

April 14, 2015

The Honorable Bill Shuster
Chairman
House Transportation &
Infrastructure Committee
2268 Rayburn House Office Building
Washington, DC 20515

The Honorable Peter A. DeFazio
Ranking Member
House Transportation &
Infrastructure Committee
2134 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shuster and Ranking Member DeFazio:

Later this week, the House Transportation & Infrastructure Committee is scheduled to vote on legislation that would require the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to withdraw their proposed rule defining a “water of the United States.” American Farm Bureau Federation supports withdrawal of the rule. The measure before the Committee provides members an opportunity to take the first important step toward resolving this issue fairly for all. We urge all members to vote for the *Regulatory Integrity Protection Act of 2015*.

A Dear Colleague is now circulating among members that mentions American Farm Bureau. That Dear Colleague states that delaying the rule would be “bad for farmers” while leaving “many of our nation’s waters unprotected.” Because our name has been used, we feel obliged to make our position clear.

AFBF is the nation’s largest general farm organization. Our members overwhelmingly oppose this rule. It is a bad rule for farmers. There is no question about that. Anyone who alleges the opposite either misunderstands the rule or misunderstands farming.

The Dear Colleague claims that delaying the rule would leave “many of our nation’s waters unprotected.” As a matter of record, EPA has made repeated statements that the proposed rule does not expand its jurisdiction¹ while its proponents take the view – as typified in the Dear Colleague – that without the rule, waters would be left unprotected. Proponents cannot have it both ways: either the rule expands jurisdiction or it does not. We believe without question that it expands EPA’s authority – and does so beyond congressional intent. That is why it should be withdrawn.

Of AFBF’s many concerns, the Dear Colleague letter cites two: (1) the distinction between “ephemeral streams” and erosional features; and (2) the potential regulation of land use activities occurring in a floodplain. The sole basis upon which the Dear Colleague claims that relief has been granted is, in the first instance, that EPA “has testified that the agencies expect the final rule to clarify the distinction” between these features. Given EPA’s track record on this rulemaking, we take little comfort in what they expect to do in a final rule.

¹ See *The Hill* newspaper, July 30, 2014: EPA Deputy Administrator Bob “Perciasepe has told lawmakers before that the rule would actually ‘reduce’ the scope of waterways the agency regulates...”

Similarly, concerns arise with respect to a floodplain. The Dear Colleague states that “EPA testified that it expected the final rule to provide more clarity and certainty on the issue.” Again, the fact that EPA will merely provide “more clarity and certainty” provides no relief whatsoever. Merely being “clear” or “certain” does not mean the agency is not regulating. The simple fact is that no one outside of the agency has seen what EPA purports to have done to fix these problems. The fact that the agency feels it has fixed them to their satisfaction does not mean farmers who will be regulated will feel the same way.

In truth, the agency’s protestations count for little in a rule it has misrepresented from the start. In fact, with regard to agriculture itself, the agency and USDA claimed they were “clarifying” 56 agricultural exemptions and providing “certainty” to farmers and ranchers. The Undersecretary of USDA testified to that effect last year. Yet Congress effectively repudiated those assertions when it voted last December to force withdrawal of the proposal.

We believe Chairman Shuster put the matter correctly last year, at the June 14, 2014 hearing on this issue. At that time, he called out EPA for using “executive action, brute force by bypassing Congress, ignoring Supreme Court rulings of the past” and “doing an end around Congress to try to gain Federal power expansion through this rulemaking.” Chairman Shuster urged both parties to protect congressional authority warning “... this is going to be Congress ceding power to the executive branch, and if we do that, if we allow this to go forward, we will never get that back and I don’t care if it is a Republican President or a Democratic President, we give it up and they will never give it back to us.”

We would also note that last year, during floor debate on H.R. 5078, Ranking Member DeFazio pointed to the “problems and potential defects in this incompetent rulemaking” and that “perhaps the agency itself will wake up and withdraw and revise the rule.” Rep. DeFazio agreed with the “legitimate concerns - of farmers, ranchers, and others who feel that the EPA is either overreaching or has written a somewhat garbled rule.” We agree with Rep. DeFazio’s remarks of last year. We do not share his view articulated yesterday that EPA has fixed the rule.

The reality is that if this legislation does not pass and EPA moves forward with a final rule, the likeliest result will be farmers, homebuilders and others being forced to engage in expensive litigation to protect their rights.

Again, AFBF supports withdrawal of the rule, and we support the measure being considered as an important step to resolving this issue. We urge all members to vote for the *Regulatory Integrity Protection Act of 2015*.

Sincerely,



Bob Stallman
President

CC: All Members of Congress