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[S.J. Res. 22, A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Corps of Engineers and the Environmental Protection Agency relating to the definition of "waters of the United States" under the Federal Water Pollution Control Act](#)

### FLOOR SITUATION

On Wednesday, January 13, 2016, the House will consider [S.J. Res. 22](#), a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Corps of Engineers and the Environmental Protection Agency relating to the definition of "waters of the United States" under the Federal Water Pollution Control Act, under a [closed rule](#). S. J. Res. 22 was introduced on September 17, 2015 by Sen. Joni Ernst (R-IA) and passed the Senate by a vote of [53 to 44](#) on November 4, 2015.

### SUMMARY

S.J. Res. 22 vacates the rule submitted by the U.S. Army Corps of Engineers (the Corps) and the Environmental Protection Agency (EPA) relating to the definition of "waters of the United States" under the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (CWA)) that was published in the Federal Register on June 29, 2015. The final [rule](#) greatly expands the scope of waters protected under the CWA.

### BACKGROUND

On June 29, 2015, the Corps and the EPA published a final rule that expand the scope of waters protected under the CWA. The CWA protects "navigable waters," a term defined in the Act to mean "the waters of the United States, including the territorial seas."<sup>1</sup> Waters that are under CWA jurisdiction are subject to the Act's multiple regulatory requirements including: restrictions on the discharge of pollutants, permitting requirements, water quality standards, and oil spill prevention and control measures.

<sup>1</sup> See CRS Report, ["EPA and the Army Corps' Rule to Define 'Waters of the United States,'"](#) January 4, 2016.

The rule focuses on what is and is not a covered water – redefining the regulatory status of marginal waters such as streams that flow part of the year, only after rainfall events, and isolated water features. Under the final rule, all tributaries to the nation's traditional navigable waters would be under the regulatory jurisdiction of the CWA and the EPA irrespective of how small or far upstream from the traditional navigable water. The rule lists narrow exemptions for waters that may not be covered, such as prior converted cropland and certain ditches. It maintains the existing statutory exclusions, such as CWA permit exemptions for normal farming and ranching activities.<sup>2</sup>

According to the Transportation and Infrastructure Committee, during development of the Rule, Congress heard repeatedly from States, counties, cities, and other local government officials that EPA had not properly consulted with them. Additionally, stakeholder groups such as farmers, ranchers, small businesses, energy, and construction all voiced concerns with both the process that the Corps and EPA used to develop the rule as well as substantive problems with the new definition of waters of the United States. At multiple hearings on the rule, the Corps and EPA admitted that their proposed rule created additional confusion and uncertainty. They agreed to fix these problems in the final rule, but the final rule continues to have many of the same problems as the proposed rule had, and includes a number of vague new terms that give the agencies broad discretion to place wet land features under federal control.

Since its publication, lawsuits against the rule have been filed by several industry groups, more than 30 states, and several environmental groups. The rule became effective August 28, 2015; however, on October 9, 2015, a federal appeals court ordered a nationwide stay of the rule, meaning that the rule is not in effect until judicial proceedings regarding where the challenges to the rule should be heard is resolved.<sup>3</sup>

The Congressional Review Act (CRA) “is an oversight tool that Congress may use to overturn a rule issued by a federal agency.”<sup>4</sup> Under the CRA, before a rule can take effect, an agency must submit a report to each house of Congress and the Comptroller General containing a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; and the proposed effective date of the rule. Congress then has specified time periods in which to take action on a joint resolution of disapproval. If both bodies pass the resolution, it is sent to the President for signature or veto. Motions to proceed in the Senate on such resolutions only require 51 votes.<sup>5</sup> S.J. Res. 22 uses the authority under the CRA to nullify the finalized rule relating to the definition of “waters of the United States” under the CWA.

According to the bill sponsor, “the expanded definition of WOTUS breeds confusion, uncertainty and more red tape. I am pleased that our proposal ensures every option is on the table to push back against the EPA’s blatant power grab. [This bill gives] Senate Democrats and President Obama [the] opportunity to stand on the side of our farmers, ranchers, manufacturers and small businesses who say this ill-conceived and overreaching rule must be stopped or they can continue to stand with an unchecked federal agency.”<sup>6</sup>

## COST

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<sup>2</sup> See CRS Report, [“EPA and the Army Corps' Rule to Define ‘Waters of the United States.’”](#) January 4, 2016.

<sup>3</sup> See CRS Report, [“Overview of EPA and the Army Corps' Rule to Define “Waters of the United States.”](#) November 5, 2015.

<sup>4</sup> See CRS Report—[“The Congressional Review Act: Frequently Asked Questions,”](#) April 17, 2015 at 1.

<sup>5</sup> Id. at Summary.

<sup>6</sup> See Sen. Joni Ernst Press Release, [“Ernst Leads Effort Against Harmful WOTUS Rule with Resolution on Senate Floor.”](#) November 3, 2015.

A Congressional Budget Office (CBO) cost estimate is currently not available.

### **STAFF CONTACT**

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 5-0190.