



July 17, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

On behalf of the 200,000 family farmer and rancher members of the National Farmers Union (NFU), thank you for taking the time to speak to the NFU board of directors on July 15 regarding your proposed rule on the Waters of the United States (WOTUS). Since 2001, U.S. Supreme Court cases have created a lot of uncertainty regarding jurisdiction of the Clean Water Act (CWA). With the Supreme Court decisions and the best available science as a guide, EPA and the U.S. Army Corps of Engineers proposed this rule to attempt to clarify jurisdiction.

During our call, a number of questions and concerns were raised by NFU board members. The board asked for clarity surrounding some of the definitions in the proposed rule. The general sense was that the proposed rule has created less clarity, not more as was intended. I strongly urge you and other representatives from the Environmental Protection Agency (EPA) to provide clear answers to questions posed by the agricultural community. I recognize that it is not always possible to answer definitively whether a specific body of water is WOTUS because some determinations need to be made on a case-by-case basis. However, to the extent possible, it is important to do everything you can to reduce confusion and anxiety surrounding jurisdiction. Failure to do so will lead to more resentment in rural America. If the proposed rule is to accomplish its slated purpose most questions about which waters are covered and which are not should be able to be answered clearly and concisely.

During the call a number of questions were asked. However, the board did not feel that its questions were adequately answered. As such, I would like to pose some of those questions again to give you an opportunity to clarify.

1. There is a lot of uncertainty regarding jurisdiction of wetlands under the proposed rule. We have heard from Acting Assistant Administrator for Water Nancy Stoner that only 5% of the estimated 20 million acres of wetlands in the Prairie Pothole region would be considered WOTUS under the proposed rule. Can you confirm that this is true? In addition, it would be helpful if you could provide us with a map of the Prairie Pothole region that predicts, with relative certainty, which waters would be considered jurisdictional and which would not.
2. In regard to vernal pools, wetlands or other unconnected bodies of water that may be seasonal in nature, if jurisdiction is unclear, how would you make a determination? Would the U.S. Army Corps of Engineers have to come to the specific farm or ranch, or does EPA make the determination from Washington, .D.C. or another office, using satellite imagery?

What would be the exact process for making determinations and what would be the timeline?

3. Can you give specific examples, particularly for wetlands, of when a body of water would be or would not be jurisdictional?
4. What is the jurisdictional definition of a ditch in the proposed rule?
5. EPA has said that the proposed rule increases jurisdiction by 3.2 percent of current jurisdictional acres. In which areas of the country will this 3.2 percent come from?
6. What is the definition of standard farming practice?
7. If an approved standard farming practice changes, would the farmer need to get a permit?
8. Would the jurisdiction of EPA over intermittent waters or seasonal wetlands change in any way?

I understand that the point of the proposed rule is for relevant stakeholders to provide suggestions, including suggestions for definitions. We look forward to submitting comments on these definitional issues. In order to provide well-reasoned comments, it is important to have the correct information. So, I appreciate your efforts in answering the questions we have posed.

Thank you again for the opportunity for our board to speak with you regarding the proposed rule. While it is not directly related to the subject at hand, I do need to reassert what several board members told me following our call. They essentially said that EPA's reputation was very severely damaged in farm country with the recent proposal to significantly undercut the Renewable Fuel Standard—and that likely led to the surliness with which the WOTUS proposed rule was received. Thank you for what you do.

Sincerely,



Roger Johnson
President