

SCR15, As Adopted by Senate, September 23, 2014

Senator Casperson offered the following concurrent resolution:

Senate Concurrent Resolution No. 15.

A concurrent resolution to call on the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to withdraw their proposed rule expanding the definition of "waters of the United States" under the Clean Water Act.

Whereas, The definition of "waters of the United States" under the Clean Water Act establishes the fundamental scope of federal authority to regulate activities in U.S. waters and wetlands. The U.S. Supreme Court has found on multiple occasions that the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) have exceeded their authority in defining these waters beyond the intended scope of federal regulation; and

Whereas, In response to the Supreme Court decisions, the EPA and Army Corps have recently proposed an amended definition to clarify federal jurisdiction. Unfortunately, the EPA and Army Corps have once again missed the mark and continue to ignore the limits on their authority, usurping powers reserved to the states under the Tenth Amendment to the U.S. Constitution; and

Whereas, The proposed rule would create greater uncertainty for businesses and homeowners rather than providing clarity. The proposed rule will add new definitions for key technical terms that introduce ambiguities and vagaries into federal regulation. Confusion will inevitably lead to further litigation, tying up our courts, delaying economic development, and wasting taxpayer money; and

Whereas, High-quality scientific input must be the basis for environmental regulations, and the end result of scientific review should never be presumed. The EPA and Army Corps have failed to allow scientific review to be completed before moving forward with the proposed rule. In the rush to promulgate rules, the primary scientific report remains in draft form and has only recently been submitted to the EPA's Science Advisory Board for peer review; and

Whereas, The proposed rule would actually expand federal jurisdiction to more waters and wetlands rather than limiting or simply clarifying jurisdiction as outlined by the U.S. Supreme Court. The EPA's economic analysis estimates that the proposed rule would increase jurisdiction by 3 percent, potentially leading to 1,400 more permits required and nearly \$220 million in additional costs to farmers, businesses, and homeowners. Furthermore, the economic analysis' assumptions and methodology significantly underestimate the potential jurisdictional expansion; and

Whereas, Any increases in federal jurisdiction will infringe upon state authority to regulate state waters. The state waters and wetlands affected by the proposed rule have minimal, if any, connection to federally navigable waters. Expanded federal jurisdiction limits the flexibility of Michigan and other states to create a regulatory environment that meets the needs and addresses the priorities of state residents. Michigan has been a national leader in creating proactive, voluntary programs like the Michigan Agriculture Environmental Assurance Program (MAEAP) that provide equal, if not greater, protection of the environment in a collaborative, nonadversarial manner. Michigan must have the freedom to protect state waters and to pursue innovative approaches without being handcuffed by rigid federal requirements; and

Whereas, This flawed proposal demonstrates again that core decisions, such as the scope of federal authority, must be left to our elected Representatives and Senators in the U.S. Congress, not to relatively unaccountable federal agencies; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we call on the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to withdraw their proposed rule expanding the definition of "waters of the United States" under the Clean Water Act; and be it further

Resolved, That copies of this resolution be transmitted to the Administrator of the U.S. Environmental Protection Agency, the Commanding General of the U.S. Army Corps of Engineers, and the members of the Michigan congressional delegation.