

115TH CONGRESS  
1ST SESSION

# S. RES. 12

Expressing the sense of the Senate that clean water is a national priority, and that the June 29, 2015, Waters of the United States Rule should be withdrawn or vacated.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2017

Mrs. FISCHER (for herself and Mrs. ERNST) submitted the following resolution; which was referred to the Committee on Environment and Public Works

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# RESOLUTION

Expressing the sense of the Senate that clean water is a national priority, and that the June 29, 2015, Waters of the United States Rule should be withdrawn or vacated.

Whereas the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly known as the “Clean Water Act”) is one of the most important laws in the United States and has led to decades of successful environmental improvements;

Whereas the success of that Act depends on consistent adherence to the key principle of cooperative federalism, under which the Federal Government and State and local governments all have a role in protecting water resources;

Whereas, in structuring the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) based on the foundation of cooperative federalism, Congress left to the States their traditional authority over land and water, including farmers’ fields, nonnavigable, wholly intrastate water (including puddles and ponds), and the allocation of water supplies;

Whereas compliance with the principle of cooperative federalism requires that any regulation defining the term “waters of the United States” be promulgated—

(1) after the establishment of a proper regulatory baseline for, and an evaluation of the costs and benefits of, the proposed regulatory definition of the term;

(2) in compliance with—

(A) chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”); and

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(3) in consultation with States and local governments, including consultation with respect to—

(A) alternative proposals for changing the regulatory definition of the term; and

(B) the impact of the alternative proposals, including costs and benefits, on State and local governments and small entities;

Whereas, in promulgating the final rule entitled “Clean Water Rule: Definition of ‘Waters of the United States’” (80 Fed. Reg. 37054 (June 29, 2015)) (referred to in this preamble as the “Waters of the United States Rule”), the Administrator of the Environmental Protection Agency and the Chief of Engineers—

(1) failed to follow the procedural steps described in the fourth whereas clause; and

(2) claimed broad and expansive jurisdiction that encroaches on traditional State authority and undermines longstanding exemptions from Federal regulation under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

Whereas, on October 9, 2015, the United States Court of Appeals for the Sixth Circuit—

(1) issued a nationwide stay for the Waters of the United States Rule; and

(2) found that the petitioners who requested that the court vacate the Waters of the United States Rule have a substantial possibility of success in a hearing on the merits of the case: Now, therefore, be it

1       *Resolved*, That it is the sense of the Senate that the  
 2 final rule of the Administrator of the Environmental Pro-  
 3 tection Agency and the Chief of Engineers entitled “Clean  
 4 Water Rule: Definition of ‘Waters of the United States’”  
 5 (80 Fed. Reg. 37054 (June 29, 2015)) should be vacated.

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