

118TH CONGRESS }  
*1st Session* } HOUSE OF REPRESENTATIVES { REPORT  
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PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, DEPARTMENT OF DEFENSE AND THE ENVIRONMENTAL PROTECTION AGENCY RELATING TO "REVISED DEFINITION OF 'WATERS OF THE UNITED STATES'"

MARCH --, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Transportation and Infrastructure, submitted the following

## R E P O R T

together with

\_\_\_\_ VIEWS

[To accompany H.J. Res. 27]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the joint resolution (H.J. Res. 27) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to "Revised Definition of 'Waters of the United States'", having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

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### PURPOSE OF LEGISLATION

The purpose of H.J. Res. 27 is to provide for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers (Corps), Department of Defense and the Environmental Protection Agency (EPA) relating to “Revised Definition of the ‘Waters of the United States,’” which was published on January 18, 2023.

### BACKGROUND AND NEED FOR LEGISLATION

Congress enacted the 1972 amendments to the *Federal Water Pollution Control Act*, commonly referred to as the *Clean Water Act (CWA)*, with the goal to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>1</sup> The *CWA* protects “navigable waters,” which is defined in the *CWA* as the “waters of the United States, including the territorial seas.”<sup>2</sup>

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<sup>1</sup> *CWA*, Pub. L. No. 92-500, 86 Stat. 816.

<sup>2</sup> *Id.* at § 502(7).

However, the CWA does not further define the term “waters of the United States” (WOTUS), leaving it up to EPA and the Corps to define which waters are subject to Federal regulation under the CWA. Since the CWA grants authority to EPA and the Corps to implement the Act, EPA and the Corps have promulgated several sets of rules interpreting the agencies’ jurisdiction over WOTUS and the corresponding scope of CWA authority.

A clear WOTUS definition consistent with Congressional intent is important, as the definition of WOTUS governs the application of CWA programs.<sup>3</sup> For example, the CWA in Sections 402 and 404 prohibits the discharge of any pollutant by any person into “navigable waters,” unless in compliance with one of the enumerated permitting provisions in the Act. The two permitting authorities in the CWA are Section 402 (the National Pollutant Discharge Elimination System, or “NPDES”) for discharges of pollutants from point sources, and Section 404, for discharges of dredged or fill material.<sup>4</sup>

When Congress passed the CWA in 1972, it never intended for the Federal Government to have jurisdiction over every water in the Nation.<sup>5</sup> During a recent Subcommittee on Water Resources and Environment hearing on February 8, 2023, entitled “Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule,” this was further elaborated on by Ms. Susan Parker Bodine, Partner at Earth & Water Law LLC, who stated, “Congress did not tell EPA and the Corps: ‘do whatever you think is necessary to protect water.’ Instead, the CWA... carefully prescribes federal authority.”<sup>6</sup>

In 1985, the Supreme Court took up *United States v. Riverside Bayview Homes, Inc. (Riverside Bayview)*.<sup>7</sup> The Court unanimously upheld the Corps’ jurisdiction over wetlands adjacent to jurisdictional waters and held that such wetlands were “waters of the United States” under the CWA.<sup>8</sup> Following *Riverside Bayview*, EPA and the Corps promulgated regulations in 1986 and 1988, which remained in effect for much of the past several decades.<sup>9</sup>

In 2001, the Court ruled in *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers* (“SWANCC”), evaluating whether CWA jurisdiction included an abandoned sand and gravel pit which had become a habitat for migratory birds.<sup>10</sup> A 5-4 decision rejected the Corps’

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<sup>3</sup> *Id.* at §§ 301, 303, 311, 401, 402, 404.

<sup>4</sup> *Id.* at §§ 402(b) and 404.

<sup>5</sup> See Brief of Sen. Shelley Moore Capito, Rep. Sam Graves, and a Coalition of 199 Members of Congress as *Amici Curiae* supporting Petitioners, *Sackett v. EPA*, No. 21-454, (Oct. 3, 2022).

<sup>6</sup> *Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule: Hearing before the Subcomm. on Water Resources and Environment of the H. Comm. on Transportation and Infrastructure*, 118<sup>th</sup> Cong. (2023) (written testimony of Ms. Susan Parker Bodine, Partner, Earth & Water Law LLC).

<sup>7</sup> *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985).

<sup>8</sup> See *id.*

<sup>9</sup> Final Rule for Regulatory Programs of the Corps of Engineers, 51 Fed. Reg. 41206 (November 13, 1986); Clean Water Act Section 404 Program Definitions and Permit Exemptions, Section 404 State Regulation Programs, 53 Fed. Reg. 20764 (June 6, 1988).

<sup>10</sup> *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

claim that CWA jurisdiction extended over isolated waters purely based on their usage by migratory birds, but did not affect the agencies' underlying regulations defining WOTUS.<sup>11</sup>

In 2006, the Supreme Court issued a 4-1-4 opinion in *Rapanos v. United States* (*Rapanos*) that did not produce a clear, legal standard on determining jurisdiction under the CWA.<sup>12</sup> Justice Scalia's plurality opinion provided a "relatively permanent/flowing waters" test with "continuous surface connection."<sup>13</sup> Writing alone, Justice Kennedy proposed a "significant nexus" test for WOTUS, concluding that a case-by-case basis for determining navigable waters was appropriate.<sup>14</sup>

Since *Rapanos*, successive Administrations have struggled to interpret the term waters of the United States for the purpose of implementing various requirements of the CWA.<sup>15</sup> Prior to the Biden Administration, executive branch efforts to define WOTUS administratively included regulations promulgated by the Corps and EPA in the 1980s and supplemented with interpretive guidance developed in response to Supreme Court rulings; the 2015 Clean Water Rule; and the 2020 Navigable Waters Protection Rule.<sup>16</sup>

The agencies' efforts to define WOTUS in regulation during both the Obama and Trump Administrations were controversial and led to litigation. Many observers viewed the Obama Administration's 2015 Clean Water Rule as defining WOTUS too broadly, while many viewed the Trump Administration's 2020 Navigable Waters Protection Rule (NWPR) as defining WOTUS too narrowly. The Obama Administration's Clean Water Rule relied on the significant nexus test while simultaneously expanding the number of waters categorically deemed as WOTUS, thus capturing more waters under Federal control.<sup>17</sup> This rule was significantly challenged in the courts and rescinded under the Trump Administration.<sup>18</sup>

The NWPR focused on relatively permanent bodies of water that provide surface flow to traditional navigable waters in a typical year.<sup>19</sup> As such, the WOTUS definition provided in the NWPR was more consistent with the Scalia opinion in *Rapanos*, and provided clarity for Americans subject to CWA provisions. A federal district court vacated the Navigable Waters

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<sup>11</sup> See generally Stephen P. Mulligan, *Evolution of the meaning of "waters of the United States" in the Clean Water Act*, CONG. RESEARCH SERVICE (R44585), updated March 5, 2019, [hereinafter CRS REPORT R44585], available at <https://www.crs.gov/reports/pdf/R44585/R44585.pdf>.

<sup>12</sup> *Rapanos v. United States*, 547 U.S. 715 (2006).

<sup>13</sup> *Id.* at 739, 742.

<sup>14</sup> *Id.* at 782 (Kennedy, J., concurring).

<sup>15</sup> Laura Gatz & Kate R. Bowers, *Redefining waters of the United States (WOTUS): Recent developments*, CONG. RESEARCH SERVICE (R46927), updated July 8, 2022 [hereinafter CRS REPORT R46927], available at <https://www.crs.gov/reports/pdf/R46927/R46927.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> Clean Water Rule: Definition of "waters of the United States", Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015), available at <https://www.govinfo.gov/content/pkg/FR-2015-06-29/pdf/2015-13435.pdf>.

<sup>18</sup> See Definition of "Waters of the United States"-Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-10-22/pdf/2019-20550.pdf>.

<sup>19</sup> The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22250 (April 21, 2020).

Protection Rule in September 2021.<sup>20</sup> However, during a recent Subcommittee on Water Resources and Environment hearing on the February 8, 2023, a witness, Mr. Garrett Hawkins, President of the Missouri Farm Bureau, testified that “[t]he bright lines under the NWPR... were appreciated because, for the first time, we actually felt certainty.”<sup>21</sup>

In January 2021, President Biden signed Executive Order 13990, revoking President Trump’s Executive Order directing EPA and the Corps to revise and rescind the 2015 Clean Water Rule.<sup>22</sup> In June of 2021, EPA and the Corps officially announced their intent to revise the WOTUS definition.<sup>23</sup> Following a rulemaking process intended to return the regulatory landscape to pre-2015 Clean Water Rule implementation and gauge stakeholder perspectives, the agencies issued a proposed Rule to change the definition of WOTUS in December 2021.<sup>24</sup>

On January 18, 2023, EPA and the Corps published their final rule entitled the “Revised Definition of the ‘Waters of the United States’”.<sup>25</sup> This WOTUS definition builds upon the pre-2015 regulations, while authorizing CWA jurisdiction under either the “relatively permanent waters” or “significant nexus” test concepts.<sup>26</sup>

EPA and the Corps state that the new WOTUS definition will have only minimal economic impact when compared to the 1986 regulations currently in place due to the vacatur of the NWPR. However, the Small Business Administration’s (SBA’s) independent Office of Advocacy denotes:

“The Agencies estimate that CWA Sec. 404 permit costs would increase between \$108.6 million to \$275.9 million for projects based in 26 states in transitioning from the NWPR to the proposed rule. These amounts do not reflect costs for Sec. 404 projects in the remaining States and other jurisdictions subject to CWA jurisdiction, nor do they reflect additional costs increases associated with other CWA programs, such as Section 402 permitting or Section 311 oil spill prevention plans.”<sup>27</sup>

Additionally, regulatory delays, increased permitting costs, and legal fees caused by this action will drive up the costs to grow food, create energy, and build critical infrastructure. Ms. Alicia Huey of the National Association of Home Builders, in written testimony provided for the

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<sup>20</sup> See *Pascua Yaqui Tribe, et. al. v. EPA*, No. CV-20-00266 (D. Ariz. Aug. 30, 2021).

<sup>21</sup> *Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule: Hearing before the Subcomm. on Water Resources and Environment of the H. Comm. on Transportation and Infrastructure*, 118<sup>th</sup> Cong. (2023) (statement of Mr. Garrett Hawkins, President, Missouri Farm Bureau).

<sup>22</sup> Exec. Order No. 13,990, (Jan. 20, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf>.

<sup>23</sup> Press Release, EPA, *EPA, Army announce intent to revise definition of WOTUS*, (June 9, 2021), available at <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus>.

<sup>24</sup> Revised Definition of “Waters of the United States”, 86 Fed. Reg. 69,372 (2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-07/pdf/2021-25601.pdf>.

<sup>25</sup> Revised Definition of “waters of the United States” Final Rule, 88 Fed. Reg. 3004 (Jan. 18, 2023).

<sup>26</sup> *Id.*

<sup>27</sup> SBA, Off. of Advoc., SBA, Comment Letter on the EPA and Army’s Proposed Rule defining “the waters of the United States” under the CWA (Feb. 7, 2022), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2022/02/08152154/Comment-Letter-Proposed-WOTUS-Definition-2022.pdf>.

February 8, 2023, Subcommittee on Water Resources and Environment hearing, explained that “government regulations from federal, state and local governments account for up to 25 [percent] of the price of a new single-family home and over 40 [percent] of multifamily development.”<sup>28</sup> The increased costs associated with obtaining CWA permits using the EPA and the Corps’ new definition of WOTUS will be passed on to the American economy.<sup>29</sup>

Notably, EPA and the Corps continued with the WOTUS rulemaking despite a pending Supreme Court case, *Sackett v. EPA (Sackett)*, which could affect the definition of WOTUS.<sup>30</sup> On January 24, 2022, the Court announced it would take the case.<sup>31</sup> The Court then heard oral arguments in *Sackett* on October 3, 2022, and a ruling is expected in 2023. However, throughout all this, EPA and the Corps continued with the rule, publishing the final version in January 2023.<sup>32</sup>

The *Sackett* case could be resolved with a narrow ruling based solely on the facts of the case.<sup>33</sup> However, *Sackett* may also be an opportunity for the Supreme Court to rule broadly on what the proper test is for determining WOTUS.<sup>34</sup> Depending on the Court’s decision in *Sackett*, much of the Biden Administration’s WOTUS rule could be inapplicable and irrelevant.<sup>35</sup>

H.J. Res. 27 returns the WOTUS definition to the guidelines promulgated by EPA and the Corps in 1986, which is the standard when Administration rules are vacated or stayed in the courts.<sup>36</sup> These guidelines were put in place 20 years prior to the 2006 *Rapanos* decision, and therefore do not include the “significant nexus” test. Pursuant to the *Congressional Review Act (CRA)*, H.J. Res. 27 would not prohibit EPA and the Corps from writing a new WOTUS definition, post *Sackett* decision. However, if this joint resolution of disapproval is enacted, the CRA provides that a future rule may not be issued in a “substantially the same form” as the disapproved rule unless it is specifically authorized by a subsequent law.<sup>37</sup>

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<sup>28</sup> *Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule: Hearing before the Subcomm. on Water Resources and Environment of the H. Comm. on Transportation and Infrastructure*, 118<sup>th</sup> Cong. (2023) (written testimony of Ms. Alicia Huey, Chairman, National Association of Home Builders).

<sup>29</sup> See David Sunding & Gina Waterfield, Review of the EPA and Corp 2021 Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule, *compiled for WATERS ADVOCACY COALITION*, (Feb. 7, 2022), available at <https://www.ipaa.org/wp-content/uploads/2022/02/2022-WAC-Final-Exhibit-10.pdf>.

<sup>30</sup> *Sackett v. EPA*, cert. granted, (21-454) 142 S. Ct. 896 (Jan. 24, 2022).

<sup>31</sup> *Supreme Court takes WOTUS case*, E&E NEWS GREENWIRE, Jan. 4, 2022, available at <https://www.eenews.net/articles/supreme-court-takes-wotus-case/>.

<sup>32</sup> Revised definition of “waters of the United States” Final Rule, 88 Fed Reg. 3004 (Jan. 18, 2023).

<sup>33</sup> Ariel Wittenberg & Hannah Northey, *Can EPA’s Clean Water Rule survive the courts*, E&E NEWS, Jan. 3, 2023, available at <https://www.eenews.net/articles/can-epas-clean-water-act-rule-survive-the-courts>

<sup>34</sup> *Id.*

<sup>35</sup> Bobby Magill, *EPA’s Federal waters update seen vulnerable at top court*, BLOOMBERG LAW (Jan. 4, 2023), available at <https://news.bloomberglaw.com/environment-and-energy/epas-federal-waters-clarification-seen-vulnerable-at-top-court>.

<sup>36</sup> Susan Parker Bodine, Comment Letter on the EPA and Army’s Proposed Rule defining “the waters of the United States” under the CWA (Feb. 7, 2022), available at <https://www.regulations.gov/comment/EPA-HQ-OW-2021-0602-2327>.

<sup>37</sup> Pub. L. No. 104-121, § 801(b); see also Bowers and Gatz, “Waters of the United States (WOTUS): Frequently Asked Questions About the Scope of the Clean Water Act (R47408), Congressional Research Service.

H.J. Res. 27 would invalidate the “Revised Definition of the ‘Waters of the United States’” replacement Rule promulgated by EPA and the Corps.

## HEARINGS

For the purposes of Rule XIII, clause 3(c)(6)(A) of the 118th Congress –

The following hearing was used to develop or consider H.J. Res. 27: the Subcommittee on Water Resources and Environment held a hearing titled, “Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule.” At the hearing Members received testimony from Mr. Garrett Hawkins, President, Missouri Farm Bureau, Ms. Alicia Huey, Chairman, National Association of Home Builders, Mr. Mark Williams, Environmental Manager, Luck Companies, *on behalf of* National Stone, Sand & Gravel Association, Ms. Susan Parker Bodine, Partner, Earth & Water Law LLC, and Mr. Dave Owen, Professor of Law and Faculty Director of Scholarly Publications, UC College of the Law, San Francisco. This hearing examined the rule from the EPA and Corps redefining the term “waters of the United States,” under the CWA, and the regulatory impact of the rule on interested stakeholders.

## LEGISLATIVE HISTORY AND CONSIDERATION

H.J. Res. 27, *Providing for congressional disapproval under Chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to ‘Revised Definition of ‘Waters of the United States’*’, was introduced in the United States House of Representatives on February 2, 2023, by Mr. Graves of Missouri, Mr. Rouzer of North Carolina, and 147 original co-sponsors and referred to the Committee on Transportation and Infrastructure. Within the Committee on Transportation and Infrastructure, H.J. Res. 27 was referred to the Subcommittee on Water Resources and Environment. The Subcommittee on Water Resources and Environment was discharged from further consideration of H.J. Res. 27 on February 28, 2023.

The Committee considered H.J. Res. 27 on February 28, 2023, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by a recorded vote of 30 yeas to 24 nays.

## COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

Vote: 1			
On: H.J. Res. 27 – Final Passage			
Yea	30	Nay	24
Member	Vote	Member	Vote
Mr. Graves of MO	Yea	Mr. Larsen of WA	Nay
Mr. Crawford	Yea	<i>Ms. Norton</i>	Nay
Mr. Webster of FL	Yea	Mrs. Napolitano	Nay
Mr. Massie	Yea	Mr. Cohen	
Mr. Perry	Yea	Mr. Garamendi	Nay
Mr. Babin	Yea	Mr. Johnson of GA	Nay
Mr. Graves of LA	Yea	Mr. Carson	Nay
Mr. Rouzer	Yea	Ms. Titus	Nay
Mr. Bost	Yea	Mr. Huffman	Nay
Mr. LaMalfa	Yea	Ms. Brownley	Nay
Mr. Westerman		Ms. Wilson of FL	
Mr. Mast		Mr. Payne	Nay
<i>Mrs. González-Colón</i>	Yea	Mr. DeSaulnier	Nay
Mr. Stauber	Yea	Mr. Carbajal	Nay
Mr. Burchett		Mr. Stanton	Nay
Mr. Johnson of SD	Yea	Mr. Allred	Nay
Mr. Van Drew	Yea	Ms. Davids of KS	Nay
Mr. Nehls	Yea	Mr. García of IL	
Mr. Gooden of TX	Yea	Mr. Pappas	Nay
Mr. Mann	Yea	Mr. Moulton	
Mr. Owens	Yea	Mr. Auchincloss	
Mr. Yakym	Yea	Ms. Strickland	Nay
Mrs. Chavez-DeRemer		Mr. Carter of LA	
Mr. Edwards	Yea	Mr. Ryan	Nay
Mr. Kean of NJ	Yea	Mrs. Peltola	Nay
Mr. D’Esposito		Mr. Menendez	Nay
Mr. Burlison	Yea	Ms. Hoyle of OR	Nay
Mr. James	Yea	Mrs. Sykes	Nay
Mr. Van Orden	Yea	Ms. Scholten	Nay



Mr. Williams of NY	Yea	Mrs. Foushee	Nay
Mr. Molinaro	Yea		
Mr. Collins	Yea		
Mr. Ezell	Yea		
Mr. Duarte	Yea		
Mr. Bean of FL	Yea		

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

### COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide for

Congressional disapproval of “Revised Definition of the ‘Waters of the United States’” Rule published by EPA and the Corps.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.J. Res. 27 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

#### FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

#### PREEMPTION CLARIFICATION

Section 423 of the *Congressional Budget Act of 1974* requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.J. Res 27 does not preempt any state, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Public Law 104-1).

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section. 1.*

This section provides that Congress disapproves of “Revised Definition of the ‘Waters of the United States’” rule published by EPA and the Corps, and that the rule shall have no force or effect.

**CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

As reported by the Committee, H.J. Res 27 makes no changes in existing law.

## DISSENTING VIEWS

Clean water is a basic need—essential for the health and safety of our communities, our families, and our overall environment. Clean water is also vital to the success of the nation’s economy and to the businesses and industries that rely on safe, sustainable, and reliable sources of clean water. Simply put, clean water is critical to our very survival—for without water, we simply could not live.

House Democrats stand for clean water.

House Democrats led the charge in the 117th Congress for enactment of *the Bipartisan Infrastructure Law* (BIL), which provided \$13 billion in clean water infrastructure investments.<sup>1</sup> This once-in-a-generation infusion of federal funding will help address the wastewater infrastructure needs of local communities regardless of size or geographic location. With the additional \$2.2 billion in local BIL investments announced in February of 2023 through the Clean Water State Revolving Fund, we are just starting to realize the human health, economic, and environmental benefits of this transformative law.

House Democrats also stand for comprehensive rules that protect our water while providing certainty and predictability to states, businesses, local governments, farmers, hunters and fishers, and American citizens who depend on clean water for their lives and livelihoods. Critical to that effort, House Democrats recognize that we need to do everything we can to ensure we have safe, sufficient and sustainable supplies of water to meet our economic and agricultural needs, our quality-of-life needs, and our day-to-day survival.

This *Congressional Review Act* (CRA) resolution, H. J. Res. 27, is the latest attack on clean water in communities all around the country. It will create ambiguity and confusion over protecting the rivers, streams, and other waterbodies that provide drinking water to over 117 million Americans at a time when many states are facing historic droughts.<sup>2</sup> It will hurt efforts to restore protections for rivers, streams, and wetlands gutted by the previous administration.<sup>3</sup> It recklessly ties the hands of federal agencies seeking to provide predictability for farmers and developers while protecting our nation’s water quality and supply. It frustrates state and local efforts to protect locally important waterbodies and create greater uncertainty and anxiety over future sustainable drinking and agricultural water supplies.

In our view, protection of the nation’s water quality and regulatory certainty can go hand in hand, as demonstrated by the current administration’s efforts to restore legally justified and scientifically based regulations defining those waters protected by the *Clean Water Act*.<sup>4</sup>

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<sup>1</sup> Pub. L. 117-58.

<sup>2</sup> See EPA, “Percentage of Surface Drinking Water from Intermittent, Ephemeral, and Headwater Streams,” found at <https://www.epa.gov/cwa-404/geographic-information-systems-analysis-surface-drinking-water-providedintermittent>.

<sup>3</sup> The previous administration’s *Navigable Waters Protection Rule* (85 Fed. Reg. 22250, Apr. 21, 2020) removed historic *Clean Water Act* protections on over 50 percent of the nation’s remaining wetlands and up to 70 percent of its rivers, lakes, and streams. A federal district court overturned the *Rule* in 2021 (*Pascua Yaqui Tribe, et. al. v. EPA*, No. CV-20-00266 (D. Ariz. Aug. 30, 2021)).

<sup>4</sup> USACE and EPA, Revised Definition of “Waters of the United States” (88 Fed. Reg. 3004, Jan. 18, 2023).

This *CRA* resolution is the wrong tool to make changes to *Clean Water Act* regulations. Instead of improving the regulations or adding greater certainty, enacting this *CRA* resolution will create chaos and void important clarifications and exclusions that farmers, ranchers, and landowners rely on.

This resolution will lessen, not increase, certainty, and will harm national efforts to protect the health of our waterbodies and the communities, businesses, and economy that depend on clean water.

In our view, this *CRA* resolution is a big mistake and should be rejected.

A handwritten signature in black ink that reads "Rick Larsen". The signature is written in a cursive, flowing style.

Rick Larsen, Ranking Member

A handwritten signature in blue ink that reads "Grace F. Napolitano". The signature is written in a cursive, flowing style.

Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment

Eleanor Holmes Norton

Steve Cohen

Henry C. "Hank" Johnson, Jr.

André Carson

Dina Titus

Jared Huffman

Julia Brownley

Frederica S. Wilson

Donald M. Payne, Jr.

Mark DeSaulnier



Jake Auchincloss



Troy A. Carter, Sr.



Rob Menendez



Emilia Sykes



Valerie Foushee

## List of Signatures

- Rick Larsen, Ranking Member
- Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment
- Eleanor Holmes Norton
- Steve Cohen
- Henry C. “Hank” Johnson, Jr.
- André Carson
- Dina Titus
- Jared Huffman
- Julia Brownley
- Frederica S. Wilson
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- Mark DeSaulnier
- Jake Auchincloss
- Troy A. Carter, Sr.
- Rob Menendez
- Emilia Sykes
- Valerie Foushee