



**National Association of Home Builders**

1201 15th Street NW  
Washington, DC 20005

T 800 368 5242  
F 202 266 8400

www.nahb.org

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**Government Affairs**

James W. Tobin III  
Senior Vice President & Chief Lobbyist

The Honorable James Inhofe  
Chairman  
United States Senate  
Committee on Environment & Public Works  
205 Russell Senate Office Building  
Washington, DC 20510

The Honorable Barbara Boxer  
Ranking Member  
United States Senate  
Committee on Environment & Public Works  
112 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Inhofe and Ranking Member Boxer:

On behalf of the 140,000 members of the National Association of Home Builders (NAHB), I am writing to express NAHB's support for S. 1140, the *Federal Water Quality Protection Act*, introduced by Senator John Barrasso (R-WY). This bill requires the Environmental Protection Agency and the Army Corps of Engineers (the agencies) to withdraw their proposed rule defining "waters of the United States." It also provides guidance to the agencies on how to shape a rule that is fair, consistent with Supreme Court precedent, and upholds congressional intent under the Clean Water Act (CWA). The agencies would be permitted to release an updated rule after completing a number of missed regulatory requirements.

On May 27, 2015, the agencies finalized a rule that greatly expands federal authority under the CWA. The rule contains expansive regulatory definitions for terms such as tributary and adjacency in order to ensure that broad swathes of land are subject to the CWA's requirements. This rule regulates new areas that are not jurisdictional under current regulations, such as most ditches, isolated waters, and even small ephemeral streams that only flow after it rains. Further, this proposed rule would run afoul of recent Supreme Court decisions, as well as ignore congressional intent under the CWA.

We were also disappointed to learn that the agencies failed to complete many of the regulatory requirements that are designed to ensure a fair and balanced rule. For example, as required under Executive Order 13132, the agencies failed to adequately consult with state and local governments; consequently, more than 33 states formally requested that the proposed rule be withdrawn. These states have expressed concerns that the proposed rule dismisses the role of state and local governments as co-regulators, as intended by Congress when the CWA was drafted.

In addition, the agencies never assessed the impacts the rule will have on small business stakeholders, as required by the Regulatory Flexibility Act. In a letter dated October 1, 2014, the Small Business Administration's (SBA) Office of Advocacy publicly admonished the agencies because they "improperly certified this rule" and stated that the rule "will have a direct impact on small businesses." Since the home building industry is dominated by family-owned small businesses, we are frustrated with the lack of consideration of the burdens on small businesses.

S. 1140 provides direction to the agencies that will help produce a workable rule that ensures environmental protection without hindering economic growth. The legislation would address many of our concerns with the rule because it establishes clear limitations on the agencies' jurisdiction. It also ensures that the agencies complete the necessary regulatory requirements before re-proposing a new rule. NAHB urges you to support S. 1140, the *Federal Water Quality Protection Act*.

Thank you for giving consideration to our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Tobin III', written in a cursive style.

James W. Tobin III

Cc: All members of the Senate Committee on Environment & Public Works