114th Congress 1st Session

H. R. ______

To preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Gosar introduced the following bill; which was referred to the Committee on __________________

A BILL

To preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Waters of the United States Regulatory Overreach Protection Act of 2015”.

SEC. 2. RULES AND GUIDANCE.

(a) Identification of Waters Protected by the Clean Water Act.—
(1) IN GENERAL.—The Secretary and the Administrator are prohibited from—

(A) developing, finalizing, adopting, implementing, applying, administering, or enforcing—

(i) the proposed rule described in the notice of proposed rule published in the Federal Register entitled “Definition of ‘Waters of the United States’ Under the Clean Water Act” (79 Fed. Reg. 22188 (April 21, 2014)); or

(ii) the proposed guidance submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget for regulatory review under Executive Order 12866, entitled “Guidance on Identifying Waters Protected By the Clean Water Act” and dated February 17, 2012 (referred to as “Clean Water Protection Guidance”, Regulatory Identifier Number (RIN) 2040–ZA11, received February 21, 2012); or

(B) using the proposed rule or proposed guidance described in subparagraph (A), any successor document, or any substantially simi-
lar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(2) USE OF RULES AND GUIDANCE.—The use of the proposed rule or proposed guidance described in paragraph (1)(A), any successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the Federal Water Pollution Control Act shall be grounds for vacating the final rule, decision, or enforcement action.

(b) EXEMPTION FOR CERTAIN AGRICULTURAL CONSERVATION PRACTICES.—

(1) IN GENERAL.—The Secretary and the Administrator are prohibited from developing, finalizing, adopting, implementing, applying, administering, or enforcing the interpretive rule described in the notice of availability published in the Federal Register entitled “Notice of Availability Regarding the Exemption from Permitting Under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices” (79 Fed. Reg. 22276 (April 21, 2014)).
(2) WITHDRAWAL.—The Secretary and the Administrator shall withdraw the interpretive rule described in paragraph (1), and such interpretive rule shall have no force or effect.

(3) APPLICATION.—Section 404(f)(1)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1344(f)(1)(A)) shall be applied without regard to the interpretive rule described in paragraph (1).

SEC. 3. FEDERALISM CONSULTATION.

(a) IN GENERAL.—The Secretary and the Administrator shall jointly consult with relevant State and local officials to develop recommendations for a regulatory proposal that would, consistent with applicable rulings of the United States Supreme Court, identify—

(1) the scope of waters covered under the Federal Water Pollution Control Act; and
(2) the scope of waters not covered under such Act.

(b) CONSULTATION REQUIREMENTS.—In developing the recommendations under subsection (a), the Secretary and the Administrator shall—

(1) provide relevant State and local officials with notice and an opportunity to participate in the consultation process under subsection (a);
(2) seek to consult State and local officials that represent a broad cross-section of regional, economic, and geographic perspectives in the United States;

(3) emphasize the importance of collaboration with and among the relevant State and local officials;

(4) allow for meaningful and timely input by State and local officials;

(5) be respectful of maintaining the Federal-State partnership in implementing the Federal Water Pollution Control Act;

(6) take into consideration the input of State and local officials regarding matters involving differences in State and local geography, hydrology, climate, legal frameworks, economies, priorities, and needs;

(7) promote transparency in the consultation process under subsection (a); and

(8) explore with State and local officials whether Federal objectives under the Federal Water Pollution Control Act can be attained by means other than through a new regulatory proposal.

(c) Reports.—
(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary and the Administrator shall publish in the Federal Register a draft report describing the recommendations developed under subsection (a).

(2) CONSENSUS REQUIREMENT.—The Secretary and the Administrator may include a recommendation in the draft report only if consensus has been reached with regard to the recommendation among the Secretary, the Administrator, and the State and local officials consulted under subsection (a).

(3) FAILURE TO REACH CONSENSUS.—If the Secretary, the Administrator, and the State and local officials consulted under subsection (a) fail to reach consensus on a regulatory proposal, the draft report shall identify that consensus was not reached and describe—

(A) the areas and issues where consensus was reached;

(B) the areas and issues of continuing disagreement that resulted in the failure to reach consensus; and

(C) the reasons for the continuing disagreements.
(4) Duration of Review.—The Secretary and the Administrator shall provide not fewer than 180 days for the public review and comment of the draft report.

(5) Final Report.—The Secretary and the Administrator shall, in consultation with the relevant State and local officials, address any comments received under paragraph (4) and prepare a final report describing the final results of the consultation process under subsection (a).

(d) Submission of Report to Congress.—Not later than 24 months after the date of enactment of this Act, the Secretary and the Administrator shall jointly submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate and make publicly available the final report prepared under subsection (c)(5).

SEC. 4. Definitions.

In this Act, the following definitions apply:

(1) Secretary.—The term “Secretary” means the Secretary of the Army.

(2) Administrator.—The term “Administrator” means the Administrator of the Environmental Protection Agency.
(3) **State and local officials.**—The term “State and local officials” means elected or professional State and local government officials or their representative regional or national organizations.