



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

Issue:

In 2015, 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. The so-called “Clean Water Rule” (CWR) 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.

Background:

NAVIGABLE WATERS

Two Supreme Court decisions concluded that the term “navigable waters” under the Clean Water Act does not include *all* waters. The 2015 regulation ignores those limits by allowing EPA and the Corps to regulate activities on dry land and over remote, isolated wetlands under the Clean Water Act. Such an over-reach goes well beyond anything contemplated by the authors of the 1972 law.

Legislative/Regulatory Status:

EPA published a notice in the Federal Register to rescind the 2015 rule, which has been temporarily suspended by court order for the past two years. The rule:

1. Exceeds the agencies’ power under the Clean Water Act by asserting federal jurisdiction over remote, isolated wetlands and land where water only flows when it rains;
2. Improperly reads the word “navigable” out of the statute;
3. Creates enormous uncertainty and confusion for both regulators and the public;
4. Is so vague that it raises significant constitutional concerns; and
5. Is contrary to the policies of the Clean Water Act, including the Act’s policy to “recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution,” 33 U.S.C. § 1251(b).

Farm Bureau is strongly encouraging EPA Administrator Scott Pruitt to propose a new rule that reflects the limitations imposed by both Congress and the Supreme Court as well as input received from farmers, ranchers and states.

Farm Bureau’s WOTUS objectives for the Trump administration are:

- 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 a replacement 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.

Contacts: Don Parrish, 202-406-3667, donp@fb.org; Danielle Quist, 202-406-3618, danielleg@fb.org