



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

November 5, 2014

Water Docket, Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attn: Docket ID No. EPA-HQ-OW-2011-0880

To whom it may concern,

Following are the Wyoming Department of Agriculture (WDA) comments pertaining to Docket ID No. EPA-HQ-OW-2011-0880, definition of "Waters of the United States" (WOTUS) under the Clean Water Act (CWA).

Our comments are specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life. As the proposed project could affect our industry, citizens and natural resources it is important that you continue to inform us of proposed actions and decisions and continue to provide the opportunity to communicate pertinent issues and concerns.

First and foremost, we request the Environmental Protection Agency (EPA) withdraw the proposed rule as written. The proposed rule creates confusion and unnecessarily expands the coverage of the CWA. We suggest the EPA consult with each state and review existing documentation and data on hydrology, geology, flows, primary uses, and improvements of waterways to jointly determine jurisdiction of waters. The EPA should work alongside local conservation districts and state agencies as they have the most knowledge and experience with streams, rivers and other water sources in our state.

We are extremely concerned with the large number of inconsistencies and contradicting statements the EPA has made. One of particular concern is the definition of "tributary" which currently includes all adjacent waters or wetlands contributing flow. This is a gross expansion of WOTUS and is not acceptable. We do not understand the rationale used to determine what constitutes a "tributary" based on the conflicting definitions and are forced to assume the EPA would include any area that may or may not have water on the surface at some time during the year. We also fail to comprehend how the EPA will not then consider groundwater as WOTUS under this definition. We have not found any indication that the EPA will try to separate groundwater from surface water and interpret that groundwater flow could be determined to be WOTUS. Additionally, the expansion of what would be considered WOTUS under the new definition of tributary will expand the NPDES requirements for pesticide application permitting. This could have a significant impact on agricultural producers managing weeds or invasive species on important agricultural production areas and would go well beyond state requirements for permitting.

The proposed rule also defines adjacent waters as "bordering, being contiguous, or neighboring traditional waters." This definition then includes water located in riparian areas or floodplains adjacent to traditional waters. Considering this, the proposed rule will expand the CWA jurisdiction to waters and lands not normally considered within the scope of WOTUS. In addition, the EPA must clearly define "floodplain." We have found no indication of which interval of floodplain EPA would use (i.e., 25 year, 50 year, 100 year, 500 year, 1000 year, etc.). Without clearly defining the floodplain there is no clear way to determine what EPA considers WOTUS and leaves the rule open to interpretation,

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which the proposed rule is intended to eliminate. We also ask that "upland soil and water conservation" be clearly defined. The proposed rule fails to clearly establish where uplands end and WOTUS begins.

The definition of "significant nexus" is also extremely concerning and very vague. The inclusion of significant nexus eliminates any certainty for agricultural producers with exemptions because it allows the EPA to make case-by-case decisions without any clear guidance. This is a gross expansion of authority and is unacceptable.

We ask the EPA withdraw the proposed rule so proper consultation can occur at the state level, with the true stockholders and users. We welcome a real conversation on this matter between the EPA, Army Corps of Engineers, conservation districts and other pertinent state, local and federal agencies.

Sincerely,



Jason Fearneyhough

Director

JF/jb

CC: Governor's Policy Office
Wyoming Board of Agriculture
Wyoming Association of Conservation Districts
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