



May 2015

U.S. House Passes Bill to Revise Corps and EPA Definition of “Waters of the United States”

On May 12, 2015, the U.S. House of Representatives passed [H.R. 1732](#), which requires the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to withdraw the [proposed rule](#) published in the Federal Register on April 21, 2014. The April 21, 2014 proposed rule defines the scope of waters protected by the Clean Water Act (CWA) as “[t]raditional navigable waters; interstate waters, including interstate wetlands; the territorial seas; impoundments of traditional navigable waters, interstate waters, including interstate wetlands, the territorial seas, and tributaries, as defined, of such waters; tributaries, as defined, of traditional navigable waters, interstate waters, or the territorial seas; and adjacent waters, including adjacent wetlands.” Under the CWA, the EPA and the Corps, along with the states, serve as co-regulators of activities affecting the nation’s waters.

The bill requires the EPA and the Corps to develop a new proposed rule, consistent with U.S. Supreme Court precedents, that takes into account public comments submitted for the April 21, 2014, proposed rule, as well as the regulatory analysis for that proposed rule, and a related EPA report issued in January 2015. This legislation also directs the EPA and the Corps to consult with state and local officials, stakeholders, and other interested parties to seek consensus on which waters and wetlands the CWA covers. As part of the consultation process, the EPA and the Corps must recognize rights of private property owners and federal deference to state primacy in developing water law. H.R. 1732 also requires the EPA and the Corps to prepare a detailed report for Congress that responds to public comments filed on the April 2014 proposed rule and associated documents and that describes how the new proposed rule addresses such comments. The report must also explain how the new proposed rule addresses the advice and recommendations obtained from other parties and include a comprehensive regulatory and economic analysis of the new proposed rule.

If you have any questions or would like to discuss EPA or Corps permitting issues, please contact one of the following lawyers:

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