

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—NOTHING

At the end of section 8, insert the following:

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

In section 9, after paragraph (4) insert the following:

(5) the term "specified regulatory law" means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XIII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the "Reclamation Acts" (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

Redesignate succeeding paragraphs accordingly.

Amendment in the nature of a substitute submitted by Mr. CANADY:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(A) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this

Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term "property" means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(6) the term "law of the State" includes the law of a political subdivision of a State.

It was decided in the } Yeas 301
affirmative } Nays 128

¶36.9		[Roll No. 190]
		AYES—301
Allard	DeLay	Hutchinson
Andrews	Deutsch	Hyde
Archer	Diaz-Balart	Inglis
Armye	Dickey	Istook
Bachus	Dicks	Johnson (CT)
Baesler	Dooley	Johnson (SD)
Baker (CA)	Doolittle	Johnson, Sam
Baker (LA)	Dornan	Jones
Ballenger	Doyle	Kanjorski
Barcia	Dreier	Kasich
Barr	Duncan	Kelly
Barrett (NE)	Dunn	Kennelly
Bartlett	Durbin	Kim
Barton	Edwards	King
Bass	Ehrlich	Kingston
Bateman	Emerson	Klink
Bereuter	English	Klug
Bevill	Ensign	Knollenberg
Bilbray	Everett	Kolbe
Bilirakis	Ewing	LaFalce
Bishop	Fawell	LaHood
Billey	Fazio	Largent
Blute	Fields (TX)	Latham
Boehner	Flanagan	LaTourette
Bonilla	Foley	Laughlin
Bono	Forbes	Lazio
Boucher	Fowler	Leach
Brewster	Fox	Lewis (CA)
Browder	Franks (CT)	Lewis (KY)
Brown (OH)	Frisa	Lincoln
Brownback	Frost	Linder
Bryant (TN)	Funderburk	Livingston
Bunn	Gallegly	LoBiondo
Bunning	Ganske	Longley
Burr	Gephardt	Lucas
Burton	Geran	Maloney
Buyer	Gillmor	Manton
Callahan	Gilman	Manzullo
Calvert	Goodlatte	Martinez
Camp	Goodling	Mascara
Canady	Gordon	Matsui
Castle	Goss	McCollum
Chabot	Graham	McCrery
Chambliss	Green	McDade
Chapman	Greenwood	McHale
Chenoweth	Gunderson	McHugh
Christensen	Gutknecht	McInnis
Chrysler	Hall (TX)	McIntosh
Clement	Hancock	McKeon
Clinger	Hansen	McNulty
Clyburn	Harman	Metcalf
Coble	Hastert	Mica
Coburn	Hastings (WA)	Miller (FL)
Coleman	Hayes	Minge
Collins (GA)	Hayworth	Mollinari
Combest	Hefley	Mollohan
Condit	Hefner	Montgomery
Cooley	Heineman	Moorhead
Cox	Herger	Moran
Cramer	Hilleary	Murtha
Crane	Hilliard	Myers
Crapo	Hobson	Myrick
Creameans	Hoekstra	Neal
Cubin	Holden	Nethercutt
Cunningham	Horn	Neumann
Danner	Hostettler	Ney
Davis	Houghton	Norwood
de la Garza	Hoyer	Nussle
Deal	Hunter	Obey

Ortiz Sanford Taylor (NC)
Orton Sawyer Tejada
Oxley Schaefer Thomas
Packard Schiff Thornberry
Parker Schumer Thornton
Paxon Scott Thurman
Payne (VA) Seastrand Tiahr
Peterson (FL) Sensenbrenner Torkildsen
Peterson (MN) Shadegg Traficant
Petri Shaw Upton
Pickett Shays Volkmer
Pombo Shuster Vucanovich
Pomeroy Sisisky Waldholtz
Porter Skeen Walker
Portman Skelton Walsh
Poshard Smith (MI) Wamp
Pryce Smith (TX) Watts (OK)
Quillen Smith (WA) Weldon (FL)
Quinn Solomon Weller
Radanovich Souder White
Ramstad Spence Whitfield
Regula Spratt Wicker
Riggs Stearns Williams
Roberts Stenholm Wilson
Roemer Stockman Wise
Rogers Stump Wolf
Rohrabacher Stupak Wynn
Ros-Lehtinen Talent Young (AK)
Rose Tanner Young (FL)
Roth Tate Zeliff
Royce Tuzin
Salmon Taylor (MS)

NOES—128

Abercrombie Gerdenson Pallone
Ackerman Gibbons Pastor
Baldacci Gilchrist Payne (NJ)
Barrett (WI) Gutierrez Pelosi
Becerra Hall (OH) Rahall
Beilenson Hamilton Rangel
Bentsen Hastings (FL) Reed
Berman Hinchey Reynolds
Boehlert Jackson-Lee Richardson
Bonior Jacobs Rivers
Borski Jefferson Roukema
Brown (CA) Johnson, E. B. Roybal-Allard
Brown (FL) Johnston Rush
Bryant (TX) Kaptur Sabo
Cardin Kennedy (MA) Sanders
Clay Kennedy (RI) Saxton
Clayton Kildee Scarborough
Collins (IL) Kleczka Schroeder
Collins (MI) Lantos Serrano
Conyers Levin Skaggs
Costello Lewis (GA) Slaughter
Coyne Lipinski Smith (NJ)
DeFazio Lofgren Stark
DeLauro Lowey Stokes
Dellums Luther Studds
Dingell Markey Thompson
Dixon Martini Torres
Doggett McCarthy Torricelli
Ehlers McDermott Towns
Engel McKinney Tucker
Eshoo Meehan Velazquez
Evans Meek Vento
Farr Menendez Visclosky
Fattah Meyers Ward
Fields (LA) Mfume Waters
Filner Miller (CA) Watt (NC)
Flake Mineta Waxman
Foglietta Mink Weldon (PA)
Ford Morella Woolsey
Frank (MA) Nadler Wyden
Franks (NJ) Oberstar Yates
Frelinghuysen Olver Zimmer
Furse Owens

NOT VOTING—5

Gekas Hoke Moakley
Gonzalez Lightfoot

So the amendment to the amendment in the nature of a substitute was agreed to.

After some further time,

36.10 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. PORTER to the foregoing amendment in the nature of a substitute submitted by Mr. CANADY:

Page 3, after line 11, insert the following:

SEC. 6 EFFECT OF PRIVATE PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

(b) CONTENT.—For the purposes of this section, a private property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;
(2) an assessment of the likelihood that a taking of private property will occur under such action; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of a taking of private property.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

(d) EFFECT ON OTHER RIGHTS.—The fact that compensation may not be made under this Act by reason of this section does not affect the right to compensation for takings of private property for public use under the fifth article of amendment to the Constitution.

(e) DEFINITION.—As used in this section, the term "taking of private property" means an action whereby property is taken in such a way as to require compensation under the fifth article of amendment to the Constitution.

Redesignated succeeding sections accordingly.

It was decided in the { Yeas 186
negative } Nays 241

36.11 [Roll No. 191]
AYES—186

Abercrombie Flake Markey
Ackerman Foglietta Martinez
Andrews Ford Martini
Baldacci Fox Mascara
Barrett (WI) Frank (MA) Matsui
Becerra Franks (NJ) McCarthy
Beilenson Frelinghuysen McDade
Bentsen Frost McDermott
Bereuter Furse McHale
Berman Gerdenson McKinney
Bishop Gephardt Meehan
Blute Gibbons Meek
Boehlert Gilchrist Menendez
Bonior Gilman Meyers
Borski Greenwood Mfume
Boucher Gutierrez Miller (CA)
Brown (FL) Hall (OH) Mineta
Brown (OH) Hamilton Minge
Cardin Hastings (FL) Mink
Castle Hinchey Mollohan
Clay Hoyer Moran
Clayton Jackson-Lee Morella
Clement Jacobs Murtha
Clyburn Jefferson Nadler
Coleman Johnson (CT) Neal
Collins (IL) Johnson (SD) Oberstar
Collins (MI) Johnson, E. B. Obey
Conyers Johnston Olver
Costello Kanjorski Owens
Coyne Kaptur Pallone
DeFazio Kelly Payne (NJ)
DeLauro Kennedy (MA) Pelosi
Dellums Kennedy (RI) Peterson (FL)
Deutsch Kennelly Pomeroy
Dicks Kildee Porter
Dingell Klink Quinn
Dixon Klug Rahall
Doggett LaFalce Ramstad
Doyle Lantos Rangel
Durbin LaTourrette Reed
Ehlers Lazio Reynolds
Engel Levin Richardson
Eshoo Lewis (GA) Rivers
Evans Lipinski Roemer
Farr Lofgren Roukema
Fattah Lowey Roybal-Allard
Fazio Luther Sabo
Fields (LA) Maloney Rush
Filner Manton Sabo

Sanders Stark Walsh
Sawyer Stokes Ward
Saxton Studds Waters
Schiff Stupak Watt (NC)
Schroeder Thompson Waxman
Schumer Thornton Weldon (PA)
Scott Torkildsen Williams
Serrano Torres Wise
Shays Towns Woolsey
Skaggs Tucker Wyden
Slaughter Velazquez Yates
Smith (NJ) Vento Zimmer
Spratt Visclosky

NOES—241

Allard Frisa Ney
Archer Funderburk Norwood
Army Gallegly Nussle
Bachus Ganske Ortiz
Baker (CA) Gekas Orton
Baker (LA) Geren Oxley
Ballenger Gillmor Packard
Barcia Goodlatte Parker
Barr Goodling Paxon
Barrett (NE) Gordon Payne (VA)
Bartlett Goss Peterson (MN)
Barton Green Petri
Bass Gunderson Pickett
Bateman Gutknecht Pombo
Bevill Hall (TX) Portman
Bilbray Hancock Poshard
Bilirakis Bilely Pryce
Bliley Hansen Quillen
Boehner Harman Radanovich
Bonilla Hastert Regula
Bono Hastings (WA) Riggs
Brewster Hayes Roberts
Browder Hayworth Rogers
Brownback Hefley Rohrabacher
Bryant (TN) Hefner Ros-Lehtinen
Bunn Heineman Rose
Bunning Herger Roth
Burr Hilleary Royce
Burton Hilliard Salmon
Buyer Hobson Sanford
Callahan Hoekstra Scarborough
Calvert Hoke Schaefer
Camp Holden Seastrand
Canady Canady Stenholm
Chabot Chabot Sensenbrenner
Chambliss Houghton Shadegg
Chapman Hunter Shaw
Chenoweth Hutchinson Shuster
Christensen Hyde Studds
Chrysler Inglis Siskiy
Clinger Istook Skelton
Coble Johnson, Sam Smith (MI)
Coburn Jones Smith (TX)
Collins (GA) Kasich Smith (WA)
Combest Kim Solomon
Condit King Souder
Cooley Kingston Spence
Cox Knollenberg Stearns
Cramer Kramer Stenholm
Crane Crane LaHood Stockman
Crapo Crapo Largent
Creameans Latham Stump
Cubin Laughlin Talent
Cunningham Leach Tanner
Danner Danner Lewis (CA) Tate
Davis Davis Lewis (KY) Tuzin
de la Garza Lightfoot Taylor (MS)
Deal Lincoln Taylor (NC)
DeLay Linder Tejada
Diaz-Balart Livingston Thomas
Dickey LoBiondo Thornberry
Dooley Longley Thurman
Doolittle Lucas Tiahr
Dornan Manzanillo Traficant
Dreier McCollum Upton
Duncan McCrery Volkmer
Dunn McHugh Vucanovich
Edwards McInnis Waldholtz
Ehrlich McIntosh Walker
Emerson McKeon Wamp
English McNulty Watts (OK)
Ensign Metcalf Weldon (FL)
Everett Mica Weller
Ewing Miller (FL) White
Fawell Molinari Whitfield
Fields (TX) Montgomery Wicker
Flanagan Moorhead Wilson
Foley Myers Wolf
Forbes Myrick Young (AK)
Fowler Nethercutt Young (FL)
Franks (CT) Neumann Zeliff