

House Concurrent Resolution No. 21

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

0847H.011

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 would add new definitions for key technical terms that introduce ambiguities and vagaries into federal regulation. Confusion would 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 incomplete; 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

32 **WHEREAS**, any increases in federal jurisdiction will infringe upon state authority to
33 regulate state waters. The state waters and wetlands affected by the proposed rule have minimal,
34 if any, connection to federally navigable waters. Expanded federal jurisdiction limits the
35 flexibility of Missouri and other states to create a regulatory environment that meets the needs
36 and addresses the priorities of state residents. In 2013, Missouri passed the Multipurpose Water
37 Resource Act, which contained several new regulations aimed at protecting water resources and
38 improving tap water quality. The state's Clean Water Commission, which works to enforce
39 water pollution laws, also approved new rules that significantly increase protection for rivers,
40 streams, and lakes, making them safer for swimming, fishing, and aquatic life; and

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42 **WHEREAS**, this flawed proposal demonstrates again that core decisions, such as the
43 scope of federal authority, must be left to our elected Representatives and Senators in the U.S.
44 Congress, not to relatively unaccountable federal agencies:

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46 **NOW, THEREFORE, BE IT RESOLVED** that the members of the House of
47 Representatives of the Ninety-eighth General Assembly, First Regular Session, the Senate
48 concurring therein, hereby urge the U.S. Environmental Protection Agency and the U.S. Army
49 Corps of Engineers to withdraw their proposed rule expanding the definition of "waters of the
50 United States" under the Clean Water Act; and

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52 **BE IT FURTHER RESOLVED** that the Chief Clerk of the Missouri House of
53 Representatives be instructed to prepare a properly inscribed copy of this resolution for the
54 Administrator of the U.S. Environmental Protection Agency, the Commanding General of the
55 U.S. Army Corps of Engineers, and the members of the Missouri congressional delegation.

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