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Committee on Environment  
and Public Works Washington, D.C.

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BUSINESS MEETING TO CONSIDER S. 1140, FEDERAL WATER QUALITY  
PROTECTION ACT

WEDNESDAY, JUNE 10, 2015

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:33 a.m. in room  
406, Dirksen Senate Building, the Honorable James Inhofe  
[chairman of the committee] presiding.

Present: Senators Inhofe, Barrasso, Capito, Crapo,  
Boozman, Wicker, Fischer. Rounds, Sullivan, Boxer, Carper,  
Cardin, Whitehouse, Merkley, and Markey.

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR  
FROM THE STATE OF OKLAHOMA

Senator Inhofe. Our meeting will come to order.

We do not have a lot of people here yet. We are going to go ahead and Senator Boxer and I will do our opening statements. Then we will wait for our quorum to show up.

I have made addressing EPA regulatory overreach one of my top priorities as Chairman of the Senate Environment and Public Works Committee. That is why I am particularly glad that today we are marking up the bipartisan S. 1140, the Federal Water Quality Protection Act after holding a bicameral oversight hearing in February, three field hearings in Alaska and Nebraska, and a legislative hearing.

Two weeks ago, EPA issued a final rule that expands federal authority under the Clean Water Act by changing the definition of "waters of the United States." Absent legislation to stop it, this new rule will go into effect later this summer.

EPA took this action despite the fact that according, to the Corps of Engineers, 60 percent of the comments, during the comment period, opposed the rule, including 32 States, the U.S. Conference of Mayors, the National League of Cities and the National Association of Counties. We have all these people opposing this very stringent rule.

I have to add at this point that in my State of Oklahoma,

which I do not think is much different from any other State, our Farm Bureau head, Tom Buchanan, says the problems the farmers and ranchers in Oklahoma face have nothing to do with anything you find in the farm bill. It is all overregulation by the EPA and the water regulations that scare them the most. That is their number one priority right now.

Fortunately, this bipartisan legislation will stop the final rule and make EPA and the Corps of Engineers go back and redo it. This time, they cannot avoid consultation with States and local governments. They will have to do a full economic analysis, including an unfunded mandates analysis, and they will have to review the impacts on small businesses and small local government.

These are process steps they skipped because they claim that a definition has no direct costs, a claim strongly disputed by States, local governments, and the Small Business Administration Office of Advocacy. We know that from the hearing we had here in these chambers. This legislation also prevents EPA from issuing a new rule that simply repeats their regulatory overreach.

Unlike the rule they issued two weeks ago, in a revised rule, EPA will not be able to claim the power to control land and water use based on use of water by birds or other animals, the seepage of water into the ground, water storage, and the

overland flow of flood water. At the same time, the legislation encourages EPA to regulate streams that actually carry pollutants to navigable water and wetlands next to streams and rivers that filter pollutants.

Before some of you came in, I made the comment that in my State of Oklahoma, the president of the Oklahoma Farm Bureau, Tom Buchanan, says their number one concern is this issue. I know that is probably true in Mississippi and other States too. We are going to try to correct that.

Senator Boxer?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES  
SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. Thank you so much, Mr. Chairman.

You heard my chairman say that his priority is going after EPA overreach. His priority is going after the Environmental Protection Agency. It is his right, as he and I have said often. Elections have consequences. When I had the gavel, we did a lot of different things here. He has the gavel and it is his right.

I want to remind colleagues that this is the Environment Committee and not the anti-environment committee. I hope we will remember that our charge is to protect the people of America from harmful pollution.

Today, we are considering legislation that would undermine one of our Nation's landmark laws, the Clean Water Act, and roll back protections for the American people, their drinking water. It will actually roll back protections for 117 million people.

We talk a lot about national security, as we should. Nothing is more important than protecting the lives of the American people. Members of this Committee should understand that when we weaken the Clean Water Act, as this bill will do, we are putting the lives of our people in danger.

The Clean Water Act prevents the uncontrolled pollution of the streams, rivers, and lakes where our children swim and that

provide drinking water to millions of Americans. If the Clean Water Act does not apply, polluters can dump raw sewage that would sicken children swimming in contaminated waters.

Factories can discharge industrial waste containing heavy metals, such as arsenic, lead, and selenium. Drilling companies can discharge wastewater containing known carcinogens like benzene and chromium-6. We need a strong Clean Water Act to ensure this does not happen.

Decades ago, the United States experienced widespread damage and degradation to our environment. The Cuyahoga River in Cleveland, Ohio was on fire and our lakes were dying from pollution. In 1972, Congress passed the Clean Water Act.

Unfortunately, the legislation before us today would take us in the wrong direction by removing protections and creating more confusion and uncertainty about which waters are protected. That is why over 80 scientists with expertise in the importance of streams and wetlands, as well as the Society for Freshwater Science, have written to us opposing this bill.

We have also received opposition letters from numerous sportsmen groups, including the American Fly Fishing Trade Association, Backcountry Hunters and Anglers, Izaak Walton League of America, Theodore Roosevelt Conservation Partnership, Trout Unlimited and many other groups.

I ask unanimous consent to place all of them into the

record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. These groups understand the important link between clean water and outdoor recreation. These groups work with Republicans and Democrats alike and they fiercely oppose this bill.

Over 40 leading law professors that study, teach, and write about the Clean Water Act have concluded "S. 1140 would constitute a massive weakening of the Clean Water Act."

I ask unanimous consent to enter these and other letters of opposition into the record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. The final Clean Water Rule that S. 1140 will block clearly protects streams that provide drinking water to millions of Americans while establishing exemptions for numerous water bodies that do not impact downstream water quality.

For the first time, Federal regulations will explicitly exclude numerous types of ditches. You are going to hear all kinds of misinformation on this. This rule excludes numerous types of ditches, stormwater collection and treatment systems, artificial ponds, water-filled depressions, puddles, and recycling water facilities.

If the Barrasso bill, S. 1140, passes, all of these new exemptions will be blocked. This bill would create more confusion for businesses and landowners by taking away new exemptions and sending EPA and the Corps back to square one.

After years of uncertainty following two Supreme Court decisions, we should not pass legislation that would create more confusion and invite years of new litigation. The Obama Administration's efforts are about protecting drinking water for American families and businesses, and the process, alluded to by my chairman, has been open and inclusive. More than 1 million comments were received during a comment period that lasted over 200 days, and over 400 outreach meetings with stakeholders and State and local governments were conducted.

Instead of advancing a bill that would allow more pollution of our waterways, we should listen to the wide variety of stakeholders that support the proposed clean water rule. A poll released last month shows that 78 percent of the people think Congress should allow the rule to move forward but not in this committee. Who are they listening to? I will leave that to you to figure out.

It is time to restore much-needed certainty, consistency, and effectiveness and S. 1140 does just the opposite. It would result in further delay, more uncertainty, and less protection for the American people.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Thank you, Senator Boxer.

We have reached an agreement that we are going to consider the Manager's Amendment to S. 1140 with members amending that document. These amendments that come in will be to that document I just described.

I want to ask members to keep in mind, we have to have a quorum of 11 in order to pass this, but our amendments only need 7. Right now we have 8, so we are going to go through these as quickly as possible. We have 11 amendments out there and I want to ask which members seek recognition to each amendment and allow each member to call up his own amendment. We can have committee counsel available at the table to answer questions. At the conclusion of the members' statements and questions, we will vote on each amendment.

I would like to start by asking Senator Barrasso if he would like to make comments about the underlying bill which is the Manager's Amendment.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES  
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Thank you very much, Mr. Chairman. I do appreciate your holding a markup on this bipartisan, pro-environmental protection, pro-small business legislation.

S. 1140, the Federal Water Quality Protection Act is legislation I introduced along with Democratic Senators, Senator Donnelly, Heitkamp, Manchin, along with other members of this committee, including you, Mr. Chairman. This is legislation that will protect our Nation's navigable waterways, the streams and wetlands that help keep our navigable waters clean.

This bill is a testament to the hard work that both sides of the aisle have done in achieving an agreement on an environmental protection bill. Our rivers, lakes, wetlands and other waterways are among America's most treasured resources.

In my home State of Wyoming, we have some of the most beautiful rivers in the world, the Snake River, the Wind River and dozens of others. The people of Wyoming voted to keep these waterways safe and pristine for their children and grandchildren. They understand there is a right way and a wrong way to do this. It is possible to have reasonable regulations to help preserve our waterways while still respecting the difference between State waters and federal waters.

Unfortunately, the rule the EPA has released does not do

that. In fact, the rule is actually worse than the proposed rule. This is important because many of my colleagues have been waiting for the rule to be released and gave the Administration the benefit of the doubt.

I am here to tell you that no matter what concessions EPA has claimed, they added new provisions that greatly expand their authority. For example, instead of clarifying the difference between a stream and erosion of the land, the rule defines tributaries to include any place where EPA thinks it sees an ordinary high water mark. What looks like, not what is, but the EPA says what looks like a high water mark.

Even worse, EPA proposes to make these decisions from their desks using aerial photographs and laser generated images claiming a field visit is not necessary. Under the rule, the Environmental Protection Agency also has the power to regulate something as "waters of the United States" if it falls within a 100-year floodplain or if it is within 400 feet of navigable water or a tributary and EPA claims there is a significant nexus.

Under this rule, significant nexus means a water feature that provides "life-cycle dependent aquatic habitat for a species." If you start drawing 4,000 foot circles around everything the EPA identifies as a tributary and everywhere there is a potential aquatic habitat for birds and fish in that

area, I expect nearly the whole Country would be included.

Mr. Chairman, this is not just me, this is from the economic analysis of the EPA-Army Clean Water Rule, May 2015, this year. This is what the EPA says to confirm my suspicions. "The agencies have determined that the vast majority of the Nation's water," the Nation's water, not the States' water, not the counties' water, not local water, but the Nation's water, they think they own it all, "the Nation's water features are located within 4,000 feet of a covered tributary, traditional navigable water, interstate water or territorial sea. We believe, therefore, that very few waters will be located outside of 4,000 feet and within 100-year floodplain." They believe they can control it all.

Mr. Chairman, in addition, the final rule exempts puddles. They define that as very small, shallow and highly transitory pools of water that forms on pavements, that is good, or upland during and immediately after a rainstorm or similar precipitation event. It does specifically include other pools of water created by rain such as prairie potholes, vernal pools, even if the land where these pools of water form is far away from any navigable water or even a tributary.

Since the Supreme Court issued its 2001 decision in the Swank case, none of these isolated pools of water have been found to be jurisdictional applying a case by case analysis.

Under this new regulation, nearly all of them will be considered waters of the United States, giving the Environmental Protection Agency the power to regulate what you do on that land.

These provisions are sweeping and will create uncertainty in communities all across America. Rather than support an EPA rule that is actually worse than the proposed rule and does not represent the interests of our farmers, ranchers, families and communities, let us move forward with this bipartisan Federal Water Quality Protection Act to assure the public that we hear and we understand their concerns. At the same time, let us give EPA and the Army Corps the certainty they need to confidently move forward with a new rule that truly reflects the needs of the constituents that we represent.

Thank you, Mr. Chairman. I urge my colleagues to vote yes on this bipartisan piece of legislation.

[The prepared statement of Senator Barrasso and the text of S. 1140 follow:]

Senator Inhofe. Thank you, Senator Barrasso.

Does any member seek recognition for an amendment? Senator Cardin.

Senator Cardin. Thank you, Mr. Chairman.

I would offer Cardin-Boxer Amendment No. 1.

Senator Inhofe. Cardin-Boxer Amendment No. 1, you are recognized.

STATEMENT OF THE HONORABLE BENJAMIN CARDIN, A UNITED STATES  
SENATOR FROM THE STATE OF MARYLAND

Senator Cardin. Thank you.

Mr. Chairman and members of the committee, our responsibility is to make sure that we protect the public from polluters. So when we talk about burdens on different segments and so forth, we want to make sure our regulatory structure is fair to all.

Make no mistake, our burden and our responsibility is on the public health of the people of this Country. That is why on a bipartisan basis, we enacted the Clean Water Act to protect public health. We do not want to go back to rivers catching fire and the circumstances that Senator Boxer alluded to in her opening comments.

I oppose the bill that is before us. Two weeks ago, the Environmental Protection Agency and the Army Corps responded to the challenge laid down by the Supreme Court a decade ago. That decision created uncertainty in case by case determinations as to what waters would be regulated under the Clean Water Act and reinstated a science-based protection using sound, peer reviewed scientific data for clean water.

That is exactly what we want them to do, to use science, to use the best data available to protect the public and make sure that we have clean water.

For the first time ever, the regulation spells out with clarity those waters that are not subject to the Clean Water Act and adopted a narrower working definition of waters of the U.S. than was the working use prior to the Supreme Court decision. They listened to the comments made during the review process as Senator Boxer pointed out. They listened to the million comments made and tailored a rule that complies with its responsibility to protect the public in regards to clean water. They listened to the reasonable concerns expressed by the stakeholders.

Therefore, the legislation we have before us, if not amended, will send EPA and the Army Corps back to the drawing board and create uncertainty once again where there will not be clarity as to what is subject to the Clean Water Act because we have denied the agencies moving forward and Congress has not adopted the certainty as to what is subject to the Clean Water regulations. We are talking about wetlands and tributaries that affect the clean water.

The amendment I have offered, first, corrects a mistake in the underlying bill. The goal of the Clean Water Act is not as stated in the bill before us, to protect traditional navigable waters from water pollution. That is not the goal stated in the Clean Water Act. The goal is to restore and maintain the chemical, physical and biological integrity of the Nation's

waters.

My amendment corrects the misstatement contained in the underlying bill but then goes to I think the heart of what I hope all of us would agree. That is, the provisions will not be effective if the Administrator and Secretary determine the implementation of the provisions is likely to increase the probability of exposure to discharges of toxins and pollutants in amounts that could adversely impact the health and welfare of persons served by public drinking water systems, including infants, children, pregnant women, the elderly and other vulnerable populations. I say that because we are all subject to having clean water in our environment but those particularly susceptible are the most vulnerable, our children, our elderly and vulnerable populations.

Secondly, the amendment says if it would compromise the safety or heighten the risk of illness from consumption of fish or swimming, that also would be taken into consideration as far as the implementation of this bill.

Mr. Chairman, I would hope my colleagues would accept this amendment. I remember in some of my previous years in the House of Representatives, Democrats and Republicans joined together in the proud tradition of this Country to protect the public. In every Congress, we looked at ways we could build upon the success of the past to protect public health so communities felt

safe in their community with clean water, and I might also add clean air. I think my amendment makes it clear that we will put public health first and carry out the burden that we have to protect the public health.

[The prepared statement of Senator Cardin and the text of Cardin-Boxer Amendment No. 1 follow:]

Senator Inhofe. Thank you, Senator Cardin.

Let me note a little bit on what he said. Senator Cardin and I were elected to the House in the same year. I remember very well and believe we have been doing just what you suggested over those some 28 years now.

I would only observe that this amendment does not amend the Clean Water Act but as you point out, sends it back to have areas where we feel it needs a lot of surgery worked out. I also am a little concerned about when we give the power to the Administrator and the Corps. I am not sure I have as much faith as you in their having that power.

I would ask for anyone who wants to be heard on this amendment? Senator Carper.

STATEMENT OF THE HONORABLE THOMAS CARPER, A UNITED STATES  
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman.

Before us we have a bill authored by Senator Barrasso, who I think is one of our more thoughtful people, who is delightful to work with and to know. While I cannot support his proposal, I would say there are several aspects of his bill that do have merit. I want to mention a couple of them.

I think a report to Congress on how to ensure communities are not harmed intentionally by this new rule would be helpful to ensure EPA stays on the right track. I also believe that the concept of maps showing watersheds that must be protected is a good one as long as it is done thoroughly and carefully.

I commend him for trying to make an honest effort to address a couple of areas that need to be addressed.

Having said that, I have not been in lock step with EPA, none of us have, but I will say this. Gina McCarthy, the Administrator, has made a strong effort to be as open as I think she and the agency can be.

The idea of having a 200 day period in which to receive input is extraordinary. They did not just get a couple thousand recommendations for changes, they got a million. I think they made an honest effort to try to incorporate those into this final rule.

Is it perfect? No way, nothing is perfect. While we strive for perfection as our goal, we cannot be perfect. I am going to support Ben's amendment. I hope the rest of us will also.

At the end of the day, some of the things that Senator Barrasso has called for in his bill deserve support. While there are other pieces of the legislation that will not allow me to support it, I commend him for that effort.

I thank you, Mr. Chairman.

[The prepared statement of Senator Carper follows:]

Senator Inhofe. You will have that opportunity.

Senator Boxer. Let us go back and forth here.

Senator Boxer. That is fine.

Senator Inhofe. Those who want to be heard on the amendment from this side?

Senator Boxer?

Senator Boxer. Thank you so much.

I want to thank Senator Cardin for his work on this.

Mr. Chairman, here are the facts. These are the facts. This is not made up. This comes from American Rivers.

The EPA estimates that up to 3.5 million people fall ill from swimming in waters contaminated by sanitary sewer overflows every year. If we start taking streams out of this regulatory reach, if we start taking waters out, people can dump their sewage in there without any type of permit. We will see this number go up, including the 1.5 million people in California every year on the beaches.

We have some pretty strict regulations but even with that, people get sick from the untreated sewage. There are pathogens in the water. Cryptosporidium contaminated the drinking water supply in Milwaukee. In 1993, 400,000 people became ill and 100 people died because they were vulnerable.

Why on earth does the Environment Committee want to remove bodies of water from this rule where they can become filled with

these pathogens? Toxic algae blooms, I know my friend has had direct experience with that. In addition to pathogens, the high nutrient levels in untreated sewage can cause illness when they create algae blooms. Symptoms from exposure include memory loss, vomiting, diarrhea, abdominal pain, liver failure, respiratory paralysis and even coma.

We are not talking about bureaucracy and EPA overreach. We are talking about how we can protect our people from these illnesses.

I will conclude with this, I think the Cardin amendment strikes a provision in S. 1140 that would essentially rewrite the objective of the Clean Water Act. My friend is right. It sends the rule back. But essentially, because frankly, I do not think the American people would stand for it one second if you tried to repeal the Clean Water Act, you would be voted out of office. They do not do that.

They play with this rule and rewrite the historic objective of the Act. The historic objective of the Act supported by Republicans and Democrats overwhelmingly 40 years ago says, we want to restore and maintain the chemical, physical and biological integrity of the Nation's waters. This is what Senator Cardin does. He restores this important definition.

The amendment also says that the Act is null and void if it would increase exposure to toxic pollution or increase the

likelihood that people will get sick from consuming fish or swimming in recreational waters. Colleagues, that is the least we can do, protect peoples' health.

The amendment opposed the historic focus of the Clean Water Act and it does not undo the many achievements of the Act over the last four decades. I hope we can at least vote yes. Otherwise, the American people will see that a Clean Water Act has protected them, even though it certainly has not been perfect. People have still gotten sick but we have protected people. We are one of the best in the world in this and that it is not being rescinded in part by this law. I urge a yes vote.

Senator Inhofe. Thank you, Senator Boxer.

Before recognizing Senator Barrasso to respond, does anyone else wish to be heard on this amendment?

Senator Barrasso?

Senator Barrasso. Thank you, Mr. Chairman.

First, I want to specifically thank Senator Carper for his fine comments. We have worked closely together on a number of issues. He is an honest broker, continues to be, and it is a privilege to serve with him as a former governor, a former U.S. member of Congress and now as a Senator. He is someone that I think really understands his State, the needs and concerns there. I appreciate his kind comments.

Mr. Chairman, I do need to oppose the Cardin-Boxer

Amendment No. 1. The bill I propose does not amend the Clean Water Act, so it does not amend Section 101 of the Act. It is not necessary to restate those goals.

In addition, even though rivers and streams that are sources of drinking water are clearly protected by S. 1140, as are the wetlands next to those rivers and streams that serve to filter pollutants, this amendment, the Cardin-Boxer amendment, gives EPA the authority to vacate the entire bill with a spurious determination which is my specific concern.

This would result in the status quo, which is unacceptable to cities, towns, farmers, ranchers, small business owners, hardworking taxpayers and those who want clean water and their livelihoods all across the Country.

I would urge a no vote on this amendment.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso.

The Cardin-Boxer Amendment is before us.

Senator Cardin. Can I close?

Senator Inhofe. Of course.

Senator Cardin. Thank you, Mr. Chairman. I appreciate the opportunity to close.

Let me say, I share Senator Carper's observations that we need to work together. Senator Barrasso and I serve not only on this committee together but also on the Senate Foreign Relations

Committee. We have been able to work together and sometimes we disagree.

Let me just point out what the bill says. It says, "The Federal Water Pollution Act is an Act to protect traditional navigable waters from water pollution." In fact, what the Clean Water Act says is it is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." That is what the Act says.

Senator Barrasso, your bill changes the Clean Water Act's fundamental principle to protect public health. You are changing it to say "to protect traditional navigable waters." That is a change, a significant change, a fundamental change in the Clean Water Act.

The reason why we underscored that with the rest of this bill is because this is what the Clean Water Act is about. The Clean Water Act is about people who swim who know that we have regulations to protect their health. People who live near water know that we have regulations and a law to protect their health and that clean water is a national priority. That is what the Clean Water Act says.

I understand Senator Barrasso's intent, but that is not what the bill says. The bill changes the fundamental direction of the Clean Water Act in addition to stopping the agencies from moving forward on its regulations.

I would urge my colleagues to adopt this amendment.

Senator Inhofe. Thank you, Senator Cardin.

Is there a motion on the Cardin-Boxer Amendment No. 1?

Senator Boxer. So moved.

Senator Inhofe. Second.

All in favor, say aye.

[Chorus of ayes.]

Senator Inhofe. Opposed, no.

[Chorus of noes.]

Senator Inhofe. A roll call has been requested. The Clerk will call the roll.

The Clerk. Mr. Barrasso?

Senator Barrasso. No.

The Clerk. Mr. Booker?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Boozman?

Senator Boozman. No.

The Clerk. Mrs. Boxer?

Senator Boxer. Aye.

The Clerk. Mrs. Capito?

Senator Inhofe. No by proxy.

The Clerk. Mr. Cardin?

Senator Cardin. Aye.

The Clerk. Mr. Carper?

Senator Carper. Aye.

The Clerk. Mr. Crapo?

Senator Crapo. No.

The Clerk. Mrs. Fischer?

Senator Fischer. No.

The Clerk. Mrs. Gillibrand?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Markey?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Merkley?

Senator Merkley. Aye.

The Clerk. Mr. Rounds?

Senator Rounds. No.

The Clerk. Mr. Sanders?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Sessions?

Senator Inhofe. No by proxy.

The Clerk. Mr. Sullivan?

Senator Inhofe. No by proxy.

The Clerk. Mr. Vitter?

Senator Inhofe. No by proxy.

The Clerk. Mr. Whitehouse?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Wicker?

Senator Wicker. No.

Senator Inhofe. I would remind the Clerk he did not call my name.

The Clerk. I am sorry. Mr. Chairman?

Senator Inhofe. No.

The Clerk. The yeas are 9 and the nays are 11.

Senator Inhofe. The amendment is not accepted.

Senator Carper. I would ask unanimous consent that my statement be entered for the record at the appropriate place.

Senator Inhofe. Without objection, of course.

[The prepared statement of Senator Carper follows:]

Senator Carper. I am going to run back to Homeland Security. We are trying to get a TSA Administrator confirmed. I am going to run and do that.

Thanks so much.

Senator Inhofe. That is important.

Do other Senators have amendments?

Senator Boxer. I do.

Senator Inhofe. Senator Boxer?

Senator Boxer. I would call up Boxer No. 1.

Senator Inhofe. Boxer No. 1. Senator Boxer?

Senator Boxer. Thank you, Mr. Chairman.

My amendment ensures that the Secretary of the Army and the Administrator of the EPA retain their authority to protect our Nation's drinking water supply.

The Clean Water Act is a critical tool for preventing pollution of water bodies that provide drinking water. The final Clean Water Rule protects streams and wetlands that provide drinking water to 1 in 3 Americans. S. 1140, the bill before us, would block this important rule and the protection it provides for our drinking water.

This amendment is very simple. It simply says that nothing in this bill affects the Secretary and Administrator's authority to protect sources of drinking water. Colleagues, that is the least we can do, the least we can do.

I hope we can all agree the EPA and the Corps should retain the authority to ensure that our drinking water supply is safe and clean.

I urge my colleagues to vote yes on this amendment.

[The text of Boxer Amendment No. 1 follows:]

Senator Inhofe. Thank you, Senator Boxer.

Let me observe that I have the same problem with this amendment that I had with the last one, because you are saying they are without a lot of guidelines, able to have that power. I would object to this amendment.

Does anyone want to be heard? Senator Cardin.

Senator Cardin. Thank you.

I support the Boxer Amendment. Mr. Chairman, when our constituents turn on their tap or go to their wells, they expect the water they are drinking is safe. I do not know of a more fundamental responsibility we have than to make sure that, in fact, is real.

The truth is that as we are chipping away at the protections we have on clean water and clean air. A lot of assumptions made by people in this Country are not necessarily accurate. You have seen recent reports that are challenging, in some cases, the safety of drinking water.

This amendment is so straightforward and commonsense. It does not stop what Senator Barrasso is trying to do in his bill. It just says we have to guarantee we are doing everything we possibly can to make sure when you turn on the tap, the water is safe.

It seems to me that at a bare minimum, we should have broad support, if not unanimous support, for this amendment. I do not

quite understand the Chair's objections to saying that the agency responsible for clean water, you cannot trust to make sure we have safe drinking water. I do not understand the logic of that argument.

Senator Inhofe. Thank you, Senator Cardin.

Do others want to be heard? If not, Boxer Amendment No. 1 is before us. A roll call has been requested. The Clerk will call the roll.

The Clerk. Mr. Barrasso?

Senator Barrasso. No.

The Clerk. Mr. Booker?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Boozman?

Senator Boozman. No.

The Clerk. Mrs. Boxer?

Senator Boxer. Aye.

The Clerk. Mrs. Capito?

Senator Inhofe. No by proxy.

The Clerk. Mr. Cardin?

Senator Cardin. Aye.

The Clerk. Mr. Carper?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Crapo. No.

The Clerk. Mrs. Fischer?

Senator Fischer. No.

The Clerk. Mrs. Gillibrand?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Markey?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Merkley?

Senator Merkley. Aye.

The Clerk. Mr. Rounds?

Senator Rounds. No.

The Clerk. Mr. Sanders?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Sessions?

Senator Inhofe. No by proxy.

The Clerk. Mr. Sullivan?

Senator Inhofe. No by proxy.

The Clerk. Mr. Vitter?

Senator Inhofe. No by proxy.

The Clerk. Mr. Whitehouse?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Wicker?

Senator Wicker. No.

The Clerk. Mr. Chairman?

Senator Inhofe. No.

The Clerk. Mr. Chairman, the yeas are 9 and the nays are 11.

Senator Inhofe. The amendment is not agreed to.

Are there other amendments?

Senator Boxer. Yes.

Senator Inhofe. Senator Boxer?

Senator Boxer. Thank you so much.

I know everyone has things to do. I had nine amendments but I am only offering three. I know they are painful for you, but we will make it quick. I have Boxer Amendment No. 5.

Senator Inhofe. Boxer Amendment No. 5, thank you.

Senator Boxer. This amendment simply says the bill is null and void if EPA or the Corps determines that implementation of the bill will increase costs. That should be a good one for you guys and gals. It would lengthen the time to obtain a permit or perpetuate the lack of regulatory predictability and certainty.

Stakeholders have waited far too long for EPA and the Corps to address the confusion created by recent Supreme Court cases. Now that the agencies have acted, we should not start the process over as this bill requires.

S. 1140 sends EPA and the Corps back to square one while adding new and confusing terms that will have to be interpreted and likely will be litigated. They will go straight to the courthouse door. I can assure you of that. Environmentalists

have a record of winning, even in the U.S. Supreme Court as we did on climate and many other things.

S. 1140 could result in years of delay, confusion and uncertainty. My amendment ensures that the new requirements of this bill will not add to the problem by decreasing predictability and making it more difficult and time consuming to get a permit.

If you support certainty and predictability, and if you do not want to see more cost associated with this, I hope you will support Boxer Amendment No. 5.

[The text of Boxer Amendment No. 5 follows:]

Senator Inhofe. Thank you, Senator Boxer.

I would observe the amendment gives the EPA and the Corps the discretion to decide whether or not any of these three standards are met. I believe that would render S. 1140 ineffective, in my opinion.

Do others want to be heard? Senator Cardin?

Senator Cardin. Mr. Chairman, I will be brief.

I now have the drift of your concerns. I appreciate that. You do not want to give the discretion to the Environmental Protection Agency or the Army Corps to implement the Clean Water Act.

Therefore, I think it is incumbent upon us to write the regulation and put it into law and for us to take on the responsibility that would normally go with an agency. I do not think we can do that, but I do not know how this committee can act by the Majority in saying we are not going to give the agency the ability to carry out our intent through its actions because we do not believe they will do that.

The Majority is saying that to us in a way that is consistent with what we intend and yet we are not prepared to enact a definitive statute as to how the law operates. You are sending it back. To me, what you are doing is just delaying and delaying and delaying. We have delayed it over a decade.

You are not doing any favors to the stakeholders who have

to operate under the Clean Water Act. They need certainty. One thing I have learned, when I talk to different business groups, residents and people, they want certainty. They say, give us the rules and we will operate under the rules.

Yet, Mr. Chairman, you are saying you do not want to give the ability of the agency to bring certainty and you are not prepared to give the certainty by statute. That puts us in a terrible position.

I am just expressing my frustration and support of the Boxer Amendment.

Senator Inhofe. Let me respond by expressing my frustration.

It might be that you feel that the Administrator, the Corps and the others are in a position to make these determinations unilaterally without the input of someone who is elected. If you talk to any of the farmers or ranchers in Oklahoma and you will find they look to us, not the unelected bureaucrats, for the interpretations. I would object to it.

Does anyone else want to be heard?

Senator Boxer. I would just close.

Senator Inhofe. Yes, of course. Senator Boxer.

Senator Boxer. I hear over and over again from Republican friends that they do not want to have rules or laws that increase costs. All we are saying is if there is an increase in

costs and if it is going to take more time to obtain a permit or perpetuate the lack of regulatory predictability, the bill is null and void.

If you want to vote no against predictability and costs, high costs, go ahead. I am sure you will, but just know that it is kind of unusual to see my Republican friends voting against something that clearly says, if it is going to increase costs, it should be null and void.

Let us vote and see. Maybe I will be shocked.

Senator Inhofe. Senator Boxer, thank you very much.

Senator Rounds. Mr. Chairman?

Senator Inhofe. Yes, Senator Rounds?

Senator Rounds. I think the Ranking Member has perhaps hit on what is one of the key issues that many of us feel has to be addressed. That is, in this particular case, this amendment would actually ask the rulemakers to decide whether or not they could void a law passed by Congress and allow them to recreate the rules the way they want to interpret them without any oversight from Congress.

In other words, this would suggest the agency itself could look at our legislation as passed and then, if it increases costs, in their determination, they could then eliminate the direction of the Congress of the United States.

That is wrong. That is exactly getting to the heart of the

problem of what is going on with the bureaucracy in Washington today. They are creating 3,500 more rules every single year. We have a million rules on the books today. None of them have been approved by the elected members of Congress. They are put into effect and there is no oversight today.

Perhaps the way we fix it is in the future, this Congress takes back the responsibility to actually make sure the rules being put in place follow the guidelines and understanding and interpretation of the Congress which passed the rule of the law in the first place.

I really do believe that is what this is all about.

Senator Cardin. Would my colleague yield?

Senator Rounds. I would.

Senator Cardin. I appreciate your comments because I think many of us share the responsibility we have in Congress to oversee agencies. I take that very, very seriously.

The challenge is that we do not have the same capacity to do the scientific peer reviews that the agency does to use best science, to do all that is implied in the Clean Water Act. That was always the intent of Congress, that it be based upon science, that there be scientific peer-reviewed data used and cost analyses must be done. All that must be done. It is done by the agency. We should be overseeing that. I agree with you, but how do we proceed if they cannot get a regulation done?

Senator Rounds. Mr. Chairman, if I could, the Science Advisory Board was designed to actually address the issues as presented to them not only by the agency but also by this committee. If you take a look at the GAO report, which was just done and completed and passed out, it suggests very strongly that they are not being asked for those analyses in terms of what the costs are today.

Not only should the agency take into account what the Science Advisory Board could do if requested, but then it should be shared with us as to whether they came up with the analysis of what the actual costs are. I do not believe that is occurring right now.

I understand the need for good rules. I still think the elected officials in this Country should have the ability to look back, review and do the oversight on a regular and ongoing basis of what those rules should look like when they are implemented so that the laws put in place today, when they are implemented correctly, follow the spirit and the intent of the law itself.

I do not believe the rules being put in place today necessarily do that or that we have the system in place right now that effectively oversees that implementation. Until such time as that occurs, the only way we have to stop a bad law or bad rule from going into effect is to literally pass an act by

Congress.

That is what we are trying to do today, to replace and say, we have seen the rules that you are putting in place, we see what you are trying to do, and we disagree. If we disagree, then we will rewrite a part of the law or amend the law so that you cannot do what you are trying to do or what you misunderstand our intent was in the first place.

Senator Boxer. Mr. Chairman, may I be heard?

Senator Inhofe. Senator Boxer.

Senator Boxer. I really trust my friend and believe he is here for the right reason, to do the right thing. But I just want to say the way it works or the way it should work is when Congress passes a law and it is overwhelmingly passed by Republicans, that was 1972, the Clean Water Act, then it is overwhelmingly reauthorized in 1987, and the agencies carried out, in this case it is the Army Corps and the EPA carried out, we do our oversight but we should not be tearing apart the Clean Water Act.

I will tell you this. The check and balance lies with the courts. There is no doubt about it. We have seen business sue on one hand, we have seen environmental groups sue and the courts have looked at this.

This bill rips the heart out of the rule and frankly, out of the Clean Water Act. As Senator Cardin so beautifully stated

in his opening amendment, which we said let us at least restore that. We could not even get that vote here.

I want to say this. I hope you will vote for this. The fact is EPA approval among the American people is about 70 percent. Our approval is 19 percent. As much as my friend would like to see Congress trump the EPA, the American people know in their heart of hearts.

They do not want this to be about politics or are we voting for the polluters or are we voting for special interests. They want the EPA and the Army Corps. Even when you look at the polling done around this, the Corps overwhelmingly, on this particular rule, they trust the Corps 72 percent and trust us 25 percent on this rule, and EPA well over 60 percent.

My view is for all the talk about how wonderful we are, we all have egos and know we are here for the right reasons and I do not question that. We work hard and want to do the right thing. The American people say, get out of the way here, have the EPA and the Corps protect our waters.

That does not mean everything they do is right but this rips the heart out of the Clean Water Act. We should not be doing that. If I could say, this is a low point for me personally in this committee.

I have seen us argue about a lot of things but I do not see why we are doing this and I think it is sad. I would go so far

as to say I do not think this will ever become law. I do not know anymore. I do not think it will, just judging from the votes we are having here.

In any event, I do not doubt my friend's intentions in any way but I do think we are ripping the heart out of a bill that is a landmark bill which has separated this Country from a lot of other countries and has done a great job for 40 years. We are messing with it and that is a sad day for the Environment Committee.

Senator Inhofe. Thank you, Senator Boxer.

Let me take the Chair's prerogative. It has been stated twice in the record in this meeting how overwhelmingly popular the Corps of Engineers and the Administrator and this Administration is.

Let me remind you that 60 percent of the responses during the comment period of this regulation were negative. I have never seen it that high. That is very negative.

The second thing is, you are right when you say we pass laws and we have oversight. We have different Administrations that come along and not always the same Administrator of the EPA, not always the same Corps of Engineers. In fact, they reflect the philosophy of the Administration.

If you think we are all that unpopular and they are that popular, I would invite you to come to Oklahoma. I would

suggest that Senator Fischer, who had a field hearing in Nebraska, would probably agree with what I just said.

Senator Barrasso. Mr. Chairman?

Senator Inhofe. Senator Barrasso.

Senator Barrasso. If I may add to the points you raised, Senator Boxer appropriately talks about a law passed in 1972 and reauthorized in 1987. This is 2015. She talks about those who support the EPA. Let me tell you what was in the Washington Post on Monday, June 8.

I would imagine most Americans who read this story would not support this agency where the headline is Discipline at EPA Lax, Watchdog Says. "The Environmental Protection Agency is creating a festering culture of complacency by dragging its feet on actions against employee misconduct, the agency's watchdog found, employees watching pornography on government computers." This is under Gina McCarthy and there is a picture of Gina McCarthy there.

"Employees watching pornography on government computers and a senior executive who looked the other way while an employee faked a timesheet and a senior employee who took another paying job while on the federal clock" are some of the examples the Inspector General cited last week.

In the realm of fraud and abuse, the Inspector General cited a need for better management oversight and prompt action

against employees guilty of misconduct. The EPA, they say, is not using the tools it has to take action against employees who break the rules.

Investigators cited examples of wrongdoing that were no-brainers for quick punishment, this is under Gina McCarthy, but were handled instead by a laissez-faire approach. Two employees, each earning \$120,000 a year, watching pornography on the job, were put on paid administrative leave for almost a year before anyone tried to fire them.

One case was discovered in November 2013, when Gina McCarthy was Director of the EPA and another was in May 2014. It took until March 2015 for the agency to move to fire them. One employee retired. The other remains on paid leave while appealing the decision. I do not believe the American people aware of this would be supportive of an agency under the direction of Gina McCarthy.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso.

Senator Boxer. Mr. Chairman, since this is about my amendment and it has gotten a little bit off track, I do not know what someone watching pornography, which is outrageous, has to do with that. A person should be fired, fined and maybe jailed, I do not know the details, but what does that have to do with making sure that when people turn on the tap water and they

have a drink, they do not get sick from some chemical toxin in the water?

We could talk about lots of other things in the news that you would not want me to bring up. Let us not go there.

I urge an aye vote. I want to have a roll call on this.

Senator Inhofe. Boxer Amendment No. 5 is before us. There has been a motion. Is there a second?

Senator Cardin. Second.

Senator Inhofe. A roll call has been requested. The Clerk will call the roll.

The Clerk. Mr. Barrasso?

Senator Barrasso. No.

The Clerk. Mr. Booker?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Boozman?

Senator Boozman. No.

The Clerk. Mrs. Boxer?

Senator Boxer. Aye.

The Clerk. Mrs. Capito?

Senator Inhofe. No by proxy.

The Clerk. Mr. Cardin?

Senator Cardin. Aye.

The Clerk. Mr. Carper?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Crapo. No.

The Clerk. Mrs. Fischer?

Senator Fischer. No.

The Clerk. Mrs. Gillibrand?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Markey?

Senator Markey. Aye.

The Clerk. Mr. Merkley?

Senator Merkley. Aye.

The Clerk. Mr. Rounds?

Senator Rounds. No.

The Clerk. Mr. Sanders?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Sessions?

Senator Inhofe. No by proxy.

The Clerk. Mr. Sullivan?

Senator Inhofe. No by proxy.

The Clerk. Mr. Vitter?

Senator Inhofe. No by proxy.

The Clerk. Mr. Whitehouse?

Senator Whitehouse. Aye.

The Clerk. Mr. Wicker?

Senator Wicker. No.

The Clerk. Mr. Chairman?

Senator Inhofe. No.

The Clerk. The yeas are 9 and the nays are 11.

Senator Inhofe. The motion is not carried.

Are there other amendments?

Senator Markey?

Senator Markey. Thank you, Mr. Chairman.

I have an amendment at the desk, Markey Amendment No. 1.

Senator Inhofe. Markey Amendment No. 1. Senator Markey.

STATEMENT OF THE HONORABLE ED MARKEY, A UNITED STATES SENATOR  
FROM THE STATE OF MASSACHUSETTS

Senator Markey. Thank you, Mr. Chairman.

This amendment intends to focus on public health, only the public health aspect of what this bill could undermine. It wants to say that there should not be a negative result with regard to the drinking water that could ultimately wind up poisoning people who drink it.

The new EPA Clean Water Rule is about clarity, clarity for developers, for farmers or city and town managers and landowners. The rule was written to clarify ambiguities resulting from two Supreme Court decisions on whether some types of wetlands are considered to be waters of the United States that are subject to the Clean Water Act.

Since these types of wetlands supply most of the water that flows through our rivers, this legal ambiguity means EPA might be powerless to protect drinking water sources from pollution dumped into wetlands.

A staggering number of groups actually asked EPA to write this rule to clarify the legal ambiguities. These groups included steelworkers, manufacturers, road builders, retailers, farmers, religious organizations, public health groups, real estate developers, miners and oil and natural gas developers. In 2013, these groups were joined by 30 Republican Senators who

sent a letter asking the EPA to write the rule.

The EPA rule resolves uncertainty and controversy. It improves consistent administration of the Act and it clarifies the roles of State and Federal Government. More than 800,000 comments were sent in support of the Clean Water Rule. More than 80 percent of the public and small business owners favor the protections it provides.

Where the Clean Water Rule seeks clarity, the bill we are considering today would only muddy the waters by introducing new ambiguities, ignoring science and creating new pollution loopholes in the Clean Water Act. This bill's only solution to pollution is confusion. Where EPA's Clean Water Rule will reduce litigation, this bill would spawn lawsuits by inventing undefinable, unscientific terms which would be impossible to administer consistently.

This bill would strip the protections from wetlands that supply drinking water to 117 million Americans. The bill puts drinking water at risk for 7 million people in my own State of Massachusetts alone. It is this very issue that I am most concerned about, the drinking water supply that millions of Americans rely on to be clean and safe.

My amendment is very simple. It merely states that the provisions of this bill cannot go into effect if the EPA Administrator determines that their implementation is likely to

increase the probability of exposure to toxic pollutants in amounts that could adversely impact the health of people, including infants, pregnant women and the elderly who need a source of safe drinking water.

It is as simple as that. It deals with infants, pregnant women and the elderly and the health effects that could, in fact, be created because of this bill which is being propounded. If you want to keep the "clean" in the Clean Water Act, then you should vote for my amendment.

If you do not think the bill before us today is a threat to drinking water, then you should also vote for my amendment. I urge an aye vote.

[The text of Markey Amendment No. 1 and the prepared statement of Senator Markey follow:]

Senator Inhofe. Thank you, Senator Markey.

I would respond that as I have looked at this, it looks like the EPA could vacate the bill by making a spurious determination. I think after the comments made by Senator Barrasso, I am not sure I want to have those individuals making those spurious determinations, so I would oppose the amendment.

Do others want to be heard? If not, Markey Amendment No. 1 is before us. Is there a motion?

Senator Markey. I would ask for a roll call.

Senator Inhofe. There is a motion and second and a roll call has been requested. The Clerk will call the roll.

The Clerk. Mr. Barrasso?

Senator Barrasso. No.

The Clerk. Mr. Booker?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Boozman?

Senator Inhofe. No by proxy.

The Clerk. Mrs. Boxer?

Senator Boxer. Aye.

The Clerk. Mrs. Capito?

Senator Inhofe. No by proxy.

The Clerk. Mr. Cardin?

Senator Cardin. Aye.

The Clerk. Mr. Carper?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Crapo. No.

The Clerk. Mrs. Fischer?

Senator Fischer. No.

The Clerk. Mrs. Gillibrand?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Markey?

Senator Markey. Aye.

The Clerk. Mr. Merkley?

Senator Merkley. Aye.

The Clerk. Mr. Rounds?

Senator Rounds. No.

The Clerk. Mr. Sanders?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Sessions?

Senator Inhofe. No by proxy.

The Clerk. Mr. Sullivan?

Senator Sullivan. No.

The Clerk. Mr. Vitter?

Senator Inhofe. No by proxy.

The Clerk. Mr. Whitehouse?

Senator Whitehouse. Aye.

The Clerk. Mr. Wicker?

Senator Wicker. No.

The Clerk. Mr. Chairman?

Senator Inhofe. No.

The Clerk. The yeas are 9 and the nays are 11.

Senator Inhofe. The motion is defeated.

Are there other amendments? Senator Boxer?

Senator Boxer. I have my last amendment.

I just want to say that it is very sad to paint the employees of the EPA with the brush of one individual or even a small group who were doing terrible things, just like it would be bad to paint all of us because some leader in the Congress also has a bad past.

Let us not do that. It is wrong. It is just plain wrong. I feel for those people who come to work every day whether it is the Army Corps or the EPA and come there for the right reasons, to do the right thing, to protect drinking water, to protect the vulnerable populations.

Let us not paint Gina McCarthy with this brush or anybody else. It is a disgrace to do it. It is awful to do it. It is wrong to do it.

I call up my Amendment No. 6. The amendment says the bill is null and void if EPA or the Corps, who I would remind everyone have multiple times more approval among the people than we do, if they determine that implementation of the bill would

increase pollution or increase costs incurred by the States.

Remember unfunded mandates? This bill could very well lead to unfunded mandates. This bill could. Also, it could lead, and will lead, if it does ever become law, I believe to increased pollution because there are going to be so many streams, rivers and bodies of water that are exempted that will then dump pollution into drinking water and dump pollution into recreational streams and rivers.

Over 40 environmental law professors who write and teach about the Clean Water Act have said S. 1140 would constitute a massive weakening of the Clean Water Act. Let us be clear what this is. You can hide behind attacks on the EPA, attacks on the Army Corps all you want but what you are doing is a backdoor repeal of the Clean Water Act with huge carveouts. This is what they write, that it could be argued to exclude vast swaths of currently protected water.

The bill will dramatically narrow the scope of the Clean Water Act, allowing uncontrolled pollution and placing an extraordinary burden on our States because EPA will be absent, the Corps will be absent.

Trust me, I have been in local government. When someone gets sick, they knock on your door and that is your problem and you will not be able to call on the EPA or the Army Corps to help because they will be excluded from this.

This amendment, my amendment, my last one, ensures that the bill will not undermine the basic goals of protections of the Clean Water Act which prevent pollution. The amendment makes sure that the bill will not place all of the burden for protecting our waterways on the States and require them to shoulder the costs.

I would hope we would have at least one or two people from the other side, who constantly lecture us about how we do not want to put more costs and burdens on the States, would vote for this.

If you oppose increasing pollution in our Nation's waterways and if you oppose putting greater burdens on the States, I urge a yes vote on this amendment. I would move it.

[The text of Boxer Amendment No. 6 follows:]

Senator Inhofe. Thank you, Senator Boxer.

I would only respond the same as I did to the last one, that the EPA could vacate the bill by making a spurious decision and I would oppose this amendment.

Do others want to be heard? Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Once again, I think we have come down to the heart of what many of us see as one of the major problems with the way the federal regulatory process works today. Not only would this amendment suggest that the EPA could overturn a congressionally determined law by their own determination but in this particular case, it even goes farther in that it suggests that we would be addressing surface waters of the individual States.

Once again, we may think that being elected as members of Congress we should make all of the determinations for every level of government. I think it is about time that we decide that if we wanted to be school board members or if we want to dictate what happens in our local schools, we ought to be on the school board.

At the same time, if we want to make determinations about surface waters in the States, that would be back at the legislative level in the States. Not all good advice from us is necessarily good law that should be dumped back on the local levels.

With all due respect to the Ranking Member, I really think there are responsible individuals at the State level just like there are responsible individuals at the federal level. With Congress suggesting that we could allow a federal bureaucracy or an administrator to make a determination as to our intent and then to overturn a law passed by this Congress goes to the very heart of what is wrong with Washington, D.C. today.

I really think this is the heart of the problem that we have when we talk about the Environmental Protection Agency and their impact at the local level where it appears as though we think we at the federal level know everything there is to know about what is going on at the State level and that we should assert the responsibilities which rightly belong to the States where there are good people who care just as much about quality water as we do.

Senator Inhofe. Senator Cardin?

Senator Cardin. First of all, I think Senator Rounds raises many very important points but I think there is some fundamental misunderstanding as to what our appropriate role should be, what a federal agency's appropriate role should be, and how we should interact with the States.

I have heard complaints that there have been too many regulations issued and the number of regulations. Congress passes laws. They are well intended. We want clean water. We

want clean air. That was not controversial among the Democrats and Republicans because the public understands that clean water and clean air is not controlled by one State, that you need to have a federal policy on how you are going to get clean water.

The water that is going to end up in the tap when I turn it on in Baltimore may very well have come through West Virginia. They understand that we have to deal with the water of the Nation. That is why we passed the Clean Water Act.

We are not scientists, we are not capable of developing all of the implementing regulations, so we asked the agency to do that. We give them certain direction on how that is going to be done. We are pretty clear about that and the type of reviews they have to go through, including scientific reviews, costs analyses, and complying with what Congress sets up as the goals. We have already gone through some of that.

Senator Boxer's amendment is pretty clear in what it says. It says "cause or contribute to the impairment of surface or coastal waters of the States." They have to make that determination.

We have seen court decisions when the agencies go beyond what Congress says they can do. We have court oversight and we should have congressional oversight. I agree with Senator Rounds.

I think one of the most important responsibilities of this

committee and every committee of Congress is to oversight the laws on the books rather than always looking to create new laws. I think that is very important. If we have to change or eliminate laws, we need to do that. I agree with you on that. That is our responsibility.

However, do not say we are not going to let agencies carry out their responsibilities because they are not complying with the will of Congress. If we do not think we are clear about what we say, let us say it clearer. We cannot be the implementing agency.

Part of what I find frustrating is the fact there happens to be a Democrat sitting in the White House. I had to say that because I think that is part of the problem we are confronting today, that we do not believe an agency will carry out what I, as an individual member believe they should, even though the law says something different than what I believe as an individual member of the Senate.

I am not questioning anyone's motives. Believe me, I am not. The collective wisdom of the Congress of the United States said we want clean water. It is up to the Environmental Protection Agency and the Army Corps to carry out those directives.

Yes, we can be clearer in those directions and we should be clearer. We can have the agency here for oversight hearings to

make sure they are carrying out what we believe the intent should be.

Members of the committee, we have been debating this issue for over a decade under both Democratic and Republican Administrations. If this bill becomes law, we are back to the drawing board and we have the same ambiguity, the same case by case determinations which our stakeholders do not want because we have not been able to figure out how Congress needs to interact with the agency on a review. Do not blame the agency, it is our responsibility.

The Boxer Amendment is a directive to what they must do. They cannot just say we are going to overturn the rules of Congress. They have to comply with the language we put in the statute or anyone can take them to court, as they have taken them to court. They have taken them to the Supreme Court of the United States with, by the way, decisions that had additional ambiguity that only Congress can clarify.

Yet we are not trying to clarify it and now we are blocking the Administration from trying to give some clarity to the stakeholders and protect what Congress said is the mandate of clean water for the United States.

I understand Senator Rounds' frustration. We are all frustrated by this. I hope together this committee can carry out its most fundamental responsibility of oversight. That is

what we need to do.

You are going to have my support and I think all of us want to make sure that the agency is carrying out what Congress said, not what I would like Congress to have said, but what Congress has said and carry it out in the most cost effective way. On that, we would be together.

In the meantime, I am afraid if this bill became law without some of the amendments we have offered, what we are doing is basically failing to carry out our responsibility in Congress.

Senator Boxer. Mr. Chairman?

Senator Inhofe. Senator Boxer.

Senator Boxer. Thank you.

I urge an aye vote but I really want to say how important I think this debate has been. It has been done with respect for each other.

I hope anyone who has watched this understands how breathtakingly different it is now than it used to be when it comes to environmental protection. I will prove it by putting a letter in the record in a minute.

We have always felt, all through history until this moment, that when it comes to our drinking water, Republicans and Democrats have agreed that no matter where you live, your child should have safe drinking water and your elderly grandmother

should have it. Everybody should have it. It is an American value.

Now, all of a sudden, wait a minute, I hear voices here which are sincere. We do not know everything. Of course, we do not know everything but I know one thing. I think a child in Arkansas, Alaska, California, Maryland or any one of our States deserves to be protected.

I would unanimous consent to place in the record this incredible letter. I do not know how my staff found it but they did. It is from the very first and the fifth Administrator of the EPA under both Nixon and Reagan. Ronald Reagan, I would say is the hero of the Republicans. I always hear him being praised up and down.

Listen to this. This is Ruckelshaus who wrote this in 2007. "Broad Clean Water Act jurisdiction is not only necessary to clean up the Nation's waters, it is necessary to ensure that the responsibility for maintaining and restoring clean water is shared equitably throughout the watershed and from State to State.

"In passing the Clean Water Act, Congress recognized that the State-by-State approach to water pollution control had failed and that it was necessary to maintain a federal floor for water pollution control to ensure that discharges in one State do not jeopardize water quality in another."

I would like to put that in the record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. I will conclude with this point.

All this talk about the States know better. I love my governor and I love my State and they are great. We work together on things. They want a strong highway bill. There my Chairman agrees, we work hand and glove.

We have a Federal Highway Trust Fund and there are some in the Republican Party who want to do devolution and have no role for the Federal Government. I hope we do not have it on this committee. We will find out when we bring forward our bill.

Look at Texas. They are always talking about Texas is alone, we do not need anyone else. The minute they had the floods, President Obama, please declare an emergency. We have to work together. There have to be values.

We have one Department of Defense. There are reasons. Dwight Eisenhower, another great man, said that you cannot have defense if you do not have a system of highways. Here we have the first EPA Administrator who was there again later, a proud Republican, saying State-by-State approach to water quality has failed.

It is a breathtaking change in the parties. I am shocked about it. I never cease to be shocked about it but it is the evolution of the parties. I am sad about it because I think the people will suffer and people will be hurt if this legislation were to pass because as I said, so many waterways would be

exempted that we would have more people getting sick.

I do not think this will pass. I hope the American people will engage.

By the way, on the comments, there are different ways to look at the comments. Some ways to look at the comments is the way my friend portrayed it. Others are that more than 80 percent of the comments were positive on the rule.

Be that as it may, this is our turn to be heard. I think we all have been heard. I hope we will have an aye vote for this so we can take a stand against more State costs and a stand to protect the people from pollution.

Senator Inhofe. Senator Sullivan, I am going to ask a favor of you because I am getting a little concerned that we are getting down to the 11 quorum that we have to have to pass this. After we pass the bill and before we do the technical, which has to be done also, at that point, I would like to recognize you because I know of something you want to say that is pertinent to this and get some results from the counsel. Is that acceptable with you?

Senator Sullivan. Yes, Mr. Chairman.

Senator Inhofe. It would be right after the vote. We will still be in session.

Senator Sullivan. Thank you.

Senator Boxer. I move the amendment.

Senator Inhofe. Before you move the amendment, do others want to be heard?

Senator Sullivan. I would like to respond. We can vote now.

Senator Inhofe. You will get a chance to do that.

First of all, on Boxer Amendment No. 6, is there a motion?

Senator Boxer. Move the amendment.

Senator Inhofe. Is there a second?

Senator Cardin. Second.

Senator Boxer. Request a roll call.

Senator Inhofe. A roll call has been requested. The Clerk will call the roll.

The Clerk. Mr. Barrasso?

Senator Barrasso. No.

The Clerk. Mr. Booker?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Boozman?

Senator Boozman. No.

The Clerk. Mrs. Boxer?

Senator Boxer. Aye.

The Clerk. Mrs. Capito?

Senator Inhofe. No by proxy.

The Clerk. Mr. Cardin?

Senator Cardin. Aye.

The Clerk. Mr. Carper?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Inhofe. No by proxy.

The Clerk. Mrs. Fischer?

Senator Fischer. No.

The Clerk. Mrs. Gillibrand?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Markey?

Senator Markey. Aye.

The Clerk. Mr. Merkley?

Senator Merkley. Aye.

The Clerk. Mr. Rounds?

Senator Rounds. No.

The Clerk. Mr. Sanders?

Senator Boxer. Aye by proxy.

The Clerk. Mr. Sessions?

Senator Inhofe. No by proxy.

The Clerk. Mr. Sullivan?

Senator Sullivan. No.

The Clerk. Mr. Vitter?

Senator Inhofe. No by proxy.

The Clerk. Mr. Whitehouse?

Senator Whitehouse. Aye.

The Clerk. Mr. Wicker?

Senator Wicker. No.

The Clerk. Mr. Chairman?

Senator Inhofe. No.

The Clerk. The yeas are 9 and the nays are 11.

Senator Inhofe. Thank you. The amendment is not agreed to.

Seeing no further members wishing to seek recognition to offer amendments, I move to accept the Manager's Amendment to S. 1140 and report the legislation to the Senate. Is there a second?

Senator Wicker. Second.

Senator Inhofe. We will request a roll call. The Clerk will call the roll.

The Clerk. Mr. Barrasso?

Senator Barrasso. Aye.

The Clerk. Mr. Booker?

Senator Boxer. No by proxy.

The Clerk. Mr. Boozman?

Senator Boozman. Yes.

The Clerk. Mrs. Boxer?

Senator Boxer. No.

The Clerk. Mrs. Capito?

Senator Inhofe. Aye by proxy.

The Clerk. Mr. Cardin?

Senator Cardin. No.

The Clerk. Mr. Carper?

Senator Boxer. No by proxy.

The Clerk. Mr. Crapo?

Senator Inhofe. Aye by proxy.

The Clerk. Mrs. Fischer?

Senator Fischer. Aye.

The Clerk. Mrs. Gillibrand?

Senator Boxer. No by proxy.

The Clerk. Mr. Markey?

Senator Markey. No.

The Clerk. Mr. Merkley?

Senator Merkley. No.

The Clerk. Mr. Rounds?

Senator Rounds. Aye.

The Clerk. Mr. Sanders?

Senator Boxer. No by proxy.

The Clerk. Mr. Sessions?

Senator Inhofe. Aye by proxy.

The Clerk. Mr. Sullivan?

Senator Sullivan. Aye.

The Clerk. Mr. Vitter?

Senator Inhofe. Aye by proxy.

The Clerk. Mr. Whitehouse?

Senator Boxer. No by proxy.

The Clerk. Mr. Wicker?

Senator Wicker. Aye.

The Clerk. Mr. Chairman?

Senator Inhofe. Aye.

The Clerk. Mr. Chairman, the yeas are 11 and the nays are 9.

Senator Inhofe. The ayes have it and the legislation is favorably reported to the Senate. Before we do our motion on the technical corrections, I would like to recognize Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman.

I have a quick question for counsel. Under Section 4(b)(3) of the introduced bill, it states that the terms "waters of the United States" under the Clean Water Act should not include "water that is located below the surface of the land including soil and groundwater."

Does this reference to soil and water include water in permafrost and water in the saturated soils that lie above permafrost?

Staff. Yes, Senator, it does.

Senator Sullivan. Thank you. Thank you for that clarification.

Mr. Chairman, if it is okay, I just wanted to respond very briefly. I think this has been a very good debate as Senator Boxer mentioned. I think there are a number of us, Senator Cardin mentioned there is some frustration, and I would agree with that.

We all certainly want clean water. My city in Anchorage gets awards almost every year for having some of the cleanest, if not the cleanest water, in the United States. It is in large measure due to the local and State authorities who make it that way.

We also want to protect the Constitution and the separation of powers and federal overreach. One of the frustrations we have had that has been the motivation behind this bill, again I agree with Senator Boxer, there are many great employees at the EPA but they have been acting in a way that exceeds their authority. This is not just hypothetical.

There was a lawsuit last year, Utility Air Regulator Group v. EPA, where the Supreme Court said something in very similar situation, the EPA issued a regulation under the Clean Air Act. Many opposed that. I was Attorney General of the State of Alaska and opposed that. They said the EPA did not have the authority to do that, it was expanding its jurisdiction.

The Supreme Court said the only body that can expand the EPA's jurisdiction is this body. That is what they are trying

to do with their "waters of the U.S." reg, expand their jurisdiction. No one, I believe on either side of the aisle, thinks the EPA has the authority to expand its own jurisdiction. That is the crux of the issue.

Let me give you one sense on the frustration of oversight. The EPA Administrator has sat before this committee a number of times. I have asked her a simple question, can you provide the legal basis, the legal opinion under the Clean Water Act that gives you the justification for this rule? It is simple. That is oversight. She has never responded, never responded.

When you get blown off like that in terms of oversight, I think it is exactly the prerogative of the Congress to clarify what the law is and say where and when they do not have the authority. That is why I think this is a very important bill.

They need to respond to oversight. When they do not do it, we need to act. In this case, they will not even provide the Congress, this committee, an opinion that says here is our authority under the Clean Water Act to issue this regulation, to issue this rule. They have never responded. That is outrageous. She needs to respond to this committee.

It is a simple request. It is oversight. It is us doing our job. They need to do their job by responding.

Thank you, Mr. Chairman.

Senator Boxer. Mr. Chairman?

Senator Inhofe. Senator Boxer.

Senator Boxer. I agree that we have a right to have our questions answered. I will work with you on that, absolutely. There is no doubt in my mind.

I would urge you to take a look at all the court cases in totality that the EPA has won and lost. I would argue if you look at the Supreme Court, they have mostly won. I would argue when environmental groups push the EPA, because they are not doing enough, the environmental groups win.

I think it is worthwhile to take a look at these cases. I would say again, the honesty here in this committee today, I commend. I really do. We heard today the true heart and soul of members on both sides. It is an unbelievable change. The people have to understand it.

I will continue as long as I am sitting here and it will be next to my Chairman until I go on to do other work, a lot of it will probably be a continuation of the work I have done, but I will continue to point out where I think we can come together and not be so separated on this issue of protecting our people.

None of us wants a child to get sick. But the bottom line, let us recognize what you say in the name of deregulation and our authority over their authority, at the end of the day, what are we doing? Are we making our people safer or are we not?

To me that is the reason I am here, to make sure people are

protected. This is totally different, whether it is taking the fight to ISIS, which I want to do, not with our combat boots on the ground I might add, but taking the fight to them and also making sure that when our kids drink the water, they are safe or when they swim.

I read recently, where was it, in Ohio where that child got sick in the last couple of years, got sick swimming because the waters had gotten so warm there were all kinds of toxins there that were not usually there. I think it was Lake Havasu. Am I right? Yes.

What we do here regardless if it is at a peak that no one answered our letter, and I agree that is wrong, or at a peak because we are more important than the EPA and more important than the Corps and all that, okay.

To me the most important thing is that our people are protected. Today, we took a giant step backwards on that front, a giant step. I do not care what the bill is called. We have a tendency here of giving these bills beautiful names. What is this one called, the Federal Water Quality Protection Act? It is not about that.

Let us look past the title. We have beautiful titles for bills but they are really not beautiful bills.

Senator Cardin. Mr. Chairman?

Senator Inhofe. Just a minute, Senator Cardin.

Let me respond to that first and then we have one member who has not been here who may want to be heard. Do you want to be heard? She does not.

Let me repeat. We have said many, many times, the Republicans want clean water, we want our kids to drink clean water and we are going to be doing all we can.

The Republican Party and the parties have not really changed. You talked about Ruckelshaus. It happened during that time there were EPA Administrators and others who were not abusing people on the outside. That is not true today. It is our job in oversight to be responsible to their needs.

Without objection, I am going to enter into the record the Monday, June 8 Washington Times referred to by Senator Barrasso.

[The referenced information follows:]

Senator Inhofe. Do others want to be heard?

Senator Boxer. Mr. Chairman, may I correct myself? I made a mistake. I have to correct the name of the lake. Is that okay?

Senator Inhofe. Sure.

Senator Boxer. Lake Havasu is in Arizona. On Trip Advisor, it says "Visitors to Lake Havasu beaches not told of killer parasite in the lake." I was wrong on the State. There was an incident in Ohio.

My point is all of what we do really does have implications for people.

Senator Cardin. Mr. Chairman, very quickly, I want to respond to Senator Sullivan's point because I agree with Senator Boxer. There should be no disagreement on our committee that any reasonable request be honored by any member of our committee and certainly by our committee for information. I certainly support that.

I wanted to point out on the constitutional issues that there are three branches of government, not two, not just the Executive and the Congress. We also have the Judicial Branch.

In regard to these rules, we were operating, I think, with a clear understanding prior to the Swank and Rapanos decisions of the Supreme Court. It was the Rapanos decisions that told Congress the agency had to clarify the waters of the U.S. That

threw in the uncertainty which is the Supreme Court interprets the laws.

Either Congress or the agencies had to respond to the Rapanos decision and that is what we have been wrestling with ever since that Supreme Court decision came down. I thought I would just point that out. There are not just two branches of government. There are three branches of government involved in us trying to clarify the waters of the U.S.

Senator Inhofe. Thank you for that clarification.

I ask unanimous consent that staff have the authority to make technical and conforming changes to the measure approved today. Without objection, so ordered.

We are adjourned.

[Whereupon, at 11:04 a.m., the committee was adjourned.]