



February 7, 2022

Hon. Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Hon. Michael Connor
Assistant Secretary
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314

Docket No. EPA-HQ-OW-2021-0602-0001
Submitted via Regulations.gov

Texas & Southwestern Cattle Raisers Association Comments on the Environmental Protection Agency and Army Corp of Engineers' Proposed Rule Defining the Scope of Waters Protected Under the Clean Water Act

To Whom it May Concern:

The Texas & Southwestern Cattle Raisers Association (TSCRA) appreciates the opportunity to submit comments on the Environmental Protection Agency's (EPA) and U.S. Army Corp of Engineers' (Army Corps) (the agencies) proposed revisions to the Waters of the United States (WOTUS) defining the scope of waters protected under the Clean Water Act (CWA).

TSCRA is a 144-year-old trade association and is the largest and oldest livestock organization based in Texas. TSCRA has more than 17,000 beef cattle operations, ranching families and businesses as members. These members represent approximately 55,000 individuals directly involved in ranching and beef production who manage 4 million head of cattle on 76 million acres of range and pastureland, primarily in Texas, Oklahoma and throughout the Southwest. TSCRA has been at the forefront, participating in every chapter of CWA and WOTUS to ensure ranchers and landowners have a voice in the development process.

Cattle producers need a clear definition of WOTUS that will allow them to assess whether they have federally jurisdictional waters on their property without spending limited resources to hire outside consultants and hydrologists. Most cattle producers are multi-generational, having dealt with every iteration of CWA jurisdiction since its passage in 1972. After enduring almost 50 years of jurisdictional battles, regulated stakeholders need clarity to best comply with CWA, so they may run their businesses efficiently and free of bureaucratic restrictions.

Unfortunately for landowners, clarity has yet to be achieved through this proposed rule. Ranchers are once again faced with a broad definition that does nothing to improve our ability to determine what qualifies as a "water of the United States."

A very important provision for ranchers and landowners omitted from the new WOTUS definition is the relinquishment of jurisdiction over certain ephemeral tributaries and intermittent streams. Returning the flow path of these occasional, small channels and streams into the regulatory structure of the Clean Water Act (CWA) is a major violation of private property rights by the agencies. To make matters even less clear, this new definition allows the agencies to blend the overly broad opinions of Supreme Court Justices Scalia and Kennedy in the *Rapanos* case to determine if a puddle or stream made by a recent rain is a significant nexus and thus federally regulated. This case-by-case process will only lead to further confusion for landowners and more bureaucratic red tape.

We are also extremely concerned to see this definition retract valuable agriculture exemptions for stock ponds, playa lakes and other agricultural water features. The change will further burden ranchers and landowners without improving water safety or environmental quality. With this definition in place, countless projects that would improve water quality and availability will be blocked by an overreaching WOTUS rule.

In many states, such as Texas, producers rely heavily on groundwater which is privately owned by the landowner. However, this new definition fails to explicitly exclude federal jurisdiction over groundwater, which along with the inclusion of jurisdiction over adjacent wetlands, could infringe upon groundwater ownership rights. This is very troublesome for landowners and is a notable departure from features that have been historically viewed as beyond the scope of CWA jurisdiction. Without this exclusion, many landowners are wary that the agencies will use the overly broad WOTUS definition to federally regulate groundwater, which should not be a medium subject to federal jurisdiction but rather an intrastate resource left to the states to manage, either alone or regionally.

TSCRA respectfully requests additional revisions be made to bring clarity for landowners, reimplement crucial agricultural exemptions, explicitly exclude federal jurisdiction over groundwater and exclude certain ephemeral tributaries and intermittent streams from jurisdiction. These changes will allow cattle producers and landowners to confidently implement conservation management practices that benefit all of our natural resources without fear of violating obscure governmental regulations.

Thank you for the opportunity to submit comments on the revised definition of WOTUS. We look forward to partnering with the agencies on this and other critical issues moving forward. If you have any questions regarding these comments or TSCRA's position, please contact Peyton Schumann at (512) 469-0171 or pschumann@tscra.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Hughes Abell', written in a cursive style.

G. Hughes Abell
President