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MISSISSIPPI FARM BUREAU® FEDERATION

Our mission is to create an environment in which Mississippi farmers, ranchers, and Farm Bureau members can have a better life and make a better living.

Mike McCormick
President

August 23, 2021

Re: EPA-HQ-OW-2021-0328 "Request for Recommendations: Waters of the United States"
Submitted through the Regulations.gov portal

On behalf of the Mississippi Farm Bureau Federation (MFBF), I appreciate the opportunity to provide thoughts on "waters" that should or should not be included in the upcoming revisions to the definition of "Waters of the United States." It is unfortunate we must enter this exercise again considering the amount of work that went into the Navigable Waters Protection Rule (NWPR). The NWPR was a balanced and reasonable approach, which satisfied the Supreme Court rulings in *Rapanos* and *SWANCC*, and provided much needed clarity to landowners. We appreciate the outreach and engagement approach the U.S. Army Corps of Engineers (USACE) and Environmental Protection Agency (EPA) is seeking from the agricultural community. We hope you will seek first to understand then to be understood.

MFBF appreciates EPA's decision to ask the court to remand the NWPR for revision rather than asking for the rule to be vacated. We do not, however, appreciate the language and justification EPA used, especially in their press release as justification for revising the rule. EPA stated they witnessed "significant degradation" of waters since the NWPR went into effect. There simply is no evidence "significant degradation" has taken place under the most generous use of that term. EPA apparently considers a lack of jurisdiction, or the mere issuance of a permit, to justify using a term carrying a much different meaning when discussing water quality. We would have less of an issue if the agency had determined there was the "potential for significant degradation." In essence, you have branded landowners as having committed some environmental sin simply because there are fewer jurisdictional determinations issued.

MFBF believes a good rule defining waters would draw a very distinct line between where federal jurisdiction ends and state jurisdiction begins. It is disingenuous to proclaim some waters are left unprotected if federal jurisdiction is somehow narrowed. Those waters are not unprotected, and each state will continue to be responsible for maintaining those water resources. In fact, they are more likely to respond to complaints from their constituents, neighbors; and friends when dealing with solely intrastate waters. If, as you say, states are either not doing enough or do not have the resources necessary to regulate waters, then the citizenship is free to petition the local or state government to address those issues.

Our ultimate hope is we one day have a "Waters of the United States" rule that does not require a jurisdictional determination. In other words, a reasonable and logical person should be able to

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determine what a federally regulated water is and what it is not. The problem arises when dry land features that become wet for a brief period of time or move a small amount of water evolve into a case-by-case jurisdictional issue. That is why we continue to go through this exercise with each change in administration or court ruling. The agency needs to recognize that *Rapanos* and *SWANCC* did not take away any authority from EPA to regulate waters; they merely determined the EPA exceeded their authority under the Clean Water Act (CWA) to regulate those waters in the first place.

MFBBF recommends the NWPR as a good, fair and balanced approach to protecting the nations' waters without the agency exceeding its authority under the CWA. We believe it is sufficient to address the recent court decisions, and the rule should remain in place without revision. We appreciate the agency's outreach and request for stakeholder input, and we urge the agency to give that input serious weight. A tremendous amount of stakeholder input from the agricultural community went into the drafting of the NWPR. We hope this administration will give our voices the same consideration.

Sincerely,

A handwritten signature in blue ink that reads "Mike McCormick". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Mike McCormick
President