



July 30, 2015

The Honorable Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

The Honorable Jo-Ellen Darcy
Department of the Army
108 Army Pentagon
Washington, DC 20310

Re: Request for Extension of the effective date of the “Clean Water Rule: Definition of ‘Waters of the United States’”

On June 29, 2015, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (collectively, the Agencies) published the “Clean Water Rule: Definition of ‘Waters of the United States’” in the Federal Register. The effective date of August 28, 2015 provides a mere 60 days for the Agencies to determine how the rule will be interpreted and ensure the regulators are trained and equipped to implement the new definition. Likewise, it affords minimal time for the regulated community to comply. Given the complexities and uncertainties associated with the rule, the National Cattlemen’s Beef Association (NCBA), Public Lands Council (PLC), U.S. Poultry & Egg Association (USPE), National Pork Producers Council (NPPC), and United Egg Producers (UEP) request you postpone the effective date of the rule until all relevant staff at the Agencies have received proper training on the new definitions and how to interpret them.

The Clean Water Rule introduces new definitions and concepts that are complex and will be challenging for Agency staff to apply in a manner that is both timely and consistent. At a recent outreach meeting regarding implementation of the rule, EPA regional staff made a statement to an NCBA member that is in direct contradiction to the plain language of the rule. The statement suggested that farm and stock ponds would become jurisdictional “waters of the U.S.” if they overflowed into a jurisdictional tributary. This interpretation is clearly wrong given that farm and stock ponds are exempt from jurisdiction even where they would otherwise be a “waters of the U.S.”¹ EPA headquarters has since confirmed that the regional interpretation is wrong. This single example illustrates the disparity in interpretation and the need for training at all levels of the Agencies to ensure consistent implementation of the rule. While we appreciate the difficulty and magnitude of coordinating the implementation of such an expansive rule across the Agencies, something must be done to ensure that the rule is interpreted correctly and consistently *before* it becomes effective law.

A recent news report suggests that the Corps disagreed with changes made in the final version of the rule including criticism that portions of the rule are too broad.² Given the Corps’ role in making jurisdictional determinations, the incongruity between the Agencies will further

¹ Clean Water Rule: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37054, 37105 (June 29, 2015) (to be codified at 33 C.F.R. pt. 328.3(b)(4)(ii)).

² David LaRoss, *Corps Downplays GOP’s Claims of Memos Proving ‘Waters’ Rule Unlawful*, Inside EPA (July 27, 2015), <http://insideepa.com/daily-news/corps-downplays-gops-claims-memos-proving-waters-rule-unlawful>.

complicate implementation of the rule. Clearly, it will take considerable time for the Agencies to address the full array of issues needed to align their practices with the rule and align varying interpretations to be consistent with the plain language of the rule.

The regulated community needs to know how the Clean Water Act's jurisdiction will be determined and assurances that such determinations will be made in a timely, predictable, and consistent manner. Based on the information currently available, it appears that neither Agency is yet able to meet these goals. The Agency field staff still need training and the regulated community has been given conflicting interpretations of how the definitions will be applied on the ground. We are particularly concerned that hasty implementation will only make matters worse by further increasing the long-standing jurisdictional confusion the rule was intended to resolve.

NCBA, PLC, USPE, NPPC, and UEP strongly urge EPA and the Corps to provide the time necessary for the Agencies to get adequately trained and for the regulated community to understand how federal jurisdictional decisions will be made so that they can comply. To do so, NCBA and PLC request that the effective date for the "Clean Water Rule: Definition of 'Waters of the United States'" be delayed until all relevant staff at the Agencies have been adequately trained on implementation of the rule.

Thank you for your consideration.

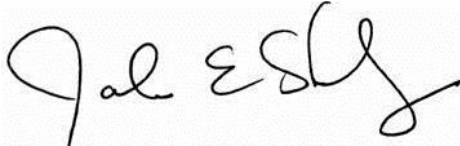
Sincerely,



Phillip Ellis
President, National Cattlemen's Beef Association



Brenda Richards
President, Public Lands Council



John Starkey
President, U.S. Poultry & Egg Association



Ron Prestage
National Pork Producers Council



Chad Gregory
President, United Egg Producers

Cc: Ron Carleton, US EPA
Ken Kopocis, US EPA
Ellen Gilinsky, US EPA