EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 3, 2015
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 1140 – Federal Water Quality Protection Act

(Sen. Barrasso, R-WY, and 46 cosponsors)

The Administration strongly opposes S. 1140, which would require the Environmental Protection Agency (EPA) and the Department of the Army (Army) to withdraw and re-propose specified regulations needed to clarify the jurisdictional boundaries of the Clean Water Act (CWA). The agencies' rulemaking, grounded in science and the law, is essential to ensure clean water for future generations, and is responsive to calls for rulemaking from the Congress, industry, and community stakeholders as well as decisions of the U.S. Supreme Court. The final rule has been through an extensive public engagement process.

Clean water is vital for the success of the Nation's businesses, agriculture, energy development, and the health of our communities. More than one in three Americans get their drinking water from rivers, lakes, and reservoirs that are at risk of pollution from upstream sources. The protection of wetlands is also vital for hunting and fishing. When Congress passed the CWA in 1972 to restore the Nation's waters, it recognized that to have healthy communities downstream, we need to protect the smaller streams and wetlands upstream.

Clarifying the scope of the CWA helps to protect clean water, safeguard public health, and strengthen the economy. Supreme Court decisions in 2001 and 2006 focused on specific jurisdictional determinations and rejected the analytical approach that the Army Corps of Engineers used for those determinations, but did not invalidate the underlying regulation. This has created ongoing questions and uncertainty about how the regulation is applied consistent with the Court's decisions. The final rule was developed to address this uncertainty.

If S. 1140 were enacted, any revisions to the CWA regulations would require the agencies to define waters of the United States in a manner inconsistent with the CWA as interpreted by the U.S. Supreme Court, resulting in more confusion, uncertainty, and inconsistency.

S. 1140 would require the agencies to expend scarce resources to duplicate the transparent rulemaking process just completed, which involved extensive public outreach and participation, including over 400 public meetings, and 1 million public comments. The agencies met with States, municipalities, small businesses, farmers, ranchers, miners, foresters, conservation groups, and many others to solicit input and reflect that input in a final rule. A regulation as prescribed in S. 1140 would raise costs for landowners and businesses seeking a CWA permit and increase delays in the permit process. S. 1140 also would reduce protection of the Nation's water quality and result in higher drinking water treatment costs, increased contamination of fish and shellfish, loss of recreational opportunities including hunting and fishing, and more frequent algal blooms that choke rivers and lakes and make waters unhealthy as a drinking water source or to swim and fish in. Wetlands serve as a natural buffer to reduce flooding, and by ignoring this important role, S.1140 also would lead to more frequent and more damaging losses from

floods. Families, communities, and businesses will have no choice but to pay for increased flood protection that natural wetlands currently provide for free.

If the President were presented with S. 1140, his senior advisors would recommend that he veto the bill.

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