad-  
25 ministrator shall—

1 (A) carry out the actions described in sec-  
2 tions 603, 604, and 609 of title 5, United  
3 States Code; and

4 (B) in carrying out those actions, take into  
5 consideration the costs of all programs under  
6 the Federal Water Pollution Control Act (33  
7 U.S.C. 1251 et seq.), regardless of whether the  
8 Secretary and the Administrator consider the  
9 costs of the proposed regulation to be direct or  
10 indirect.

11 (4) UNFUNDED MANDATES.—In proposing and  
12 promulgating a regulation pursuant to subsection  
13 (a), the Secretary and the Administrator shall evalu-  
14 ate the intergovernmental and private sector impacts  
15 of the regulation, in accordance with title II of the  
16 Unfunded Mandates Reform Act of 1995 (2 U.S.C.  
17 1531 et seq.), regardless of whether the Secretary  
18 and the Administrator—

19 (A) consider the impacts of the proposed  
20 regulation to be direct or indirect; or

21 (B) determine that expenditures resulting  
22 from the proposed regulation would meet the  
23 monetary thresholds established in that Act (2  
24 U.S.C. 1501 et seq.).

1           (5) IMPROVING REGULATION AND REGULATORY  
2 REVIEW.—In proposing and promulgating a regula-  
3 tion pursuant to subsection (a), regardless of wheth-  
4 er the Secretary and the Administrator consider the  
5 regulation to be a significant regulatory action or  
6 significantly affect State, local, and tribal govern-  
7 ments, the Secretary and the Administrator shall en-  
8 sure that the regulation meets the requirements of—

9           (A) Executive Order 12866 (5 U.S.C. 601  
10 note; relating to regulatory planning and re-  
11 view); and

12           (B) Executive Order 13563 (76 Fed. Reg.  
13 3821 (January 18, 2011)).

14           (6) IMPROVING PERFORMANCE OF FEDERAL  
15 PERMITTING AND REVIEW OF INFRASTRUCTURE  
16 PROJECTS.—In proposing and promulgating a regu-  
17 lation pursuant to subsection (a), the Secretary and  
18 the Administrator shall consider—

19           (A) Executive Order 13604 (5 U.S.C. 601  
20 note; relating to improving performance of Fed-  
21 eral permitting and review of infrastructure  
22 projects); and

23           (B) the goal of reducing the time to make  
24 decisions in the permitting and review of infra-  
25 structure projects by the Federal Government.

1           (7) REPORT.—Not later than the date that is  
2           30 days before the date of issuance of a proposed  
3           regulation pursuant to subsection (a), the Secretary  
4           and the Administrator shall submit to the Com-  
5           mittee on Environment and Public Works of the  
6           Senate and the Committee on Transportation and  
7           Infrastructure of the House of Representatives a re-  
8           port that—

9                   (A) describes the means by which the pro-  
10                  posed regulation, if finalized, would achieve  
11                  compliance with—

12                           (i) Executive Order 12866 (5 U.S.C.  
13                           601 note; relating to regulatory planning  
14                           and review), including the means by  
15                           which—

16                                   (I) the regulation would impose  
17                                   the least burden on society, consistent  
18                                   with obtaining regulatory objectives,  
19                                   taking into account, among other  
20                                   things, and to the maximum extent  
21                                   practicable, the costs of cumulative  
22                                   regulations; and

23                                   (II) the Secretary and the Ad-  
24                                   ministrator identified and assessed

1 available alternatives to direct regula-  
2 tion;

3 (ii) section 2(i) of Executive Order  
4 13132 (64 Fed. Reg. 43256 (August 4,  
5 1999)), which requires agencies to “act  
6 only with the greatest caution where State  
7 or local governments have identified uncer-  
8 tainties regarding the constitutional or  
9 statutory authority of the national govern-  
10 ment”;

11 (iii) section 3 of that Executive order  
12 (64 Fed. Reg. 43256 (August 4, 1999)),  
13 which requires agencies—

14 (I) to strictly adhere to constitu-  
15 tional principles and statutory author-  
16 ity;

17 (II) to take action limiting the  
18 policymaking discretion of the States  
19 only in cases in which there exists  
20 constitutional and statutory authority  
21 for the action;

22 (III) to provide States with max-  
23 imum administrative discretion prac-  
24 ticable, without intrusive Federal  
25 oversight; and

1 (IV) to rely on State policies to  
2 the maximum extent practicable; and  
3 (iv) Executive Order 13563 (76 Fed.  
4 Reg. 3821 (January 18, 2011)), including  
5 the public participation requirements of  
6 section 2 of that Executive order, which re-  
7 quire an opportunity for public comment  
8 regarding all pertinent parts of the rule-  
9 making docket, including relevant scientific  
10 and technical findings and seeking the  
11 views of those who are likely to be affected  
12 before issuing a notice of proposed rule-  
13 making;

14 (B) includes the Federalism summary im-  
15 pact statement required by section 3 of Execu-  
16 tive Order 13132 (64 Fed. Reg. 43256 (August  
17 4, 1999));

18 (C) includes the regulatory flexibility anal-  
19 yses required under section 603 of title 5,  
20 United States Code, and the report of the re-  
21 view panel required under section 609 of that  
22 title;

23 (D) describes the small government agency  
24 plan, and the State, local, and tribal input  
25 under sections 203 and 204 of the Unfunded

1 Mandates Reform Act of 1995 (2 U.S.C. 1533,  
2 1534);

3 (E) describes the means by which the pro-  
4 posed regulation is the least costly, most cost-  
5 effective, or least burdensome alternative, in ac-  
6 cordance with section 205 of the Unfunded  
7 Mandates Reform Act of 1995 (2 U.S.C. 1535);

8 (F) describes whether the Secretary and  
9 the Administrator will provide funding to State,  
10 local, and tribal governments to meet the inter-  
11 governmental mandates imposed by the pro-  
12 posed regulation; and

13 (G) describes how the proposed rule will  
14 achieve the goal stated in section 1 of Executive  
15 Order 13604 (5 U.S.C. 601 note; relating to  
16 improving performance of Federal permitting  
17 and review of infrastructure projects) that the  
18 time to make decisions in the permitting and  
19 review of infrastructure projects by the Federal  
20 Government be reduced.

21 (8) TIMING.—In carrying out this section, the  
22 Secretary and the Administrator shall use best ef-  
23 forts—

24 (A) to provide not less than 180 days for  
25 the consultation described in paragraph (2);



1 (B) to provide a comment period on the re-  
2 vised proposed rule of not less than 120 days;  
3 and

4 (C) to publish a final rule not later than  
5 December 31, 2016.

6 **SEC. 5. MEASURE OF FLOW.**

7 After providing public notice and an opportunity for  
8 comment, the Secretary shall establish quantifiable and  
9 statistically valid measures of the volume, duration, and  
10 frequency of flow in streams in different geographic areas  
11 that would, in a normal year, allow pollutants in reaches  
12 of streams in those geographic areas to flow to and de-  
13 grade the water quality of a traditional navigable water.

14 **SEC. 6. REPORT TO CONGRESS.**

15 Not later than the date that is 3 years after the date  
16 of promulgation of a regulation pursuant to section 4, and  
17 not less frequently than once every 3 years thereafter, the  
18 Comptroller General of the United States, after consulta-  
19 tion with State, local, and tribal governments and other  
20 affected entities, shall—

21 (1) review the jurisdictional determinations  
22 made during the applicable period by the Secretary  
23 and the Administrator; and

24 (2) submit to Congress a report that de-  
25 scribes—

1 (A) the interpretations of the regulation  
2 by—

3 (i) districts of the Corps of Engineers;

4 and

5 (ii) regional offices of the Environ-  
6 mental Protection Agency;

7 (B) whether those interpretations are con-  
8 sistent;

9 (C) if any inconsistency exists, the meas-  
10 ures carried out by the Secretary and the Ad-  
11 ministrator to reduce the inconsistency or an  
12 explanation of the geographic differences that  
13 make the inconsistency appropriate; and

14 (D) the impacts of those interpretations on  
15 Federal permitting and review of infrastructure  
16 projects, and the goal stated in section 1 of Ex-  
17 ecutive Order 13604 (5 U.S.C. 601 note; relat-  
18 ing to improving performance of Federal per-  
19 mitting and review of infrastructure projects)  
20 that the time to make decisions in the permit-  
21 ting and review of infrastructure projects by the  
22 Federal Government be reduced.

1 **SEC. 7. EFFECT OF ACT.**

2 (a) PERMITTING AUTHORITY.—Nothing in this Act  
3 limits the authority of the Secretary or the Adminis-  
4 trator—

5 (1) to require a permit for any discharge of pol-  
6 lutants to a navigable water under the Federal  
7 Water Pollution Control Act (33 U.S.C. 1251 et  
8 seq.); or

9 (2) to take any enforcement action with respect  
10 to an unpermitted discharge under that Act.

11 (b) WATER TRANSFERS.—Nothing in this Act affects  
12 a determination regarding whether the transfer of water  
13 from 1 body of water to another requires a permit under  
14 section 402 of the Federal Water Pollution Control Act  
15 (33 U.S.C. 1342).

16 (c) RETENTION OF STATE AUTHORITY.—Nothing in  
17 this Act places any limitation on the scope of water subject  
18 to State jurisdiction under State law.

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