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## **CLEAN WATER ACT – DEFINITION OF “WATERS OF THE U.S.”**

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### Issue:

The U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) finalized a rule significantly expanding the definition of “waters of the United States” under the Clean Water Act (CWA). This regulation expands federal authority beyond the limits approved by Congress and affirmed by the U.S. Supreme Court; the impact on farmers and ranchers will be enormous. Farm Bureau is asking EPA to reconsider this regulation and propose a new rule that reflects not only the limitations imposed by both Congress and the Supreme Court, but the views offered after consultation with states.

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### Background:

#### *NAVIGABLE WATERS*

Two Supreme Court decisions concluded that the term “navigable waters” under the CWA does not include *all* waters. The regulation, which was aggressively pushed by the former administration, allows EPA and the Corps to use the CWA to regulate activities on dry land and in isolated waters. Such an over-reach goes well beyond anything contemplated by the authors of the 1972 law.

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### Legislative/Regulatory Status:

The final EPA and Corps rule defining the scope of waters protected under the CWA went into effect on Aug. 28, 2015. The U.S. Court of Appeals issued a nationwide stay of the rule, but the rule is nonetheless final. The Supreme Court is currently considering an appeal that will ultimately determine if the petitions challenging the WOTUS rule should be heard before a district court or court of appeals.

The final rule provides none of the clarity and certainty the former administration promised. Instead, it creates confusion and risk by granting the agencies almost unlimited authority to regulate, at their discretion, any low spot where rainwater collects, including common farm ditches, ephemeral drainages, agricultural ponds and isolated wetlands found in and near farms and ranches across the nation. Farm Bureau’s WOTUS objectives for the Trump administration are to -

- Ensure WOTUS remains a top regulatory priority;
- Ensure the new administration devotes immediate resources to WOTUS reform activities;
- Ensure prompt action to withdraw the current rule;
- Ensure prompt action to propose and replace the WOTUS rule;
- Ensure the new administration has sufficient input from farmers and ranchers; and
- Use congressional interest to support Farm Bureau’s repeal and replace objectives.

AFBF Policy:

Farm Bureau has significant concerns with the WOTUS rule and believes it expands federal jurisdiction, resulting in the imposition of burdensome requirements on agricultural producers.

Farm Bureau supports administrative efforts to repeal and replace the WOTUS rule.

Farm Bureau supports a rule that conforms to the limits approved by Congress and affirmed by the U.S. Supreme Court.

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