

regulate waters now considered entirely under State jurisdiction.

This unprecedented exercise of power will allow the EPA to trump States rights and wipe out the authority of State and local governments to meet local land and water use decisions. It is particularly troubling when we have seen no evidence—no evidence at all—that the States are misusing or otherwise failing to meet their responsibilities. Enormous resources will be needed to expand the Clean Water Act Federal Regulatory Program.

Not only will there be a host of landowners and project proponents who will now be subject to the Clean Water Act's mandates and the cost of obtaining permits, but an increase in the number of permits needed will lead to longer delays in actually getting the permits. Increased delays in securing permits will impede a host of economic activities in 50 States, cost thousands of American jobs.

Farming and ranching, commercial and residential real estate development, electric transmission, transportation projects, bridge repairs, energy development, and mining will all be negatively affected. This is at a time when the United States has seen our economy shrink. The Reuters story today talks about shrinkage much more than predicted previously. Regulations such as this continue to damage America, damage our country, damage our families, damage our communities, damage the hard-working men and woman who want to go to work, put food on the table for their kids, raise their families, and go to work, but yet we have an administration that does not seem to see, is blinded by a role of big government. They are blinded from seeing the impact these onerous, expensive, burdensome regulations are having on the American public and certainly on our economy, as pointed out today in this news release from Reuters about the shrinking of the American economy.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. HOEVEN. Mr. President, I thank the Senator from Wyoming for his leadership on this important issue and pick up on a point he just expressed: Why are we not demanding in this body that we vote on legislation to address this proposed regulation?

As he said so clearly and eloquently, this is an issue this Congress rejected. So now when one of the agencies, the EPA, goes around Congress to set up a proposed regulation that does something the Congress expressly rejected, why in the world are we not voting? It is our responsibility and our right to do so.

America's farmers and ranchers and entrepreneurs go to work every day to build a stronger nation. Thanks to those hard-working men and women, we live in a country where there is affordable food at the grocery store, where a dynamic private sector offers Americans the opportunity to achieve

a brighter future. In these difficult economic times, the Federal Government should be doing all it can to empower those who grow our food and those who create jobs. Yet instead regulators are stifling growth with burdensome regulations that generate cost and uncertainty.

Look at the economic data, as the Senator from Wyoming said, that came out this morning. What are we doing stifling that entrepreneurial activity, that entrepreneurship, that creativity that makes the American economy go? This proposed regulation is an example of that. It touches almost every industry.

We are talking about our farmers and ranchers, but it goes across all industry sectors. The proposed rule by the Army Corps of Engineers and the Environmental Protection Agency to regulate the waters of the United States is exactly the type of regulation that is hurting our economy, hurting our entrepreneurs, hurting our farmers, and our ranchers.

The waters of the United States rule greatly expands the scope of the Clean Water Act, regulations over America's streams and wetlands. If we take a look at a chart I brought, I know it is a little hard to see, but it demonstrates the incredible reach of this proposed regulation.

If we look at the chart, we can see it is a real power grab that will enable the EPA to stretch its tentacles far into the countryside and far beyond.

It is not just our farmers and ranchers and water in a ditch or water in a field that is there for maybe 1 week when it rains and the rest of the time it is dry, it affects construction, it affects powerplants, it affects stormwater drainage. I cannot think of anything it is not going to affect.

Is that how our country works now? Instead of the people who are duly elected to pass laws for this country, we stand here and we do not get to vote on any of these issues we were elected to vote on, and someone who is not elected at the EPA or the Corps, they put regulations in place that affect virtually every single American. Is that how this works now? Is that what it has come to?

Because that is exactly what is happening. That is exactly what is going on. The Supreme Court has found that Federal jurisdiction under the Clean Water Act extends to navigable waters. I do not think anyone is arguing about the EPA's ability to regulate the Missouri River or other navigable bodies of water—rivers, lakes—but the Supreme Court also made clear that not all bodies of water are under the EPA's jurisdiction.

So under a significant nexus determination, the EPA has decided: We do not care what the Supreme Court said. We are going to make sure they are all under our jurisdiction, not pursuant to any law. We are going to put a regulation in place that enables us to do whatever we want with any body of

water, not just navigable bodies of water.

Again, that is what I have tried to show on this chart. Ephemeral streams, tributaries, all waters deemed adjacent to any navigable body, including dry ditches, including water in fields that may be there for a short period of time, runoff from storm sewers, you name it.

That is not the intent of the law. That is not the intent of the Supreme Court ruling. That is why it is so important that we address it. That is what we propose to do. In the legislation we put forward, both on the floor, in the bill filed by the Senator from Wyoming, the legislation I have offered in Energy and Water, we straightforwardly, we simply and straightforwardly address this regulation.

How much time is remaining?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOEVEN. I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Is there objection?

Mr. CARDIN. Mr. President, I would have no objection as long as equal time is added to the block that follows for the Democrats.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. HOEVEN. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOEVEN. Mr. President, that is our point. We understand that people bring different points of view to this deliberative body, but the point is this: This is an important issue that affects virtually all Americans, that affects our economy, that affects our farmers, our ranchers, our businesses, the energy sector. You name it.

When we have something of this importance, we have an absolute responsibility to the people of this country to show where we stand on the issue, meaning we have a responsibility to vote on this and the other important issues before this body. That is what we are asking for.

We are saying everybody has a right to bring their point of view and their opinion, but we all have a right and a responsibility to vote on these important issues. That is what we are asking for, a vote on this important issue for the benefit of the American people.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. CARDIN. Mr. President, it is our understanding that Democrats control the next 32 minutes.

The ACTING PRESIDENT pro tempore. Democrats control the next 30 minutes.

#### ORDER OF PROCEDURE

Mr. CARDIN. I ask unanimous consent that Senator WHITEHOUSE and I be allowed to speak in a colloquy with other Members or to yield time during that 30 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### WATERS OF THE UNITED STATES

Mr. CARDIN. I was listening to my colleagues on the other side of the aisle talk about the proposed rule for the waters of the United States, and I am somewhat curious as to where they get a lot of their information because if they read the proposed rule—and I point out that this is a proposed rule—it specifically excludes from waters of the United States certain ditches, wastewater treatment plants, ponds, et cetera. I am going to get into the specifics. But if you listen to their points on the floor, you would think all ditches are covered under the proposed rule—which is now subject to comment—and that is not the case.

I would urge those who are interested to please read the proposed rule and determine for yourself the fact that it does not include many of the examples given by the opponents in clarifying the waters of the United States.

Last week I had a roundtable discussion with a group of scientists and concerned citizens dealing with the progress we have made in the Chesapeake Bay. The Chesapeake Bay is critically important—not to just those who live in the watershed; it is the largest estuary in our hemisphere. There is more coastline on the Chesapeake Bay than on the entire west coast of the United States. It is a national treasure and has been declared that by many Presidents. It is iconic to Maryland and supports a diversity of aquatic life which is important to our lives and to our economy. Mr. President, \$1 trillion of our economy is based on the Chesapeake Bay.

Starting in the 1980s, we recognized that we had a responsibility to do what we could to preserve and clean up the quality of the water within the Chesapeake Bay. Starting with Maryland, Pennsylvania, Virginia, and now expanding to Delaware, West Virginia, New York, the District of Columbia, and the Federal Government, we have a Chesapeake Bay agreement. The most recent, the fourth one, was recently signed. It recognizes that we have a real challenge to deal with the quality of the water in the bay.

We have asked our farmers to do more, and we have provided help to them in the farm bill for conservation practices. We have asked developers to do more by preserving more pervious surfaces and dealing with the loss of acreage of forest land. We have asked local governments to do more as far as dealing with wastewater treatment facility commitments. We have had a partnership between the government and private sectors. All stakeholders are involved because we believe we all have responsibilities. We are not asking one segment to do it alone. All of us are working together.

But, quite frankly, the regulation of the waters of the United States di-

rectly affects the success we are going to have in cleaning the Chesapeake Bay. So the issue we are talking about with the waters of the United States and clarifying that has a direct impact.

I might also tell you that climate change has a direct impact. Those of us who live in the watershed area, yes, we can do our responsibility for reducing our carbon footprint, but we need to get our country engaged in reducing our carbon footprint. We need to do that for many reasons—we need to do that for public health; we need to do that for national security.

Let me remind my colleagues that the Naval Academy, the Aberdeen Proving Ground, Pax River—all critically important to our national defense—are located on our coasts in Maryland and are subjected now to more flooding as a result of sea level increases which, in part, are the result of our activities with climate change. All we ask is that we follow the science.

Let me talk for a moment about waters of the United States because I heard what my colleague said. I have to take us back to 2001 when the Supreme Court issued two decisions concerning the navigable waters and the waters of the United States and added confusion. What this administration is trying to do, what we are trying to do is restore the authority that we all thought was in the law before the two Supreme Court decisions. That is all we are doing—trying to go back to what everyone understood were the regulations of the waters of the United States because the freshwater supply coming into the Chesapeake Bay is critically important to the health of the Chesapeake Bay. So if water goes into the streams, it goes into the bay, and that is of concern to us, and that needs to be regulated under the Clean Water Act.

I will quote from the preamble of the proposed regulation that has been submitted. The preamble says:

The SWANCC and Rapanos decisions resulted in the agencies evaluating the jurisdiction of waters on a case-specific basis far more frequently than is best for clear and efficient implementation of the CWA. This approach results in confusion and uncertainty to the regulated public and results in significant resources being allocated to these determinations by federal and state regulators.

That is why we had this proposed rule—to clarify the law that gives certainty. How many times have I heard from my constituents: Let us know what the rules are so that we can do our business. That is exactly what this proposed rule is all about.

The National Farmers Union issued this statement:

NFU has long advocated for increased certainty surrounding Clean Water Act requirements for family farmers and ranchers in the wake of complicating Supreme Court decisions. Today's draft rule clarifies Clean Water Act jurisdiction, maintains existing agricultural exemptions and adds new exemptions, and encourages enrollment in U.S. Department of Agriculture conservation programs.

That is their quote. The reason that is—there are 56 conservation practices that are specifically exempt from this regulation, so if farmers are participating in these conservation practices, they don't have to worry about the issues to which some of my colleagues referred.

Let me quote from the proposed regulation itself. The regulation says that the following are not waters of the United States: waste treatment systems, including treatment ponds or lagoons; prior converted cropland; ditches that are excavated, and it gives certain conditions; ditches that do not contribute flow, either directly or through another water, to the waters of the United States, so we have exempted ditches; certain artificially irrigated areas are exempted; artificial lakes or ponds created by excavating and/or diking dry land; artificial reflecting pools or swimming pools created by excavating and/or diking dry land; small ornamental waters created by excavating and/or diking dry land; water-filled depressions; groundwater, including groundwater drained through subsurface drainage systems; and gullies and rills and non-wetland swales.

If you listen to my colleagues, they would tell you that if, as a farmer, you have a ditch on your property that is just on your property, that you are using for irrigation on your property, it would be subject to this regulation. It would not be. It is specifically exempt.

Here is the point.

Mr. HOEVEN. Would the Senator yield?

Mr. CARDIN. Let me finish my point.

Here is the point. This is a proposed regulation. So if you think further clarification is needed, there is an extended comment period. If you think we need to make further clarifications on issues—what we are trying to get at are practices that affect water that will go into our streams and rivers and in my case end up in the Chesapeake Bay watershed, which in trying to clean up the bay we have to deal with.

The success of the Chesapeake Bay Program is that all stakeholders are involved. We use the best science. We need everyone doing their fair share. Therefore, if your activities contribute to water flowing into the Chesapeake Bay watershed through our streams and rivers, yes, you are regulated under the Clean Water Act. But if you have a self-contained ditch that is not involved in that and are using it for irrigation, absolutely not. If you participate in the conservation programs, you don't have to worry about a new set of regulations. That is what this does.

Our true leader on this has been Senator WHITEHOUSE. I thank him very much on the climate change issues, on the environmental issues. He has been on the floor every day.

I want to make sure my colleagues have a chance to express their views on this issue. It is critically important.

I yield for my colleague from Rhode Island.