



June 8, 2015

The Honorable John Barrasso
United States Senate
307 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso:

On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, I am writing in support of S. 1140, the Federal Water Quality Protection Act. This legislation would provide relief for small businesses by sending the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (the Agencies) back to the drawing board on its problematic Waters of the United States rule.

In a regulation finalized on May 27, 2015, the Agencies changed the definition of waters of the United States in such a way that vastly expands the federal government's authority over private landowners, including small businesses. Under this new regulation, land formations that only fill and hold water during heavy rain would be regulated if the Agencies determine that these formations affect the quality of downstream navigable waters.

When Congress granted the Agencies the authority to define waters of the United States in the 1970s, it was clear that the intent was for the Agencies to protect navigable waters, not every drop of water that might eventually end up in a navigable water. As a result of this new regulation, the Agencies are bringing seasonal streams, ponds, ditches, and depressions in fields into federal jurisdiction. The financial impacts of this rule will disproportionately impact small businesses; Clean Water Act permits can cost tens of thousands of dollars and lead to lengthy project delays.

Unfortunately, despite claims by the Agencies, the regulation will only increase uncertainty. The rule still requires the Agencies to determine on a case-by-case basis whether many common land formations fall under federal jurisdiction. Often, this determination does not occur until after substantial investments and planning by a small business have taken place – thus chilling investment and expansion. Small businesses cannot be speculative with their resources and capital.

In addition, the Agencies failed to adequately analyze the rule under the Regulatory Flexibility Act. This law requires EPA to conduct a Small Business Advocacy Review panel when a rule will have a significant economic impact on a substantial number of small entities. In this case, the EPA incorrectly certified that the rule will not have a small business impact.

National Federation of Independent Business

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S. 1140 would stop this egregious regulatory overreach by nullifying the new rule and directing the Agencies to draft a revised rule that does not include locations such as isolated ponds, ditches, agriculture water, storm water, floodwater, and streams without enough flow to carry pollutants to navigable waters.

NFIB strongly supports this commonsense legislation that will ensure that the property rights of small business owners are upheld. We look forward to working with you to enact this important legislation.

Sincerely,

A handwritten signature in black ink that reads "Amanda Austin". The signature is written in a cursive, flowing style.

Amanda Austin
Vice President, Public Policy

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