Statement of the
American Farm Bureau Federation

TO THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE SUBCOMMITTEE SUPERFUND, WASTE MANAGEMENT AND REGULATORY OVERSIGHT

"AMERICAN SMALL BUSINESSES' PERSPECTIVES ON ENVIRONMENTAL PROTECTION AGENCY REGULATORY ACTIONS"

APRIL 12, 2016

Presented By:
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Chairman Inhofe, Subcommittee Chairman Rounds, Ranking Member Markey, and members of the Committee, I appreciate the opportunity to testify on behalf of the American Farm Bureau Federation and the nation's farmers and ranchers.

My name is Tom Buchanan. I am President of the Oklahoma Farm Bureau Federation and serve on the Board of the American Farm Bureau Federation. I produce cotton and run cows on my farm in Altus, Oklahoma. I have attached two documents which I would like to request be included in the Committee's record for this hearing. The first is detailed testimony given on June 10, 2015 by AFBF's General Counsel, Ellen Steen, to the Senate Committee on the Judiciary entitled "Examining the Federal Regulatory System to Improve Accountability, Transparency and Integrity." The second document is a letter from the Small Business Administration's Office of Advocacy detailing how the U.S. Army Corps of Engineers and the Environmental Protection Agency failed to comply with the Regulatory Flexibility Act (RFA). Both documents shine much needed light on EPA's overall conduct and lack of accountability, transparency and rulemaking integrity.

In addition, I would like to express my gratitude to Chairman Inhofe for his request to the Government Accountability Office that they look into EPA's highly irregular conduct during the "waters of the U.S." (WOTUS) rulemaking. As a result, GAO issued a *legal opinion* detailing how the federal agencies engaged in illegal lobbying and used *covert propaganda* to push the WOTUS rule by blitzing the public with a misleading social media campaign. The legal opinion found that the EPA broke the law with its social media and grassroots lobbying campaign by advocating for its own waters of the U.S. rule. It does not surprise Farm Bureau that EPA used tactics that stepped well past the bounds of proper agency rulemaking. From our perspective, EPA was more focused on promoting the WOTUS rule than keeping an open mind or hearing good-faith concerns with their proposal. Farmers and ranchers deserve better when important matters of public policy are at stake.

I'm here today because of my organization's experience with a major new Clean Water Act rulemaking by EPA and the U.S. Army Corps of Engineers. This is a rule of extraordinary practical importance for farmers, ranchers and most anyone else who grows, builds, or makes anything in this nation. After carefully studying the proposed rule, we at Farm Bureau concluded that the rule's vague and broad language would define "waters of the United States" to include

countless land areas that are common in and around farm fields and ranches across the countryside. These are areas that don't look a bit like *water*. They look like *land, and they are farmed*, but by defining them as "waters of the U.S." the rule would make it illegal to farm, build a fence, cut trees, build a house, or do most anything else there without first asking permission of the federal government and navigating a costly and complex permitting regime.

From the day it first issued the proposed rule, EPA behaved like an advocate for a decision that was already made—willing to say most anything to get to the desired result. It waged a public relations campaign aimed directly at farmers and ranchers—providing false and misleading assurances, in speeches and blogs, that the rule will not increase permitting requirements for farmers or "get in the way" of farming. But those of us who have litigated agency rules, and agency interpretations of their rules, know that courts won't give any weight to speeches and blogs. Our experience is that EPA and the Corps will interpret their rules broadly, not narrowly. And in the enforcement proceedings that are sure to come—with an agency, a judge, and an ambiguous regulation—the agency's interpretation will be unassailable.

EPA also engaged in an extraordinary social media campaign aimed at a different audience—the broader public. That campaign consisted almost entirely of non-substantive platitudes about the importance of clean water—which no one disputes. It used simplistic blogs, tweets and YouTube videos to generate purported "support" for the rule among well-intended people who have absolutely no idea what the rule would actually do or what it will cost. EPA later claimed "public" support for the rule, even though the vast majority of those who actually read the rule—state and local governments, businesses, and organizations representing virtually every segment of the U.S. economy—vehemently opposed it.

Regardless of whether you supported, opposed, or never heard of the waters rule, I hope many of you would agree that this is not how rulemaking should be conducted.

I would like to point out that the agencies also ignored another important regulatory safeguard for small businesses by improperly certifying the WOTUS rule under the Regulatory Flexibility Act. The Office of Advocacy concluded that the effects of EPA's WOTUS rule would have direct economic impacts on a substantial number of small businesses and the agencies should

have convened a Small Business Advocacy Review (SBAR) panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) before releasing the rule for comment.

Congress should hold the agencies accountable for ignoring the requirements of the RFA and for openly showing their contempt for small entities by characterizing their concerns about the proposal as "silly" and "ludicrous."

Lastly, Farm Bureau believes agencies must comply with the regulatory safeguards enacted by Congress and keep an open mind during rulemaking. They should try to honestly and transparently account for the regulatory impact and cost of their actions, even when they expect opposition. I hope this Committee's efforts will lead us in that direction.

Thank you.

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Testimony of
Ellen Steen
General Counsel and Secretary
American Farm Bureau Federation
before the
Senate Committee on the Judiciary

"Examining the Federal Regulatory System
to Improve Accountability, Transparency and Integrity"

June 10, 2015

Chairman Grassley, Ranking Member Leahy, and Members of the Committee, thank you for calling this important hearing on the transparency and integrity of federal agency rulemaking and inviting me to testify on behalf the American Farm Bureau Federation (AFBF) and the nation's farmers and ranchers.

My name is Ellen Steen, and I am the General Counsel and Secretary of AFBF. In my current position and in two decades of private law practice prior to joining AFBF, I have been involved in dozens of agency rulemakings, primarily focused on U.S. Environmental Protection Agency (EPA) rules under the Clean Water Act. I have litigated the validity and interpretation of EPA rules and policies, experiencing first-hand the deference that courts show agency regulations and agency interpretations of their regulations.

As I explain below, the new "waters of the U.S. rule" rulemaking broke new ground, turning an already imperfect process into essentially a public relations campaign. Like any campaign, the last year has been full of "spin" created by former campaign officials now leading agency communications teams, mutual accusations of misleading the public, public officials derisively dismissing concerns of the opposition, suggestions that opposition to the rule amounts to opposition to clean water, tit-for-tat responses and public rejection of opposing views—all in the middle of a rulemaking public comment period. If this characterization of the rulemaking process troubles the Committee, it should. I invite the Committee to peruse the attachments to this testimony to get a flavor of what has become of our federal rulemaking process.

Executive Summary

The notice-and-comment procedure for rulemaking is designed to ensure that agencies take honest account of the thoughts and concerns of the regulated public and to hold agencies to their stated rationales when regulations are challenged in court. When it works as it should, the notice-and-comment process guarantees just what Congress, with the Administrative Procedure Act (APA), set out to accomplish: a deliberative process of soliciting and considering public input, followed by an agency decision and response to the public's input. It's often not exciting—sometimes even dull—but that back-and-forth is essential to sound decision-making and to the integrity of the rulemaking process.

EPA's handling of the Waters of the United States Rule—a regulation of extraordinary practical and financial importance to farmers, ranchers and most anyone else who grows, builds, or makes anything in this Nation—flouted the APA's notice-and-comment process in three key respects:

- *First*, throughout the rulemaking process, EPA publicly derided concerns expressed about the proposed rule (including the concerns of Farm Bureau and our farmer and rancher members). Legitimate concerns how the rule would affect agriculture, in particular, were subtly twisted and then dismissed as "silly" and "ludicrous" and "myths." Public statements from the agency's highest officials made it clear that the agency was not genuinely open to considering objections to the rule.

- *Second*, EPA engaged in an extraordinary public relations campaign to solicit support for (but not informed comment on) the rule. The campaign consisted almost entirely of non-substantive platitudes about the rule's purported benefits, while omitting any meaningful information about the actual content of the rule—i.e. *what the rule would do, and what activities would be regulated as a result*. The campaign substituted blogs, tweets and YouTube videos for what should have been an open and honest exchange of information between the agency and the public.

- *Finally*, the agency allowed its own internal timeline, and perhaps the presidential election cycle, to dictate issuance of a proposed rule before the fundamental scientific study underlying the proposal was complete and available for public review—and then to dictate issuance of a final rule without providing a further opportunity for public comment on major changes made in that final rule. Regardless of the agency's motivations, the integrity of the rulemaking process demands that the public have an opportunity to review and comment on the basis for an agency's proposal and on any major changes *before* they appear in a final regulation.

This flawed process recently culminated in the issuance of a deeply flawed regulation, the true costs and regulatory impact of which have not been seriously considered and may not be known for years. But regardless of whether you supported, opposed or never heard of that rule, you should shudder to think that this is how controversial regulations will be developed in the age of social media. Agencies must strive to maintain an open mind throughout the rulemaking process—and to inform rather than indoctrinate and obfuscate—even when policy issues have become controversial and politicized.

The overbroad and vague rule that EPA has promulgated to define "waters of the United States" perfectly illustrates another serious problem with agency rulemaking. The federal courts' current approach to determining whether a rule is lawful involves deferring to the agency's interpretation of a statute and deferring again to the agency's interpretation of its own rules. As scholars and some of the Justices of the Supreme Court have pointed out, this two-stage system of deference actually encourages agencies to promulgate broad and vague rules, and then to expand their power by interpreting those rules broadly during the course of implementation and enforcement.

With the "waters" rule, EPA has repeatedly and emphatically assured farmers and the public, in speeches and blogs, that the new rule will not increase permitting obligations for farmers or "get in the way" of farming. But those of us who have litigated agency rules, and agency interpretations of their rules, know that courts are unlikely to give much weight to speeches and blogs. Months and years from now, with an ambiguous regulation before a judge, the agency's interpretation will be unassailable. The end result is that the regulated community is ambushed: the rules allow for a wide range of interpretations, the agency's informal campaign during rulemaking provides a narrow and comforting interpretation, and the regulated first learn their actual obligations and liabilities when the enforcement actions begin. This is not how it was meant to be.

Introduction

As the Members of this Committee know better than most, the statutes enacted by Congress—no matter how carefully drafted—frequently leave room for interpretation. That isn't necessarily a bad thing. It would be as unwise as it would be impracticable for Congress to attempt to foresee every possible application of each statute that it writes. Leaving room for interpretation introduces common sense flexibility as unanticipated circumstances arise. The law gets worked out as much in its implementation as it does in its drafting.

As the Supreme Court explained in the watershed case, *Chevron v. Natural Resources Defense Council*, by leaving interpretive "gaps" in statutes, Congress leaves it to expert agencies to promulgate regulations to *fill* those gaps. But there is reason to be cautious on that score. There is very little, after all, to distinguish a statute enacted by Congress from the statute's implementing regulations, promulgated by a federal agency comprising of unelected bureaucrats. According to the Supreme Court, agency rules that fill gaps in statutes have the force and effect of law and, under *Chevron* deference, are given controlling weight by the courts. Put simply, rules that fill gaps in statutes have *legislative* effect.

For that reason, it is essential that the process for promulgating agency rules be open and transparent and ensure accountability. That is precisely the purpose of the APA. The APA was enacted in 1946 against a background of rapid expansion of administrative rulemaking as a check on federal agencies whose enthusiasm for rulemaking risked regulatory excesses not contemplated by Congress. The Act guards against such excesses in part by mandating a public notice-and-comment process.

The notice-and-comment process is at the heart of the APA and the goals it was designed to achieve. As a general matter, before an agency makes a rule, it must *first* notify the public of the proposal and invite comment on the rule's perceived virtues and vices; *second*, consider the comments and arguments submitted by the public; and *finally*, make a final decision and explain that decision in a statement of the rule's basis and purpose. This process should force agencies to take honest account of the knowledge, experience and concerns of the public (including the regulated public) and allow courts to later hold agencies to their stated rationales when regulations are challenged in court. When it works as it should, the notice-and-comment process ensures just what Congress set out to accomplish with the APA: ensuring meaningful public input and a public record to hold agencies accountable for their stated rationale and intent in the rulemaking process.

Unfortunately, agencies have recently been testing—and we think exceeding—the limits of what the notice-and-comment procedure permits. AFBF's recent experience with EPA's "Waters of the United States Rule" offers a troubling example.

First, a little background. Under the 1972 Clean Water Act, it is illegal (without a permit or other specific statutory authorization) to discharge pollutants from a point source—such as nozzles on equipment used to spread fertilizer and pesticides—into the "navigable waters." Congress defined "navigable waters" as "waters of the United States." The term has been the subject of controversy, rulemaking by both EPA and the U.S. Army Corps of Engineers, and inconsistent judicial interpretation ever since. Not surprisingly, EPA's most recent regulation defining its jurisdiction over "waters of the United States" was the subject of vigorous debate.

It is no surprise that agriculture and other industries that engage in activities on the land have very serious substantive concerns with the scope of EPA's Waters of the U.S. rule—which defines as "waters of the U.S." many features that simply look like *land,* not *water,* and that are ubiquitous across the countryside. It will not be a surprise that we strongly believe the rule is an arbitrary and capricious interpretation of the Clean Water Act, exceeds EPA's constitutional authority, and is simply bad policy that will cause costly and unhelpful disruptions in the national economy. But we understand those concerns are beyond the scope of this Committee's current inquiry. Here we will focus on the defects in the process by which EPA arrived at the rule, which we believe help to explain why EPA got the substance of the rule so wrong. EPA made mistakes because it finalized the rule according to an opaque and deeply flawed process that failed to hold EPA to account to state and local governments, the regulated public, and the basic economic and other analyses that are meant to inform agency rulemaking—in fact, it treated these as obstacles to be overcome rather than as sources of input and information that would improve the final rule.

There were three core problems with the rulemaking process that should be of special concern to the Committee and its Members, which I have identified in bullet points in the Executive Summary of this testimony. I'll now say a bit more about each of these concerns.

Closed-Mindedness

EPA first published the proposed Waters of the United States rule on April 21, 2014, and the public comment period remained open until November 14, 2014. AFBF did not immediately oppose the rule. Rather than jump to conclusions, our staff carefully reviewed the lengthy proposal and came to the conclusion that the rule's vague language would dramatically expand EPA's jurisdiction, allowing it to regulate virtually all "waters"—including countless land areas across the countryside where rain channels and flows only immediately after rainfall, ditches running alongside and within farm fields, and isolated low spots in the middle of farm fields. We prepared information for our members to help them understand the rule and voice their concerns (since we are a grassroots advocacy organization). In the end, we and scores of other organizations representing agriculture and other industries' interests—plus the vast majority of state, county and municipal governments—submitted detailed comments as part of the notice-and-comment process, expressing grave concerns about the impact of the rule on a wide range of commonplace and essential land use and land management activities.

But long before we sent the official comments to the record, all indications were that EPA's mind had already been made up, and that our comments had no hope of being taken seriously. For example, in an article appearing in *Farm Futures* (perma.cc/KH98-6WVU), EPA Administrator Gina McCarthy was quoted—*on July 9, 2014, in the middle of the public comment period*—as calling the Farm Bureau's concerns "ludicrous" and "silly" and based on "myths." Farmers and ranchers across the country told us they read her remarks and took them personally. How could we expect our comments to receive fair consideration when they were already being dismissed out-of-hand as silly? The answer—we could not.

Instead, as described below, EPA's conduct over the coming months demonstrated not only that its mind and ears were closed, but also that it was firmly entrenched and fiercely "messaging" a misleading picture of the proposed rule designed to placate opposition within the regulated community and build ill-informed support among the lay public.

Manipulation of the Public and the Process

EPA's conduct throughout the rulemaking gave the striking appearance of advocacy aimed at generating public support and "cooking the books" to overcome procedural hurdles like the economic and regulatory impact analyses.

With regard to public support, EPA engaged in an aggressive social media and promotional campaign designed to dampen opposition and manufacture support for the rule. Immediately upon releasing the proposed rule (before we at Farm Bureau or the general public even had an opportunity to read it), EPA announced purportedly wide-spread support for the rule from businesses and agriculture.[1] Fast on the heels of that came a public webcast sponsored by EPA's Watershed Academy, proclaiming that the rule "does NOT protect any new types of waters," "does NOT broaden historical coverage of the Clean Water Act," "does NOT expand regulation of ditches," would "benefit" agriculture and was shaped by "input from the agricultural community."[2]

EPA's campaign right out of the gate made it incumbent on Farm Bureau, the nation's largest general agricultural organization representing farmers and ranchers, to not only develop comments to the agency, but to launch our own campaign to inform our members and the public about the true impact of the rule. The result was our "Ditch the Rule" grassroots campaign, which explained to farmers and rural America through our website and social media how EPA's proposed rule would expand federal jurisdiction over stormwater drainage paths, ditches and small "wetland" areas—in the process increasing federal permit requirements for routine farming and ranching practices as well as other common private land uses, like building homes.

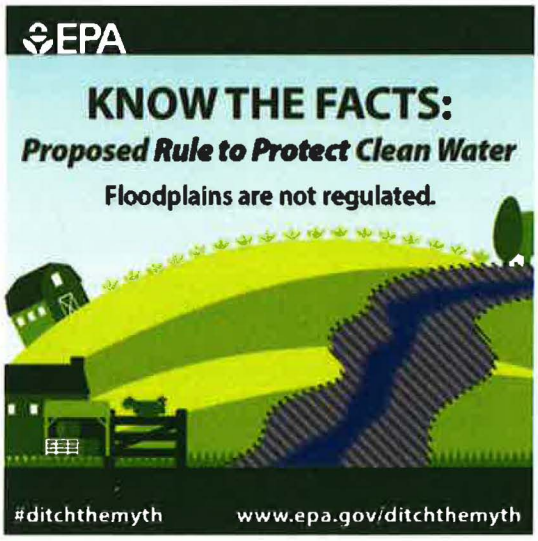
Not long after our campaign went live, a competing campaign called "Ditch the Myth" went public and continues today. Remarkably, however, that campaign was not launched by an environmental advocacy group—instead, it was launched by *EPA itself*. To our knowledge, this

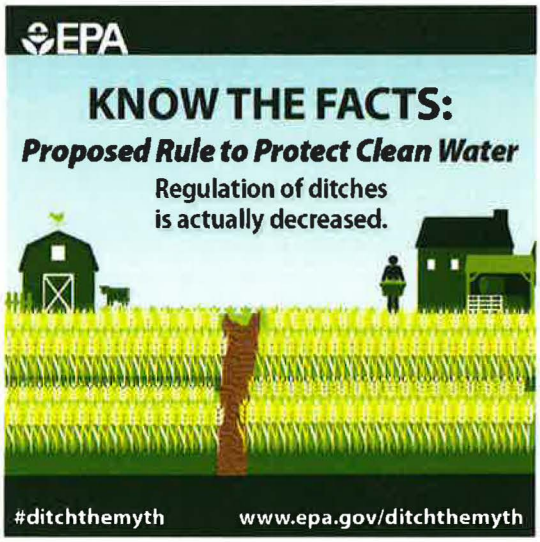
[1] EPA News Release, "Here's What They're Saying About the Clean Water Act Proposed Rule" (March 25, 2014) (attached).

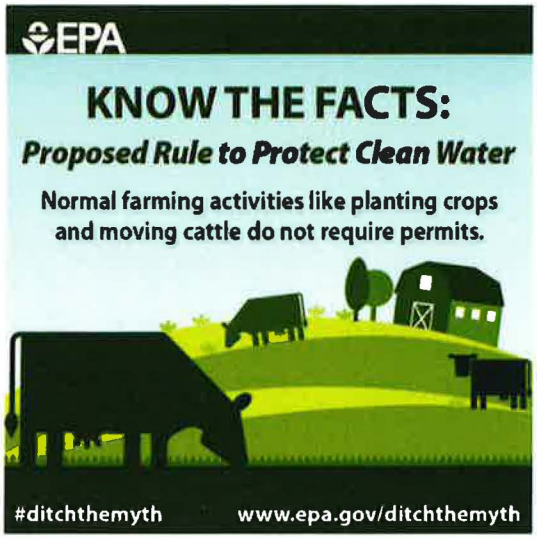
[2] EPA Waters of the U.S. Proposed Rule Webcast (April 7, 2014) (attached).

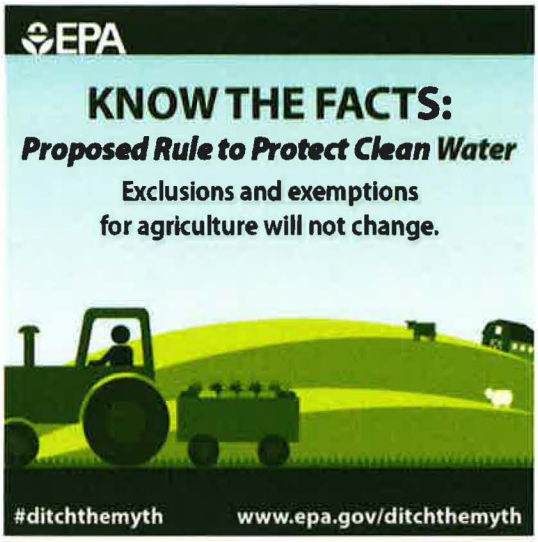
was an unprecedented move. The APA requires EPA to listen to comments and concerns on its proposed rule; it does not contemplate an agency engaging in a publicly funded campaign to influence the comments that the public makes and explicitly reject public criticisms of a proposed rule during the comment period.

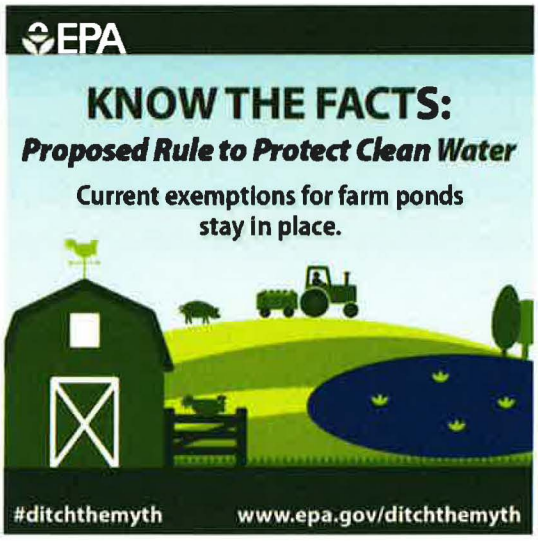
Worse, the content of EPA's "Ditch the Myth" campaign was fundamentally misleading and directed at rejecting criticisms made by the very same industries that would be regulated by the rule. For example, EPA's "Know the Facts" slides assured the public that "normal farming activities like planting crops and moving cattle do not require permits." But that is extremely misleading, since "normal" farming under the Clean Water Act is in fact a term of art that has been extremely narrowly interpreted and has *never* been construed to include moving cattle (not to mention commonplace activities like applying fertilizer and crop protection products). The agency also asserted that "regulation of ditches is actually decreased." But that, too, is simply false—the rule would automatically regulate many ditches as "tributaries," whereas previously any ditch that does not carry water most of the time could only be regulated after a case-specific analysis by the agency. In the end, most claims that EPA made in its public campaign were, at best, artfully phrased to mislead the public:

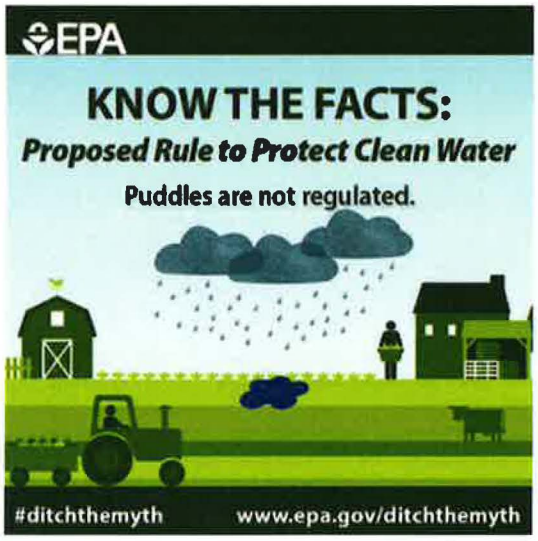












Similarly, throughout the summer and early fall of 2014, EPA put out official blogs on its websites and "question and answer" documents for public consumption—again, in the middle of the public comment period—rejecting the Farm Bureau's and other groups' arguments that the rule: (1) dramatically expands the agency's jurisdiction compared to current law (given that the Supreme Court has long since found the previous decades-old overbroad regulations to be unlawful); (2) perpetuates the costly vagueness of prior rules; and (3) would allow EPA and the U.S. Army Corps of Engineers to require permits or simply disallow innumerable commonplace activities on the land nationwide, including farming and ranching activities like building a fence, fertilizing and protecting crops, and grazing livestock. The question-and-answer document put forth a new round of carefully crafted and misleading statements that the rule would not increase federal jurisdiction (false), would not regulate land where water flows after rainfall (false), and

would not require permits for the protection and fertilization of crops (false).[3] Farm Bureau responded the following month with a detailed rebuttal,[4] and the public battle waged on. Strikingly, this battle was not over the policy merits of expanding jurisdiction or of increasing federal permitting of farming and other land uses—which would be a worthwhile public discussion—but simply over whether or not the rule *would* expand jurisdiction and increase federal regulation of land use. EPA has insisted it will not, but those statements are absent from the official public notices that judges would typically look to in construing an agency rule.

Beyond its "Ditch the Myth" campaign, EPA engaged in an aggressive "Thunderclap" social media campaign, designed to drum up superficial support for the rule outside the regulated community. Thunderclap is a company that provides a "crowdspeaking" platform, which, in its own words, "allows a single message to be mass-shared, flash mob-style, so it rises above the noise" and helps "create action and change like never before." *See* perma.cc/EBD4-KLR5. EPA's Thunderclap campaign coupled a picture of a child drinking water over a meaninglessly one-dimensional statement: "Clean water is important to me. I support EPA's efforts to protect it for my health, my family, and my community." Thunderclap then directed people to a link so they could support the rule through social media and further the campaign. EPA's Thunderclap campaign purportedly reached 1.8 million people.[5]

Through Thunderclap and the coordinated efforts of environmental groups and political action groups (in particular, Organizing for America (OFA)), EPA was able to boost superficial support for the rule by hundreds of thousands of well-intended people who never read or even looked at the proposed rule. In the preamble to its final rule, EPA boasts that the agency received "over 1 million public comments on the proposal, the substantial majority of which supported the proposed rule." Of course, this omits that over 900,000 of the so-called "comments" fit on less than four single-paced pages. It also omits that the rule was overwhelmingly opposed in detailed, substantive comments by the majority of state governments, county and municipal governments, and associations and companies from virtually every sector of the U.S. economy.[6] Of course, agency rulemaking does not and should not turn on public polling—but for EPA to claim to be responsive to public comments—in this context—rings hollow.

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[3] *See* "Questions and Answers – Waters of the U.S. Proposal." EPA and U.S. Army Corps of Engineers (undated but released in September 2014) (attached).

[4] *See* "Trick or Truth? What EPA and the Corps of Engineers Are *Not* Saying About Their 'Waters of the U.S.' Proposal." (Oct. 30, 2014) (attached).

[5] "I Choose Clean Water" Thunderclap, by U.S. Environmental Protection Agency (attached).

[6] Although agencies traditionally have discounted comments submitted as part of a mass campaign, EPA appears to have adopted a different approach—counting and tallying up individual non-substantive comments like petition signatures, postcards and copied emails. For example, rather than counting one electronic petition bearing 218,542 names as one comment, EPA appears to have counted it as 218,542 comments. Similarly, a petition organized by OFA, the former campaign for President Obama (which still uses the President's picture on its communications), generated 69,369 signatures, each of which was counted as a separate comment. In contrast, a single, detailed substantive comment letter signed by attorneys general from 11 states and governors from 6 states opposing the rule appears to have been counted as one comment.

EPA also seems to have gamed the economic and other required analyses designed to ensure an informed final rule. EPA's economic analysis, for example, cited a 3% increase in the scope of its jurisdiction, which was revised for the final rule to 4%. EPA widely cited this 3% figure in its public communications, as evidence of the modest impact of the rule. The final economic analysis itself (at page vi), however, states that it *does not* purport to estimate the scope of the increase in CWA jurisdiction under the rule—and indeed EPA has made no effort to estimate the degree of expansion:

> To estimate how the costs and benefits of CWA programs may change as a result of a change in the number of positive jurisdictional determinations under this rule, the EPA reviewed a sample of negative jurisdictional determinations (JDs) (i.e., determinations of no jurisdiction) completed by the Corps in fiscal years 2013 and 2014 to assess how the JD would change if the final rule had been in place. The EPA looked at a random sample of 188 jurisdictional determination files, which represents 782 individual waters in 32 states. *It is important to emphasize that the economic analysis focuses exclusively on the costs and benefits from CWA programs that would result from the associated change in negative JDs, rather than an analysis of how the* ***scope of jurisdiction*** *changes - nationwide data do not exist on the extent of all waters covered by the CWA.* The agencies generally only make jurisdictional determinations on a case-specific basis at the request of landowners. (emphasis added)

Thus, according to the agencies' economic analysis, they actually do not know, and have not attempted to estimate, how much the scope of CWA jurisdiction will increase under the rule.

Likewise, EPA certified that the proposed rule would not have a significant economic impact on small businesses for purposes of Section 609(b) of the Regulatory Flexibility Act, asserting that the rule would be *narrower* in scope that previous regulations. Yet those prior rules have long since been found overbroad and unlawful, and which therefore do not reflect current practice, as pointed out in an objection by the SBA Office of Advocacy.[7]

In promoting the environmental benefits of the rule to the lay public, however, the agencies use a much larger figure. In this context, EPA boasts that the rule will protect 60% of the nation's flowing streams, and millions of acres of wetland, that otherwise lack clear protection.[8]

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[7] SBA Office of Advocacy letter to The Honorable Gina McCarthy (Oct. 1, 2014).

[8] "But right now 60 percent of the streams and millions of acres of wetlands across the country aren't clearly protected from pollution and destruction. In fact, one in three Americans—117 million of us—get our drinking water from streams that are vulnerable.... EPA and the U.S. Army Corps of Engineers has proposed to strengthen protection for the clean water that is vital to all Americans." EPA Thunderclap campaign ending Sept. 29, 2014 (copy attached). "The Supreme Court decisions in 2001 and 2006 left 60 percent of the nation's streams and millions of acres of wetlands without clear federal protection, according to EPA, causing confusion for landowners and government officials." http://abcnews.go.com/Politics/wireStory/epa-rules-protect-drinking-water-regulate-small-streams-31332848

So how big is this expansion of EPA's regulatory reach? 3-4%, 0% or 60%? Most seasoned Clean Water Act practitioners would tell you the answer is somewhere closer to 60%—maybe more. Yet this is nowhere reflected in the economic and regulatory impact analysis underlying the rule.

Circumvention of Notice and Comment

Much of the communication by EPA to AFBF, other stakeholder groups and the public during this rulemaking occurred outside the Federal Register and the formal public comment process. Yet even within the formal notice-and-comment process, EPA gave short shrift to the substantive give-and-take that Congress envisioned when it enacted the APA. Under settled APA notice and comment requirements, "[a]mong the information that must be revealed for public evaluation are the technical studies and data upon which the agency [relies in its rulemaking]." *American Radio Relay League, Inc. v. F.C.C.*, 524 F.3d 227, 236 (D.C. Cir. 2008). Agencies are not permitted to promulgate rules based on "data that, to a critical degree, is known only to the agency." *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 376, 393 (D.C. Cir. 1973). Instead, the "critical factual material" used by the agency must *itself* be "tested through exposure to public comment." *American Radio Relay League*, 524 F.3d at 236.

That did not happen in the Waters of the U.S. rulemaking. Throughout the comment period, the EPA's linchpin scientific report was undergoing review by the Science Advisory Board. It wasn't until October 2014 that the Advisory Board submitted its formal review to the agency. And that review suggested major changes to the report, which as a result was not finalized until well *after* the close of the comment period. Organizations like the Farm Bureau should have had an opportunity to comment on the final science report, which we believe is deeply flawed. EPA could easily have reopened the comment period for a short time for the express purpose of allowing comment on the amended science report. Consistent with its efforts to marginalize critical comments, however, EPA issued a final rule and report without ever having allowing the public to comment on the amended version of the science report that underlies the final rule.

Furthermore, the substantial changes that EPA made between its proposed and final rule means that many of the key provisions of the final rule, including definitions of key concepts like "tributary," "neighboring," and "significant nexus," have never been tested by notice and comment. While we understand EPA's desire to limit rulemaking to one round of notice and comment, there is no doubt that when an agency makes substantial changes from the proposed rule the rulemaking process would benefit from seeking comments on those changes. A practice of reopening the comment period to address major changes before a rule becomes final would improve agency transparency and accountability and result in better rules that are less open to attack in litigation. And the lack of such a practice could encourage agencies to save the "real" rule for final publication and thereby avoid public comment on key but controversial provisions of the rule.

Conclusion

The net result of all of this should, in our view, be of deep concern to the Members of this Committee. As a result of its unprecedented public relations campaign and the cutting short of the comment process, EPA effectively pulled the wool over the lay public's eyes. Among EPA's public explanations for the rule was its promise that the rule would bring greater clarity and predictability. In fact, the rule accomplished the exact opposite, leaving agency bureaucrats with unbridled discretion to determine the reach of the Clean Water Act. The result will be widespread uncertainty and enforcement risk for the hundreds of thousands of family farmers and ranchers whose interests the Farm Bureau represents.

But beyond its practical impact on the regulated public, this uncertainty does even further violence to the integrity of the notice-and-comment rulemaking process. As you know, the general rule is that courts will defer to an agency's interpretation of its own ambiguous regulations. The Supreme Court has warned in recent cases that this so-called *Auer* deference encourages agencies to be vague in framing regulations, which then allows them the discretion to make case-by-case "interpretations" of the regulation later. The result is that subsequent interpretations of vague regulations—many of which will be made, in this case, in the context of enforcement actions—form the true substance of the regulation, but are never tested through the notice and comment procedure. *See Decker v. Northwest Environmental Defense Center*, 133 S. Ct. 1326, 1341 (2013) (Scalia, J., concurring in part). In other words, *Auer* deference allows an agency, "under the guise of interpreting a regulation, to create de facto a new regulation" without going through formal APA rulemaking. *Chase Bank USA, N.A. v. McCoy*, 131 S. Ct. 871, 881 (2011). That is just what the Waters of the U.S. rule accomplishes—EPA has promulgated a vast and vague regulation, the *real* substance of which will be determined by unaccountable agency staff, without notice-and-comment rulemaking. Such opaque and unaccountable governance should be of deep concern to every member of this Committee, and to the public at large.

We at the American Farm Bureau Federation appreciate the Committee's willingness to listen to our concerns. Thank you.

October 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Maj. Gen. John Peabody
Deputy Commanding General
Civil and Emergency Operations
U.S. Army Corps of Engineers
Attn: CECW-CO-R 441 G Street, NW
Washington, D.C. 20314-1000

Re: Definition of "Waters of the United States" Under the Clean Water Act [1]

Dear Administrator McCarthy and Major General Peabody:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments regarding the proposed rule to the U.S. Army Corps of Engineers (the Corps) and the Environmental Protection Agency (EPA, and together, "the agencies"). Advocacy believes that EPA and the Corps have improperly certified the proposed rule under the Regulatory Flexibility Act (RFA) because it would have direct, significant effects on small businesses. Advocacy recommends that the agencies withdraw the rule and that the EPA conduct a Small Business Advocacy Review panel before proceeding any further with this rulemaking.

The Office of Advocacy and the Regulatory Flexibility Act

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so our views do not necessarily reflect those of SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[2] requires small entities to be considered in the federal rulemaking process. The RFA requires federal agencies to consider the impact of their proposed rules on small businesses. When a rule is expected to have a significant economic impact on a substantial number of small entities, agencies must evaluate the impact, consider less

[1] Definition of Waters of the United States Under the Clean Water Act, 79 *Fed. Reg.* 22188 (April 21, 2014).
[2] Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

burdensome alternatives, and in the case of EPA, convene a Small Business Advocacy Review panel.[3] The RFA directs Advocacy to monitor agency compliance with the RFA. To this end, Advocacy may file written comments reflecting small business concerns about the impact of a rulemaking.[4] Because of small business concerns with the proposed rule, Advocacy held a roundtable on July 21, 2014 and has heard from numerous small entities in many industries.

Background

The Clean Water Act (CWA) was enacted in 1972 to "restore and maintain the chemical, physical and biological integrity of the Nation's waters."[5] The CWA accomplishes this by eliminating the "discharge of pollutants into the navigable waters."[6] The CWA defines "navigable waters" as "the waters of the United States, including the territorial seas."[7] Existing regulations currently define "waters of the United States" as traditional navigable waters, interstate waters, all other waters that could affect interstate or foreign commerce, impoundments of waters of the United States, tributaries, the territorial seas, and adjacent wetlands.[8]

The CWA requires a permit in order to discharge pollutants, dredged, or fill materials into any body of water deemed to be a "water of the United States."[9] The EPA generally administers these permits, but EPA and the Corps jointly administer and enforce certain permit programs under the Act.[10]

The extent of the Act's jurisdiction has been the subject of much litigation and regulatory action, including three Supreme Court decisions. Actions of the Court have expanded and contracted the definition, especially regarding wetlands and smaller bodies of water.

- In 1985, the Supreme Court determined that adjacent wetlands may be included in the regulatory definition of "waters of the United States."[11]
- In 2001, the Court held that migratory birds' use of isolated "nonnavigable" intrastate ponds was not sufficient cause to extend federal jurisdiction under the CWA.[12]
- In 2006, the Supreme Court considered whether wetlands near ditches or man-made drains that eventually empty into traditional navigable waters were

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[3] 5 U.S.C. § 603, 605.
[4] The Small Business Jobs Act of 2010 (Pub. L. 111-240 § 1601) also requires agencies to give every appropriate consideration to Advocacy's written comments on a proposed rule. This response must be included in an explanation or discussion accompanying the final rule's publication in the *Federal Register* unless the agency certifies that the public interest is not served by doing so.
[5] 33 U.S.C. § 1251(a) (1972).
[6] Id. at § 1251(a)(1).
[7] Id. at § 1362(7).
[8] 33 C.F.R. § 328.3(a); 40 C.F.R. §230.3(s).
[9] 33 U.S.C. §§ 1311(a), 1342, 1344.
[10] Id. at § 1344.
[11] *United States v. Riverside Bayview Homes,* 474 U.S. 121, 134-135 (1985).
[12] *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC),* 531 U.S. 159, 174 (2001).

considered "waters of the United States."[13] Justice Scalia, writing for the plurality, determined that "*only* those wetlands with a continuous surface connection to bodies that are 'waters of the United States' [. . .] are 'adjacent to' such waters and covered by the Act."[14] Justice Kennedy concurred in the judgment, but concluded that the Corps must establish the existence of a "significant nexus" when it asserted jurisdiction over wetlands adjacent to non-navigable tributaries.[15]

The courts have left much uncertainty regarding what constitutes a "water of the United States." Such uncertainty has made it difficult for small entities to know which waters are subject to jurisdiction and CWA permitting.

To address this uncertainty, the EPA and Corps proposed this rule which would revise the regulatory definition of "waters of the United States" and would apply to all sections of the Clean Water Act. The proposed rule defines "waters of the United States" within the framework of the CWA as the following seven categories:

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate wetlands;
- The territorial seas;
- All impoundments of a traditional navigable water, interstate water, the territorial seas or a tributary;
- All tributaries of a traditional navigable water, interstate water, the territorial seas or impoundment;
- All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment or tributary; and
- On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a traditional navigable water, interstate water or the territorial seas.[16]

The proposed rule defines several terms for the first time: "neighboring," "riparian area," "floodplain," "tributary," and "significant nexus"; and it clarifies the terms, "adjacent" and "wetlands."[17] The rule leaves the regulatory definitions of "traditional navigable waters," "interstate waters," "the territorial seas," and "impoundments" unchanged.[18]

Regulatory Flexibility Act Requirements

The RFA states that "[w]henever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or

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[13] *Rapanos v. United States,* 547 U.S. 715, 729 (2006).
[14] Id. at 742.
[15] Id. at 779 (Kennedy, J., concurring).
[16] 79 *Fed. Reg.* at 22,198.
[17] See Id. at 22,263, for the complete definitions of "adjacent," "neighboring," "riparian area," "floodplain," "tributary," "wetlands," and "significant nexus."
[18] Id.

publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis [IRFA]. Such analysis shall describe the impact of the proposed rule on small entities."[19]

Under Section 609(b) of the RFA, EPA is required to conduct small business advocacy review panels, often referred to as SBREFA panels, when it is unable to certify that a rule will not have a significant economic impact on a substantial number of small businesses. SBREFA panels consist of representatives of the rulemaking agency, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), and the Chief Counsel for Advocacy. SBREFA panels give small entity representatives (SERs) a chance to understand an upcoming proposed rule and provide meaningful input to help the agency comply with the RFA. SERs help the panel understand the ramifications of the proposed rule and significant alternatives to it.

Section 605(b) of the RFA allows an agency to certify that a rule will not have a significant economic impact on a substantial number of small entities in lieu of preparing an IRFA.[20] When certifying, the agency must provide a factual basis for the certification.[21] In the current case, the agencies have certified that revising the definition of "waters of the United States" will not have a significant economic impact on a substantial number of small businesses.

The Proposed Rule Has Been Certified in Error

Advocacy believes that the agencies have improperly certified this rule. Advocacy, and the small businesses we have spoken to, believe that

- The agencies used an incorrect baseline for determining their obligations under the RFA;
- The rule imposes costs directly on small businesses; and
- The rule will have a significant economic impact on small businesses.

A. The Agencies Use the Incorrect Baseline for its Regulatory Flexibility Act Certification

Advocacy believes that the agencies used the wrong baseline for their RFA certification. In certifying the rule, the agencies state that, "This proposed rule is narrower than that under the existing regulations…fewer waters will be subject to the CWA under the proposed rule than are subject to regulation under the existing regulations."[22] On this

[19] 5 U.S.C. §603.
[20] 5 U.S.C. §605.
[21] Id.
[22] Id.

basis the agencies conclude that, "This action will not affect small entities to a greater degree than the existing regulations."[23]

The "existing regulations" that the agencies refer to in this reasoning is the 1986 rule defining the scope of waters of the United States. Compared to the 1986 definition, the proposed changes represent a narrowing of coverage. However, in the economic analysis accompanying the rule, the agencies assess the regulation vis-à-vis current practice and determine that the rule increases the CWA's jurisdiction by approximately 3 percent.[24] The agencies' certification and economic analysis contradict each other.

Advocacy believes that the proper baseline from which to assess the rule's impact is current practice. Guidance from the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) substantiates this view. OIRA's Circular A-4 provides guidance to federal agencies on the development of regulatory analysis.[25] It states that "The baseline should be the best assessment of the way the world would look absent the proposed action."[26] The 1986 regulation has been abrogated by several Supreme Court cases and is no longer in use.[27] The Corps and EPA also issued a guidance document in 2008 which sought to bring jurisdictional determinations in line with these Supreme Court cases.[28] The 1986 regulation does not represent the current method for determining jurisdiction and has not served that purpose for more than thirteen years. Using an obsolete baseline improperly diminishes the effects of this rule. Advocacy agrees with the agencies' economic analysis that uses current practice as the appropriate baseline for evaluating the rule.

B. The Rule Imposes Costs Directly on Small Businesses

The second basis for the certification appears to be the agencies' position that the impact on small businesses will be indirect, hence not requiring an initial regulatory flexibility analysis or a SBAR panel.[29] EPA cites *Mid-Tex Electric Cooperative, Inc., v. Federal Energy Regulatory Commission*[30] and *American Trucking Associations, Inc., v. EPA*[31] in support of their certification.[32] Advocacy believes that the agencies' reliance on *Mid-Tex* and *American Trucking* is misplaced because the proposed rule will have direct effects on small businesses.

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[23] Id.
[24] Id.
[25] Office of Management and Budget, *Circular A-4*, http://www.whitehouse.gov/omb/circulars_a004_a-4/#e (September 17, 2003).
[26] Id.
[27] See *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC),* 531 U.S. 159, 174 (2001); *Rapanos v. United States,* 547 U.S. 715, 729 (2006).
[28] Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States* and *Carabell v. United States*, December 2, 2008, http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm .
[29] 79 *Fed. Reg.* at 22,220.
[30] *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC),* 773 F.2d 327, 342 (D.C. Cir. 1985).
[31] *American Trucking Associations v. EPA,* 175 F.3d 1027 (D.C. Cir. 1999).
[32] 79 *Fed. Reg.* at 22,220.

In *Mid-Tex*,[33] the Federal Energy Regulatory Commission (FERC) issued regulations instructing generating utilities how to include costs of construction work in their rates. Although the generating utilities were large businesses, their customers included small entities, to whom they may or may not have been able to pass on these costs through any rate changes.[34] The issue raised in this case was whether the agency had improperly certified the rule because it failed to consider the impact on the small business customers. The court concluded that an agency is required to file an IRFA only in cases where a regulation directly affects small businesses;[35] if it does not, an agency may properly certify.

In *Mid-Tex*, the proposed regulation's applicability to small businesses is akin to the FERC regulation's applicability to the generating utilities themselves, not their customers, as EPA seems to believe. Generating utilities were an intervening actor between the regulatory agency and the small business customers; the utilities had a substantial amount of discretion as to whether they would pass on their construction costs to their small entity customers and, if so, how much of those costs they would pass on.

Such is not the case with this rule. First, there is no intervening regulated actor. In *Mid-Tex,* the generating utilities were the entities regulated and bound by FERC guidelines, and it was not certain that they would pass on the costs of the new guidelines to their small business customers. In the current case, the Clean Water Act and the revised definition proposed in this rule directly determine permitting requirements and other obligations. It is unquestionable that small businesses will continue to seek permits under the Clean Water Act. Therefore they will be subject to the application of the proposed definition and the impacts arising from its application.

Second, the rule defines the scope of jurisdiction of the Clean Water Act without any discretion left to any entity or intermediary. The rule does not, for example, set a goal for which types or how many waters must be included in jurisdiction, leaving the Corps or states to determine the exact definition of waters of the United States in particular instances. This rule establishes the definition and all small entities are bound by it.

In *American Trucking*,[36] the EPA's certification of rules to establish a primary national ambient air quality standard (NAAQS) for ozone was challenged. The basis of the EPA's certification was that the NAAQS regulated small entities indirectly through state implementation plans. The rules gave states broad discretion to determine how to achieve compliance with the NAAQS.[37] The rules *required* EPA to approve any state plan that met the standards; it could not reject a plan based upon its view of the wisdom of a state's choices.[38] Under these circumstances, the court concluded that EPA had properly

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[33] 773 F.2d at 342.

[34] Id. The generating utilities were not required to pass on the rate increases and in some cases were limited by state law in how much of the rate increase could be passed on to customers.

[35] Id.

[36] 175 F.3d 1027 (D.C. Cir. 1999).

[37] Id.

[38] Id. at 1044.

certified because any impacts to small entities would flow from the individual states' actions and thus be indirect.[39]

EPA's proposed rule is distinguishable from the regulations at issue in *American Trucking*. The states were intervening actors with broad discretion regarding how to implement the federal standards. The EPA rules only told the states what the goal was; the states were left to develop the plans that would implement those goals and thereby impose impacts on small businesses.[40] In the current case, the agencies are not defining a goal nor are they authorizing any third party to determine the means and methods for reaching the goal. To the contrary, the agencies are defining the term governing the applicability of their own CWA programs. A change in the scope of the definition of "waters of the United States" necessarily leads to an increase in the scope and impact of the CWA since the programs thereunder only apply to waters that fall within this definition. The agencies, not a third party, determine whether a given body of water is within the jurisdiction of the requirements of the Clean Water Act and therefore subject to it.

Small businesses have also provided specific examples of how this rule will directly impact them. For example, during a May hearing of the U.S. House of Representatives Committee on Small Business, Jack Field of the Lazy JF Cattle Co. testified that the rule would essentially eliminate an exemption for normal farming practices that he relies upon to do things such as building a fence to control his grazing cattle.[41] The proposed rule would eliminate the exemption for farmers whose actions do not comply with Natural Resources Conservation Services standards.[42]

Small entities in the utility industry have expressed that this proposed rule could eliminate the advantages of Nationwide Permit 12 – Utility Line Projects (NWP 12). Utility companies use NWP 12 to construct and maintain roads that provide access to the utility grid. Under NWP 12 a "single and complete" project that results in less than a ½ acre loss of waters of the U.S. is allowed to proceed under NWP 12 rather than obtain an individual CWA permit.[43] Currently, each crossing of a road over a water of the U.S. is treated as a "single and complete" project. The proposed rule creates large areas in which NWP 12 could no longer be used at all. Under this proposed rule waters in the same riparian area or floodplain all become adjacent waters and therefore waters of the U.S. If all of the waters in the riparian area or floodplain are treated as one interconnected water of the U.S. it would be virtually impossible for small utility companies to use NWP 12. Small utilities would need to apply for the more costly and time consuming individual

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[39] Id. at 1045.
[40] Id. at 1044.
[41] Testimony of Jack Field, Owner Lazy JF Cattle Co. at U.S. House of Representatives Committee on Small Business Hearing entitled "Will EPA's Waters of the United States Rule Drown Small Businesses?", May 29, 2014 at http://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=373099.
[42] 79 Fed. Reg. at 22,194; Notice of Availability Regarding the Exemption From Permitting Under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices,79 Fed. Reg. 22,276.
[43] Reissuance of Nationwide Permits, 77 Fed. Reg. 10195 (February 21, 2012).

permits. This is a direct cost imposed solely as a result of the changes to the definition of the term "waters of the United States" proposed in this rule.

These examples, as well as comments that Advocacy has received from small entities in other industries, demonstrate that the impact of the proposed rule will be direct. Therefore, the agencies are required to measure the impacts of the rule and to determine whether those impacts are significant for a substantial number of small entities.

C. The Rule Will Have a Significant Economic Impact on Small Businesses

The economic analysis clearly indicates that this rule is likely to have a significant economic effect on small businesses. In the analysis, the agencies examine the anticipated changes to permitting under CWA Section 404 (development projects that discharge dredge or fill materials into waters of the U.S.). They find that in current practice 98 percent of streams and 98.5 percent of wetlands meet the definition of waters of the U.S.;[44] under the revised definition these figures rise to 100 percent.[45] They find zero percent of "other waters" (the seventh category in the revised definition) to be covered in current practice, but the revised definition would cover 17 percent of this category.[46] The agencies evidence an understanding that this increase in jurisdiction will lead to greater costs stating, "A change in assertion of CWA jurisdiction could result in indirect costs of implementation of the CWA 404 program: a greater share of development projects would intersect with jurisdictional waters, thus requiring the sponsors of those additional projects to obtain and comply with CWA 404 permits."[47]

The agencies estimate that CWA 404 permit costs would increase between $19.8 million and $52.0 million dollars annually, and they estimate that section 404 mitigation costs would rise between $59.7 million and $113.5 million annually.[48] These amounts do not reflect additional possible cost increases associated with other Clean Water Act programs, such as Section 402 permitting or Section 311 oil spill prevention plans.[49] The agencies further state that the economic analysis done with respect to the 404 program increase is likely not representative of the changes that may occur with respect to 402 and 311 permitting,[50] leaving small businesses without a clear idea of the additional costs they are likely to incur for these Clean Water Act programs.

The economic analysis also singles out a particular class of businesses potentially affected by the revised definition, yet fails to evaluate any of these potential effects. EPA acknowledges that "a large portion of traditional 402 permit holders are located nearby large water sources to support their operations."[51] The agencies do not identify how many

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[44] Economic Analysis of Proposed Revised Definition of Waters of the United States, U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, 11 (March 2014).
[45] Id.
[46] Id.
[47] Id. at 13. Advocacy disagrees with the agencies' assertion that this cost is indirect (see above).
[48] Id. at 16.
[49] Id. at 12.
[50] Id.
[51] Id.

of these businesses may be small nor do they discuss the expected impact of this rule on them. Yet this proposed rule would directly affect those small businesses that may be located next to large water sources and which fall within the 3 percent of waters that will be newly included in the definition "waters of the U.S."

Concerns raised by small businesses as well as the agencies' own economic analysis both indicate that small businesses will see a cost increase as a result of the revised definition. The EPA and the Corps have obligations under OMB guidance, and the RFA to measure and communicate this increase. Their certification of no small business impact is inappropriate in light of this information. Because of this probable small business impact, the RFA requires the agencies to complete an IRFA and a SBAR panel.

Conclusion

Advocacy and small businesses are extremely concerned about the rule as proposed. The rule will have a direct and potentially costly impact on small businesses. The limited economic analysis which the agencies submitted with the rule provides ample evidence of a potentially significant economic impact. Advocacy advises the agencies to withdraw the rule and conduct a SBAR panel prior to promulgating any further rule on this issue.

If we can be of any further assistance, please contact Kia Dennis, Assistant Chief Counsel, at (202) 205-6936.

Thank you for your attention to this matter.

Sincerely,

/s/ Winslow Sargeant, Ph.D.

Chief Counsel for Advocacy

/s/ Kia Dennis

Assistant Chief Counsel

/s/ Stephanie Fekete

Legal Fellow

Tom Buchanan
Oklahoma Farm Bureau President

Jackson County farmer-rancher Tom Buchanan was elected president of Oklahoma Farm Bureau Nov. 16, 2013, at the organization's 72nd annual meeting in Norman.

Buchanan runs a cow-calf operation and grows wheat and irrigated cotton on his farm near Altus. He also raises cattle in a family partnership with his brother and sister. Buchanan serves as the general manager of the Lugert-Altus Irrigation District and represents irrigation water use interests as vice chairman of the Oklahoma Water Resources Board.

Buchanan has been a Farm Bureau member since he was 16 years old and has been active on the Jackson County board for more than 20 years, representing the county on numerous state Farm Bureau committees. He also served on the Oklahoma Farm Bureau Board of Directors for six years representing District 2.

Buchanan is a 1974 graduate of Altus High School. He graduated from the University of Oklahoma in 1979 with a Bachelor of Arts degree.

Buchanan has two grown children: Nathan works as a petroleum engineer, and Catie is a registered dietician.