

National Cattlemen's Beef Association meeting with OMB-OIRA

August 20, 2019

Re: EPA Waters of the United States, Recodification of Preexisting Rules Finalization

Support for Step One Finalization:

- Reinstatement of the status quo
- Repair the muddled jurisdictional patchwork
 - 27 states enjoined, 23 states under 2015 WOTUS Rule, New Mexico

Step Two:

Support-

- Wetland category correctly limits jurisdiction in alignment with Supreme Court precedent.
- Prior Converted Cropland exclusion provides a clear PCC definition.
- Ephemeral features are correctly excluded from federal jurisdiction, in alignment with Supreme Court precedent.
 - The exclusion of ephemeral waters is only as strong as the "intermittent" definition

Concerns-

- Intermittent Tributaries
 - Clarify the tributary definition by adding a definition for "surface water channel". This new definition should utilize physical indicators (bed & banks//point bars & cutbanks). This ensures the federal government does not regulate "the merest trickle." More importantly, it gives farmers and ranchers the ability to *visually identify* a potential WOTUS.
 - Limit federally jurisdictional tributaries to those that flow in response to an elevated groundwater table or snowpack contribution.
 - Provide definitions for "certain times" and "typical year"
- Jurisdictional Ditch category is superfluous
 - "Ditches" considered (a)(1) waters do not need their own standalone category
 - Ditches that flow as tributaries may be regulated as (a)(2) waters
- Exclusions
 - General concern – "exclusions" only create a perception
 - Example: Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and lock cleaning ponds) which are not identified in paragraph (1)(iv) or (i)(v) of this section (*the lakes and ponds or impoundments categories of jurisdictional waters*)
 - Stock pond – upland limitation
 - General concern regarding "upland" definition
- Lakes and Ponds
 - Remove category; large lakes and ponds will be (a)(1) waters
 - The agency has no authority to regulate lakes and ponds that are flooded by (a)(1)-(4) waters