



Texas and Southwestern Cattle Raisers Association

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*The*  
**Cattleman**

 CATTLE RAISERS  
INSURANCE  
Hardworking Insurance for Hardworking Families

September 21, 2017

Mr. E. Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Mr. Douglas W. Lamont  
Deputy Asst. Secretary of the Army (Project Planning and Review), performing the duties of the Assistant Secretary of the Army for Civil Works  
U.S. Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314

*Filed electronically at [www.regulations.gov](http://www.regulations.gov)*

RE: Docket No. EPA-HQ-OW-2017-0203

Dear Administrator Pruitt and Assistant Secretary Lamont:

The Texas and Southwestern Cattle Raisers Association (TSCRA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) (together, "the Agencies") proposed rule: Definition of "Waters of the United States"—Recodification of Pre-existing Rules. 82 Fed. Reg. 34899 (July 27, 2017) ("Proposed Rule").

TSCRA is a 140-year-old trade association and is the largest and oldest livestock organization based in Texas. TSCRA has a membership of more than 17,500 beef cattle operations, ranching families and businesses. These members represent over 50,000 individuals directly involved in ranching and beef production that manage over four million head of cattle on more than 76 million acres of range and pasture land primarily in Texas and Oklahoma, but throughout the Southwest.

The definition of "waters of the United States" is important to the cattle industry. In particular, §402 National Pollutant Discharge Elimination System (NPDES) discharge permits, §404 permit requirements, and Total Maximum Daily Loads (TMDLs) have a direct and immediate impact on cattle producers.

TSCRA supports the Agencies' proposal to rescind the Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054 (June 29, 2015) ("2015 Rule"), and codify the status quo that is now being implemented under the Sixth Circuit stay of the 2015 Rule. The Agencies should rescind the 2015 Clean Water Rule because the 2015 Rule's provisions are, in various respects, beyond the Agencies' statutory authority, inconsistent with Supreme Court precedent, and contrary to the goals of the Clean Water Act (CWA), including the Act's goal to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." 33 U.S.C. § 1251(b). The Agencies failure to seek input from state and local entities during the development of the 2015 Rule contributed to the rule's legal flaws and lack of clarity.

Of particular importance to TSCRA members who are subject to regulation under the CWA, is the regulatory uncertainty that flows from the 2015 Rule's lack of clarity on key terms and definitions, such as "adjacent,"

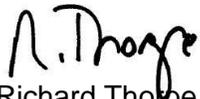
"floodplain," "ordinary high-water mark," and "significant nexus." There are also major concerns on the impacts to playa lakes and coastal prairie wetlands. Moreover, by allowing for jurisdiction over remote, isolated features and ephemeral washes, as well as 100-year floodplains, the 2015 Rule improperly reads the word "navigable" out of the statute, and implicates significant constitutional concerns about the appropriate scope of federal authority. Furthermore, nothing in the record created during the 2015 rulemaking process dictated the adoption of such a sweeping definition of "waters of the United States."

To address these concerns, the Agencies should rescind the 2015 Rule and recodify the regulations in place immediately prior so that the Code of Federal Regulations accurately reflects the applicable regulations. Since the Sixth Circuit's October 2015 issuance of a nationwide stay, the Agencies have been currently implementing the regulations defining WOTUS that were in effect immediately before the 2015 Rule. The proposed action would simply continue that practice and recodify the status quo that has been in place for decades.

Finally, TSCRA supports the Agencies' efforts to undertake a substantive rulemaking to reconsider the definition of "waters of the United States." Although codifying the status quo is important to ensure clarity and regulatory certainty in the near term, there are many issues with the current regulations and guidance documents that should be addressed through a new rulemaking. TSCRA will continue to support a rulemaking to clearly articulate the extent of federal CWA authority.

Thank you again for the opportunity to comment on this matter. If you should have questions from TSCRA regarding these comments, please contact Jason Skaggs at 512-469-0171 or at [jskaggs@tscra.org](mailto:jskaggs@tscra.org).

Sincerely,

A handwritten signature in black ink, appearing to read "R. Thorpe".

Richard Thorpe  
President