

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

September 6, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff,
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-up: H.R. 5032 (Rep. David Brat), To allow certain property in the town of Louisa, Virginia to be used for purposes related to compliance with water quality standards, and for other purposes.
September 7-8, 2016; 2167 Rayburn HOB

Bill Summary:

H.R. 5032 removes a federal use restriction on a parcel of land in the Town of Louisa (Town), Virginia in order to help the Town comply with federal drinking water quality standards.

Co-Sponsors:

Reps. Bob Goodlatte (R-VA) and Robert Wittman (R-VA).

Background:

The Town purchases its drinking water from the Louisa County Water Authority and redistributes that water to approximately 766 customers. Since 2009, the Town has experienced compliance issues with the Environmental Protection Agency's (EPA) disinfection by-products rule. Specifically, the Town has received eleven "Notices of Violation" for exceeding the Primary Maximum Contaminant Level for Total Trihalomethanes (TTHM) and eleven "Notices of Violation" for exceeding the Primary Maximum Contaminant Level for Haloacetic Acids (HAA5).¹ Some people who drink such contaminated water over many years could experience liver, kidney or central nervous system problems and an increased risk of cancer.² After the EPA raised its standards in 2014, the Town entered into a "Consent Order" in 2015 to take corrective actions to bring its water back into compliance.³ Failure to comply could result in civil penalties.

¹ Letter from The Virginia Department of Conservation and Recreation to Mr. Jack Howard of the National Park Service dated December 7, 2015, p. 1

² Id.

³ Id., p. 2

The Town has spent over one million dollars on engineering studies and recommendations to find a solution for reducing the concentrations of these contaminants.⁴ The Town reactivated two wells and one spring that had not been used in over 25 years in order to dilute the contaminants out of its drinking water. During that process it was discovered that the wells and the spring were contaminated and unsuitable for this purpose. The Town began searching for other sources of suitable groundwater, which was eventually found under the Louisa Community Park.⁵

In 2004, the Town received a \$75,000 Land and Water Conservation Fund (LWCF) state assistance grant to develop the Louisa Community Park.⁶ To comply with the EPA standards, the Town wishes to repurpose a two percent portion of the Community Park so that it can convert the test well into a production well and build a small building covering the well. Bringing this well online will help bring the Town's drinking water back into compliance with EPA drinking water regulations and could provide water for park restroom development.⁷

The Town is required to maintain land purchased with LWCF grant money for public recreation purposes. Specifically, the law stipulates that "No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation use."⁸ The Department of the Interior has indicated that the Town must find suitable lands to offset for the land used for the well site, or be provided with an exemption by the Department or Congress. A Louisa Town official testified at a June 23, 2016 Water, Power and Oceans Subcommittee legislative hearing that the Town does not wish to pursue an offset because one of the contiguous properties that could be acquired is located outside of the Town's limits and it would be cost prohibitive.⁹

The State of Virginia's Department of Conservation and Recreation requested an exemption in December 2015 from the National Park Service (NPS), further stating that "to require replacement property for such an insignificant impact that does not cause or contribute to any adverse consequence to the human environment or displace or disrupt any recreation would create unnecessary delays and burden to the Town of Louisa in its quest to provide safe and healthy drinking water for its citizens".¹⁰

⁴ Id.

⁵ Id.

⁶ LWCF#51-00389

⁷ Letter from The Virginia Department of Conservation and Recreation to Mr. Jack Howard of the National Park Service dated December 7, 2015, p. 3

⁸ Section 200305(f)(3) of title 54

⁹ Testimony of Mr. Tom Filer, Town Manager, Town of Louisa, before the House Water, Power and Oceans Subcommittee, June 23, 2016, p.2

¹⁰ Letter from The Virginia Department of Conservation and Recreation to Mr. Jack Howard of the National Park Service dated December 7, 2015, p. 3

Although the Town contends that an exemption can be granted by the NPS, the federal agency has indicated that it does not have the legal authority to do so.¹¹ To that end, Congressman Dave Brat (VA-7) introduced H.R. 5032. Similar bills allowing for re-purposes have passed the House of Representatives in recent Congresses. In the 113th Congress, the House passed H.R. 4527 (Rep. Michaud, D-ME), which allowed the City of Tremont, Maine to re-purpose former school land for other community purposes.¹² In addition, the House passed H.R. 5162 (Rep. Goodlatte, R-VA), which allowed a three acre parcel of land to be re-purposed so that it can be used for the construction of a childcare center.¹³ The Town and community leaders, including the head of the local National Association for the Advancement of Colored People chapter, support H.R. 5032.

Major Provisions of H.R. 5032:

Section 1 stipulates that the LWCF land use restriction shall not apply to any portion of the land known as the “Community Park” in the Town that is used for activities designed to improve compliance with water quality standards.

Cost:

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

Administration Position:

The Administration indicated that it does not support the bill because “Granting an exception for one town through legislation would be unfair to all the communities that have fulfilled their contractual obligation under the LWCF law.”¹⁴

¹¹ Email from Mr. Jack Howard, National Park Service to Ms. Synthia Waymack, Virginia Department of Conservation and Recreation, March 24, 2016

¹² H.R. 4527, 113th Congress: <https://www.congress.gov/bill/113th-congress/house-bill/4527>

¹³ H.R. 5162, 113th Congress: <https://www.congress.gov/bill/113th-congress/house-bill/5162>

¹⁴ National Park Service Submitted Statement for the Record for the House Water, Power and Oceans Subcommittee hearing, June 23, 2016, p. 2