

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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November 2, 2015

TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce urges you to take up and pass S. 1140, the bipartisan “Federal Water Quality Protection Act,” which would remedy shortcuts taken by the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (COE) when promulgating their new “waters of the United States” (WOTUS) rule.

The WOTUS rule was finalized in August 2015 without the agencies conducting the required regulatory impact analyses and without appropriately consulting with states or affected stakeholders. The final WOTUS rule expands federal jurisdiction over water features and land uses beyond what Congress intended and beyond the lawful limits of federal Clean Water Act jurisdiction as interpreted by the U.S. Supreme Court.

More than half of the states and numerous stakeholder organizations filed lawsuits to challenge the final rule. Just before the final rule was to become effective, a federal district court in North Dakota issued an injunction effective in thirteen states; shortly thereafter, the Sixth Circuit Court of Appeals issued an injunction effective nationwide. The fate and interpretation of the final WOTUS rule is now in the hands of the courts, again, which means the regulated community is right back where it has been for nearly a decade—without any certainty of the scope of federal jurisdiction over water features and local land uses. Business owners in all sectors of the economy will be affected by this regulatory uncertainty, which is certain to chill the development and expansion of large and small projects across the country.

It is critical that the Senate take up and pass S. 1140 and that Congress direct the EPA and COE to withdraw the flawed final WOTUS rule and start the rulemaking process over. The states and the regulated community deserve a proper and legal rulemaking process, including necessary and appropriate consultation and impact analyses, and they deserve a final rule that is clear and consistent with the Congressional intent of the Clean Water Act.

In the event that the Senate does not agree to consider S. 1140, the Senate should approve S.J. Res. 22 as a failsafe to prevent the flawed final WOTUS rule, and the attendant significant regulatory uncertainty, from further harming the economy. While the Chamber believes it is a better approach for EPA to start over and redo the rule in the manner specified by S. 1140, S.J. Res. 22 is a backstop to prevent implementation of this deeply flawed rule.

The Chamber strongly supports S. 1140, a bipartisan measure that would ensure the EPA and COE conduct a lawful rulemaking process and adequately engage with stakeholders before

finalizing any new WOTUS definition. **The Chamber urges you to support S.1140 and may consider votes on, or in relation to, this bill—including on the motion to proceed—in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten