

**AMENDMENT TO H.R. 2, AS REPORTED
OFFERED BY MS. HERRERA BEUTLER OF
WASHINGTON**

At the end of subtitle F of title XI, add the following:

1 **SEC. ____ . WATERS OF THE UNITED STATES AND NAVI-**
2 **GABLE WATERS.**

3 (a) WOTUS REPEAL.—The final rule issued by the
4 Administrator of the Environmental Protection Agency
5 and the Secretary of the Army entitled “Clean Water
6 Rule: Definition of ‘Waters of the United States’” (80
7 Fed. Reg. 37053 (June 29, 2015)) is repealed.

8 (b) NAVIGABLE WATERS DEFINITION.—Section 502
9 of the Federal Water Pollution Control Act (33 U.S.C.
10 1362) is amended by striking paragraph (7) and inserting
11 the following:

12 “(7) NAVIGABLE WATERS.—

13 “(A) IN GENERAL.—The term ‘navigable
14 waters’ means—

15 “(i) the territorial seas;

16 “(ii) interstate waters which are pres-
17 ently used, or are susceptible to use in
18 their natural and ordinary condition, as a

1 means to transport interstate or foreign
2 commerce;

3 “(iii) relatively permanent, standing,
4 or continuously flowing bodies of water
5 that form geographical features commonly
6 known as streams, rivers, or lakes, that
7 flow directly into waters described in
8 clause (ii); or

9 “(iv) wetlands that have a continuous
10 surface water connection to waters de-
11 scribed in clause (ii) or (iii).

12 “(B) EXCLUSIONS.—The term ‘navigable
13 waters’ shall be limited to the waters described
14 in subparagraph (A) and does not include—

15 “(i) intermittent or ephemeral waters;

16 “(ii) subsurface waters, including
17 ground water or underground streams;

18 “(iii) any water that by itself does not
19 meet the definition in subparagraph (A);

20 “(iv) an intrastate water, unless meet-
21 ing the requirements of subparagraph (A);

22 “(v) a man-made channel or ditch, in-
23 cluding irrigation, distribution, and drain-
24 age systems;

1 “(vi) a water that does not meet the
2 definition in subparagraph (A), including a
3 water that in the past could have been a
4 water that meets the definition in subpara-
5 graph (A) or a water that in the future
6 could be a water that meets the definition
7 in subparagraph (A);

8 “(vii) a water that requires the use of
9 means beyond visual inspection by the
10 naked eye, including aerial photographs,
11 satellite imaging, or hydrological testing, to
12 determine if it meets the definition in sub-
13 paragraph (A);

14 “(viii) prior converted cropland; or

15 “(ix) waste treatment systems, includ-
16 ing systems created in or with impounded
17 waters described in subparagraph (A) and
18 all features and components of any system
19 designed to actively or passively retain or
20 reduce or remove pollutants from waste-
21 water or stormwater, including those that
22 convey the pollutants into and out of the
23 system.

24 “(C) CONTINUOUS SURFACE WATER CON-
25 NECTION.—For purposes of this paragraph, a

1 continuous surface water connection is a con-
2 nection with respect to which an ordinary per-
3 son would not be able to visually determine by
4 the naked eye, by looking at the water surface,
5 where one body of water ends and the other be-
6 gins.

7 “(D) RELATIVELY PERMANENT, STAND-
8 ING, OR CONTINUOUSLY FLOWING.—For pur-
9 poses of this paragraph, a water is relatively
10 permanent, standing, or continuously flowing if
11 it has continuous flow for at least 290 days of
12 the year, except in cases of extreme events,
13 such as a drought.

14 “(E) WETLANDS.—For purposes of this
15 paragraph, wetlands—

16 “(i) are areas that are inundated or
17 saturated by surface or ground water at a
18 frequency and duration sufficient to sup-
19 port, and that under normal circumstances
20 do support, a prevalence of vegetation typi-
21 cally adapted for life in saturated soil con-
22 ditions; and

23 “(ii) include swamps, marshes, bogs,
24 and similar areas.

1 “(F) PRIOR CONVERTED CROPLAND.—For
2 purposes of this paragraph, the term ‘prior con-
3 verted cropland’—

4 “(i) means areas that, prior to De-
5 cember 23, 1985, were drained or other-
6 wise manipulated for the purpose, or hav-
7 ing the effect, of making an agricultural
8 product possible, and that are inundated
9 for no more than 14 consecutive days dur-
10 ing the growing season; and

11 “(ii) includes agricultural drainage
12 features, including ditches and convey-
13 ances, that are the means by which the
14 original conversion from wetlands to crop-
15 land took place and that are integral to the
16 continued production of agricultural prod-
17 ucts by providing drainage or irrigation to
18 maintain productive growing conditions.

19 “(G) JURISDICTIONAL DETERMINATION.—
20 The Secretary of the Army, at his cost, shall
21 provide a binding determination upon the re-
22 quest of a permit applicant, landowner, or other
23 affected person with an identifiable and sub-
24 stantial legal interest in a property, to deter-
25 mine whether a water is a navigable water

1 under clause (iv) of subparagraph (A). The re-
2 view process shall not exceed 60 days, begin-
3 ning on the date of receipt of a written request
4 from the affected person. If no determination
5 has been made within the 60 day review period,
6 the water shall not be considered a navigable
7 water. A determination that a water is not a
8 navigable water, or a failure to provide a deter-
9 mination, shall be binding on both the Sec-
10 retary and the Administrator for as long as the
11 person has an identifiable and substantial legal
12 interest in the property. If a determination is
13 made that a water is a navigable water, the de-
14 termination shall be binding for a period of no
15 longer than 5 years. The affected person may
16 obtain expedited judicial review not later than
17 30 days after the date on which the determina-
18 tion is made in a district court of the United
19 States, of appropriate jurisdiction and venue,
20 which is located within the State of the affected
21 person seeking the review.”.

