



ARKANSAS AGRICULTURE DEPARTMENT

ARKANSAS FORESTRY COMMISSION
ARKANSAS LIVESTOCK AND POULTRY COMMISSION
ARKANSAS STATE PLANT BOARD

ASA HUTCHISON
GOVERNOR

#1 NATURAL RESOURCES DRIVE
LITTLE ROCK, AR 72205

WES WARD
SECRETARY OF AGRICULTURE

PHONE: (501) 225-1598
WWW.AAD.ARKANSAS.GOV

June 19, 2017

Ms. Donna Downing
Office of Water (4502-T)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted via email: cwawotus@epa.gov; hanson.andrew@epa.gov

Re: Comments on EPA's Definition of "Waters of the United States"

The Arkansas Agriculture Department appreciates the effort by the Environmental Protection Agency (EPA) and the Department of the Army to consult with and seek comments from state and local governments on the forthcoming proposal to revise the definition of Waters of the United States (WOTUS).

The Arkansas Agriculture Department consists of the Arkansas State Plant Board, Arkansas Livestock and Poultry Commission and the Arkansas Forestry Commission. The Arkansas Agriculture Department is dedicated to the development and implementation of policies and programs for Arkansas agriculture and forestry to keep its farmers and ranchers competitive in national and international markets while ensuring safe food, fiber and forest products for the citizens of the state and nation.

Agriculture remains our state's largest industry with over 43,500 farms contributing \$20 billion each year to the state's economy. Arkansas is a diverse agricultural state producing over twenty-one (21) commodities that rank in the top 25 in the nation each year. This broad diversity includes aquaculture, row crop, specialty crop, livestock, poultry, and forestry and timber production. With our agricultural diversity there is also a broad range of agricultural groups and organizations that help to represent our many farmers and ranchers.

Arkansas's agricultural community plays an active role with policy development in our state and they remain ready to work with policy makers at the federal level. As such, the below comments are based on the comments that the Arkansas Agriculture Department received from our state's agricultural organizations as well as individual farmers and ranchers. There is broad consensus from the Arkansas agriculture and forestry industries on the following comments:

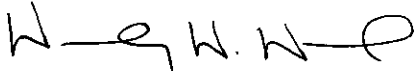
States with an approved section 402 permitting program need a clear rule that defines WOTUS based on objectively identifiable characteristics to reasonably administer the program within their borders. Such a definition will go a long way towards avoiding litigation and other costs that divert scarce resources from protecting state and federal waters.

Further, we would encourage the EPA to craft new definitions consistent with the following general principles:

- Federal jurisdiction can extend beyond navigable waters to certain non-navigable water bodies and wetlands. In defining those non-navigable water bodies or wetlands that are “waters of the U.S.,” EPA should focus on water features that are likely to directly affect traditional navigable waters and that are identifiable based on clear, objective characteristics, to provide clarity and certainty to regulators and the public.
- Federal jurisdiction cannot properly extend to non-navigable, isolated/intrastate waters and wetlands. Nor does it extend to any ordinarily dry features, such as ephemeral streams.
- A water feature that is “relatively permanent” must contain water persistently and frequently. At a minimum, they must continuously carry water on a seasonal basis (such as throughout the spring season). Features that are usually dry and only carry water when it rains are not “relatively permanent” waters.
- Wetlands should only be “waters of the U.S.” when they are immediately adjacent to traditional navigable waters, meaning they directly touch or share a common border with those waters. This would include wetlands that are beside such waters but separated by a man-made or natural berm.
- Any revised definition should retain the long-standing codified exclusions from WOTUS and should consider the need for additional exclusions for features such as ditches or irrigation structures, depending on the scope of the revised WOTUS definition.

This issue is of significant importance to our agriculture industry and the Arkansas Agriculture Department appreciates the opportunity to comment. We look forward to continuing to work with the EPA throughout this process and into implementation of the rule. Please don't hesitate to contact us if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wesley W. Ward', with a stylized flourish at the end.

Wesley W. Ward
Secretary of Agriculture
Arkansas Agriculture Department