



June 9, 2015

Dear Senator:

The Waters Advocacy Coalition (WAC) asks you to support S. 1140, the Federal Water Quality Protection Act. The bill would require the withdrawal of the joint rulemaking recently finalized by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) revising the definition of “waters of the United States” (WOTUS) under the Clean Water Act (CWA). S. 1140 then provides to EPA and the Corps the procedural and substantive direction necessary for development of a more reasonable rule that will protect the nation’s ‘navigable’ waterways.

WAC is a broad coalition representing the nation’s construction, real estate, mining, agriculture, transportation, forestry, manufacturing, and energy sectors, as well as wildlife conservation and recreation interests. Upon release of the final rule on May 27, 2015, members of WAC were disappointed to learn that many of the concerns we had discussed with the agencies were not addressed in the final rule. We continue to believe that the only reasonable approach to develop this important regulation is through robust federal-state consultation with input from other stakeholders, including the regulated community.

For many years, WAC members have engaged the agencies in the hope of finding a mutually acceptable and logical pathway to a revised regulatory regime. By way of regulatory comments, letters, in-person meetings, and testimony at congressional hearings, WAC members have repeatedly urged the agencies to develop a rule that would provide stakeholders with a reasonable regulatory approach designed to achieve environmental protections without hindering the American economy. Despite promises to the contrary, the final rule lacks the framework that would promote efficient and effective regulatory protection for the country’s navigable waters. Instead, the rule combines ambiguous terms and definitions with new and unbounded approaches to broaden jurisdiction. The result will have a chilling effect on activity throughout all sectors of the economy and will increase the cost of doing business. We are especially concerned that the increased need for permits and the potential for litigation will add to existing permitting delays. These issues can easily translate to lost businesses and jobs, and stalled or stopped beneficial economic activity.

The broadly written definition of tributary is an example of the regulatory overreach that we hoped would be clarified in the final rule, especially since we provided the agencies with detailed recommendations designed to improve the definition. Instead, the agencies moved forward with a tributary definition that would lead to time-consuming and costly permit requirements for an expanded number of water conveyances—costs that we believe outweigh any minimal benefits.

Furthermore, the agencies failed to complete many of the regulatory requirements that are designed to ensure collaboration and synergy among stakeholders. Executive Order 13132

requires robust consultation with state and local governments. The agencies disregarded this consultation requirement based on an erroneous assertion that they were only modestly expanding jurisdiction. As a result, more than 33 states requested that the proposed rule be withdrawn rather than finalized and expressed concern that the agencies were not respecting the co-regulator role established for state and local governments by Congress under the CWA.

WAC members have consistently called for a federal regulation that will clarify the limits of federal jurisdiction consistent with Supreme Court decisions and congressional intent. It is now abundantly clear that Congress needs to provide guidance to the agencies and set parameters for that regulation. We believe S. 1140 will help create certainty by identifying “bright lines” and excluding waters that should be outside of federal jurisdiction, such as groundwater, isolated ponds, stormwater management systems, and streams without surface connections or sufficient flow to carry pollutants to navigable waters.

We respectfully ask that you support this vitally important legislation.

Sincerely,

Agricultural Retailers Association  
American Exploration & Mining Association  
American Farm Bureau Federation  
American Forest & Paper Association  
American Gas Association  
American Iron and Steel Institute  
American Petroleum Institute  
American Public Power Association  
American Road & Transportation Builders Association  
American Society of Golf Course Architects  
Associated Builders and Contractors  
The Associated General Contractors of America  
Association of American Railroads  
Association of Equipment Manufacturers (AEM)  
Association of Oil Pipe Lines  
Club Managers Association of America  
Corn Refiners Association  
CropLife America  
Edison Electric Institute  
Federal Forest Resources Coalition  
The Fertilizer Institute  
Florida Sugar Cane League  
Foundation for Environmental and Economic Progress (FEEP)  
Golf Course Builders Association of America  
Golf Course Superintendents Association of America  
The Independent Petroleum Association of America (IPAA)

Industrial Minerals Association – North America  
International Council of Shopping Centers (ICSC)  
International Liquid Terminals Association (ILTA)  
Interstate Natural Gas Association of America (INGAA)  
Irrigation Association  
Leading Builders of America  
NAIOP, the Commercial Real Estate Development Association  
National Association of Home Builders  
National Association of Manufacturers  
National Association of REALTORS®  
National Association of State Departments of Agriculture  
National Cattlemen's Beef Association  
National Club Association  
National Corn Growers Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Golf Course Owners Association of America  
National Industrial Sand Association  
National Mining Association  
National Multifamily Housing Council  
National Oilseed Processors Association  
National Pork Producers Council (NPPC)  
National Rural Electric Cooperative Association  
National Stone, Sand and Gravel Association (NSSGA)  
Portland Cement Association  
Public Lands Council  
Responsible Industry for a Sound Environment (RISE)  
Southern Crop Production Association  
Southeastern Lumber Manufacturers Association  
Sports Turf Managers Association  
Texas Wildlife Association  
Treated Wood Council  
United Egg Producers  
U.S. Chamber of Commerce