



WYOMING WOOL GROWERS ASSOCIATION

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November 14, 2014

Water Docket
Environmental Protection Agency
Attn: Docket N. EPA-HQ-OW-2011-0880
Mail Code 2822T
1200 Pennsylvania Ave NW
Washington, DC 20460

RE: Docket ID NO. EPA-HQ-OW-2011-0880; Comment on Proposed Rule "Clean Water Act; Definitions: Waters of the United States"

The Wyoming Wool Growers Association (WWGA) appreciates the opportunity to comment on the proposed rule "Clean Water Act; Definitions: Waters of the United States" (WOTUS). The WWGA represents Wyoming's sheep and wool industry and serves to protect, preserve, promote and enhance the interests of sheep producers and other livestock owners in Wyoming. Incorporated into our priorities is the goal to enhance and ensure Wyoming's natural resources through sound environmental practices, including those that promote healthy and productive water resources. The Wyoming Wool Growers Association has been working toward with these goals since its formation in 1905. Our members have a direct interest in ensuring the definition of the waters of the US does not interfere with their sheep operations and their positive stewardship practices.

We have reviewed the proposed rule and have come away with significant concerns. We would request that the rule be withdrawn for the reasons stated in these comments and in the well-reasoned comments of numerous other entities with interest in this proposed rule. We would encourage the Agencies to work with the states and local entities to address their needs regarding WOTUS.

We believe the proposed rule clearly exceeds the scope of authority granted to the EPA and the USACE under the Clean Water Act. The stated purpose of the proposed rule is to provide clarity and predictability with regard to the scope of U.S. waters and the jurisdiction of both Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE). A number of new definitions and amendments are added to existing regulations purportedly to achieve that goal but it leaves out important definitions such as "floodplain" and "upland soil and water conservation". The proposed rule redefines "Waters of the United States" to include, among other water bodies, intermittent and ephemeral streams, such as the kind ranchers and farmers use for drainage and irrigation, and it expands its jurisdiction to waters not previously considered waters of the U.S. Consequently, agriculture producers cannot predict with any sense of certainty whether an area may fall within WOTUS jurisdiction or not. In our opinion, what has been proposed not only heightens the Agencies' obfuscation of its purpose and authority it also ultimately creates more confusion in the American public.

The understanding of the Commerce Clause of the U.S. Constitution as outlined in the proposed rule is convoluted and essentially obliterates the distinction between "national" and "local". The assertion that "Congress clearly intended to subject interstate waters to CWA jurisdiction without imposing a requirement that they be water that is navigable for purposes of Federal regulation under the Commerce Clause themselves or be connected to water that is navigable for purposes of Federal regulation under the

Commerce Clause” 79 Fed. Reg. at 222188, 22200 (April 21, 2014) reveals a lack of understanding of the Agencies’ authority under the CWA and implies that Congress could grant more authority to the Agencies under the CWA than the Constitution allows.

As the Montana Wool Growers Association (MWGA), put it in their August 26 comments,

“the Agencies imply their authority under the CWA works backward (i.e., if the Agencies have jurisdiction over a navigable water pursuant to the Commerce Clause, they also have authority over any waters that feed, or lands that feed waters, into the navigable water, or waters that otherwise have a significant nexus to the navigable water.”

The Agencies’ interpretation serves as the foundation for expanding jurisdiction over bodies of that water that have not traditionally fallen under the CWA jurisdiction. Without any investigation and documentation bodies of water that were not included at one time will now be jurisdictional simply because it is presumed there is a significant nexus to traditional water. This expansion to “jurisdiction by rule” only increases regulatory uncertainty for the ranching community and is an unacceptable expansion of authority. EPA will be allowed to make case-by-case decisions without clear guidance, leaving ranchers unsure if they are in compliance or not.

We find numerous issues with the proposed rule, which have been outlined quite articulately by others, including the Montana Wool Growers Association, the state of Wyoming, and the Wyoming Department of Agriculture, to name a few. We lend our support to the comments of those organizations and to the recommendations made in the Montana Wool Growers Association’s extensive comments submitted August 26, 2014. Most importantly, we agree with and support the numerous requests that the proposed rule be withdrawn by Environmental Protection Agency (EPA) and the Army Corps of Engineers.

We appreciate the opportunity to express our concerns related to this proposed rule. If you have questions or need further input, please don’t hesitate to contact us.

Sincerely



Amy W. Hendrickson
Executive Director

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