

# Farm, Ranch, and Rural Communities Advisory Committee

## Water Ad Hoc Work Group DRAFT Recommendations

- 1. In 2020, the Environmental Protection Agency (EPA) charged the Farm, Ranch and Rural Communities Federal Advisory Committee with the task advising on the way to support and facilitate inter-agency environmental benchmarks. Specifically, the purpose of this letter is to address the question of:**

**As EPA supports these inter-agency environmental benchmarks, in what ways can EPA facilitate the development of new technologies, practices, or market-based approaches to advance environmental goals around nutrient pollution....?**

U.S. farmers and ranchers have made tremendous strides to become more efficient and reduce environmental footprint and are poised to do so much more. For instance,

- Over the last 70 years, corn producers have improved nitrogen use efficiency by 73%.<sup>1</sup>
- Pork farmers produce a pound of pork with 25% less water than 50 years ago.<sup>2</sup>
- The U.S. has one of the lowest beef greenhouse gas (GHG) emissions intensities: 10–50 times lower than other parts of the world.<sup>3</sup>
- Conservation tillage increased 28% from 2012 to 2017.<sup>4</sup>
- Nationally, 91% of sorghum acres are rain fed saving 1.5 trillion gallons of water annually<sup>5</sup>.

These are just a few examples of how farmers and ranchers have continued to become more sustainable while continuing to feed a growing population. Many farmers and ranchers, including small /medium sized and minority owned farms are struggling. Farmer and rancher debt in the U.S. exceeds \$400 billion, according to USDA-ARS<sup>6</sup>. Additionally, in the 2017 Census, almost as many US farmers are 65 and older as younger than 55 (34% vs. 37%). In contrast, only 14% of self-employed US workers in nonagricultural businesses are 65 or older (US Department of Agriculture (USDA), Economic Research Service (ERS)). As evidenced by the data above, it is imperative that a system be developed to improve the security of our nation's food supply, protection of our natural resources, and considers equity and diversity.

FRRCC strongly encourages the EPA to work with USDA and other federal agencies to quantify the value of public goods and ecosystem services that can be provided and enhanced on agricultural landscapes and operations. Ecosystem services provided by agricultural and silviculture producers include soil conservation, carbon farming/sequestration, water quantity & quality benefits, habitat improvement, and water resource recharge. There are a variety of market mechanisms available

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<sup>1</sup> <https://www.purdue.edu/newsroom/releases/2019/Q3/study-highlights-nitrogen-efficiency-gains-in-corn-hybrids-over-70-years.html>.

<sup>2</sup> <https://www.thepigsite.com/articles/what-is-the-true-meaning-of-sustainability-in-us-pork-production>

<sup>3</sup> Herrero, M., et al., 2013. Biomass use, production, feed efficiencies, and greenhouse gas emissions from global livestock systems. Proc. Natl. Acad. Sci. 110: 20888–20893.

<sup>4</sup> <https://grains.org/about/the-councils-work/enabling-trade/sustainability/>

<sup>5</sup> <https://www.sorghumcheckoff.com/sorghum-sustains>

<sup>6</sup> <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/assets-debt-and-wealth/#:~:text=Farm%20real%20estate%20debt%20is,total%20farm%20debt%20in%202020.>

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to incentivize the achievement of ecosystem services above and beyond those practices already being implemented by producers, such as an Ecosystems Management System (EMS).

It is important to note, that FRRCC is utilizing the term Ecosystems Management System, not Ecosystems Market System. This important distinction is rooted in the importance of a market versus management. The government's role should be to develop a system to which the rules are clearly defined for a free enterprise market to be developed. The FRRCC recommends EPA and other federal partners be responsible for developing a system to which credits can be generated, traded, and purchased. Just like other assets or commodities, a market should determine the price and structure of the market, not the government.

The suggested approach would not only provide benefits for the environment and climate, but will also offer the agricultural community an opportunity to create additional win-win revenue streams capable of reducing the ongoing economic challenges being faced through the entirety of the agricultural value chain. This approach would not only reduce environmental impact but also create a market for farmers to generate additional revenues that would help to abate the ongoing economic crisis for farmers and ranchers. Through ARS, the USDA has stated, "Agriculture could play a prominent role in U.S. efforts to address climate change if farms and ranches undertake activities that reduce greenhouse gas (GHG) emissions or remove greenhouse gases from the atmosphere."<sup>7</sup>

In addition to the benefits of an EMS improving farmer / rancher economics and reducing environmental footprint, an EMS would reduce the burden on small communities and industry. Farmers and ranchers can implement conservation practices in a more economical manner than costly wastewater treatment upgrades or certain emissions reduction technologies that provides comparable environmental benefits. Instead of these expensive upgrades, farmers and ranchers could be incentivized to implement practices to offset required Clean Water Act or Clean Air Act required upgrades on wastewater facilities or industrial facilities. To accomplish this monumental task, the FRRCC recommends EPA act on the following action items:

1. Seek a collaborative agreement with other agencies such as USDA and the Food and Drug Administration (FDA) to develop an EMS. It is the FRRCC's recommendation that USDA and EPA co-lead the development of EMS related to system development, practice implementation, etc., however EPA must be responsible for developing the aspects of an EMS for compliance with the federal environmental regulations (additional recommendations below). Additionally, it is important for FDA to be involved with this effort as livestock feed ingredients are approved by FDA. There is significant ongoing research on feed additives for reducing environmental impact. These feed additives show promise for reducing environmental impacts from livestock.
2. Through the collaborative agreement mentioned above, develop a Federal Advisory Board (FAB) with a two-year minimum charter to advise EPA on developing an EMS. This FAB must contain a diverse cross section of representatives from academia, NGO's, local government, production agriculture, current market actors, and private industry.

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<sup>7</sup> [https://www.ers.usda.gov/webdocs/publications/42842/8494\\_eb15\\_1\\_.pdf?v=3209.1](https://www.ers.usda.gov/webdocs/publications/42842/8494_eb15_1_.pdf?v=3209.1)

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3. There are several specific items the FRRCC has identified as critical to ensuring the outcomes of an EMS are successful. These items would need to be considered by the FAB (as described above). In no order of importance, these items include:
  - a. The primary objective of an EMS should be improvement our country's natural resources. It is imperative that any EMS program be developed such that farmers and ranchers receive a significant majority of the proceeds from a credit. An EMS should not be developed whereas service providers (e.g., verifiers, consultants, credit traders, etc.) receive most of the proceeds from an EMS.
  - b. Current cost of soil sampling and laboratory analyses to measure/quantify soil carbon is laborious and expensive. EPA, in cooperation with National Academy of Science (NAS), USDA and FDA, should issue an innovation challenge to develop sensors capable of accurately tracking even minute soil carbon amounts and indicators of change in soil carbon before it is detectable and quantifiable.
  - c. The FRRCC strongly recommends EPA develop specific guidance on the trade ratio to meet environmental assurance and enable EMS programs to commence. Some states have attempted to develop trading criteria, however one of the contentious issues is the trade ratio. For instance, does a permittee have to purchase 2, 5, or 10 pounds of phosphorus credits to receive a reduction of one pound against their NPDES permit limit?
  - d. The FRRCC recommends USDA lead development of a list of proven conservation practices and quantify the environmental improvement of each practice. Farmers and ranchers investing in best management practices to reduce emissions and practices should be managed under established standards such as Natural Resources Conservation Service (NRCS) practice standards. Farmers and ranchers should be provided regulatory and economic certainty, as well as purchasers should receive the same. Implementation of conservation programs should be designed to de-risk transaction costs for both the farmer / rancher, regulatory agency, and credit buyer in achievement of conservation goals.
  - e. GHGs have no geographic boundary and can be reduced, offset and / or traded globally, the same cannot be said for water quality which is generally addressed on a watershed level. EPA must consider how an EMS would affect transboundary watersheds. The FRRCC recommends EPA add guidance to the "Handbook for Developing Watershed Plans to Restore and Protect Our Waters"<sup>8</sup> to encourage states and tribes with transboundary watersheds to develop a single Watershed Management Plan to ensure consistency of approach. We also recommend EPA

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<sup>8</sup> [https://www.epa.gov/sites/production/files/2015-09/documents/2008\\_04\\_18\\_nps\\_watershed\\_handbook\\_handbook-2.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/2008_04_18_nps_watershed_handbook_handbook-2.pdf)

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provide guidance in the handbook for how states could collaborate to develop an EMS within the watershed.

- f. The FRRCC recommends EPA collaborate with each state's water resources agencies and the USDA-Natural Resources Conservation Service (NRCS) to develop an EMS credit clearinghouse and verification program. Farmers trust their local conservation districts, watershed groups, and NRCS staff and would be more ready to work with a non-regulatory agency.
- g. It is important to ensure any federal developed program not create redundancy where effective state programs already exist.
- h. Farmers and ranchers who have already implemented improved practices should be retroactively compensated for early adoption. A payment for ecosystems services provided by the implementation of practices over time should be considered for those farmers / ranchers who proactively implement improved practices.
- i. Consideration should be given to needed funding of agencies involved in to developing and implementing an EMS for EPA, USDA, FDA.

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### **2. What recommendations does the FRRCC have for EPA in its endeavor to re-write the definition of “waters of the United States (WOTUS)”?**

On June 9, 2021, EPA and the Department of the Army (the agencies) announced their intention to revise the definition of WOTUS. This process is envisioned to include two rulemakings: a foundational rule to restore longstanding protections, and an anticipated second rule that builds on that regulatory foundation. A clear and consistent definition of WOTUS is critically important to America’s farmers, ranchers, and rural communities.

The evolution of the definition of WOTUS has been a source of confusion and concern for American agriculture for several decades. Within the timeframe of the 1986 rule implementation, the “significant nexus” test made the definition elusive as farmers and ranchers attempted unsuccessfully to prove otherwise against federal agencies who had already determined jurisdiction. Within the timeframe of the 2015 rule implementation, the agencies significantly expanded their interpretation of the jurisdictional authority provided under existing law. That system was neither beneficial for farmers and ranchers, nor the environment. Projects became even more complex, and delay was experienced on countless projects across the country, many of which would have meant additional conservation and water quality improvements. American agriculture appreciated the clarity the 2020 Navigable Waters Protection Rule (2020 Rule) provided. Many features were retained within federal jurisdiction, but it was workable for farmers, ranchers, and rural communities. Unfortunately, not much implementation was allowed to be realized before the agencies attempt to again rewrite the definition of WOTUS. Given that, the FRRCC recommends EPA take the following actions:

1. Adhere to Clean Water Act and relevant Supreme Court precedent. Important Supreme Court cases on this issue include *US v. Riverside Bayview Homes*, *Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers*, and *Rapanos v. United States*. Together, the cases reinforce that Congress placed limits on the scope of federal jurisdiction under the Clean Water Act by using the term “navigable” and by recognizing, preserving, and protecting the primary responsibility and rights of states over land and water use and development. Any definition of WOTUS should be guided by these cases and should be limited to traditional navigable waters and territorial seas. Jurisdiction over non-navigable tributaries should be limited to those tributaries containing clearly discernable physical features, as well as consistent flow into traditionally navigable waters. Any consideration for adjacency must be limited wetlands that directly abut WOTUS.
2. Define WOTUS using clear terms that are easy to interpret and apply. The most important aspect of any definition of WOTUS is it must be easily interpreted by farmers, ranchers, and leaders of rural communities and interpreted with clear lines of jurisdiction. It is necessary that a new WOTUS rule avoid vague terminology that both landowners and regulators cannot apply without engaging in burdensome analyses. Accurate and current online, interactive tools should be considered for the purpose of mapping jurisdictional waters to provide as an informal guide to farmers, ranchers, and leaders of rural communities. Agency determinations, however, must be made in the field to ensure a holistic approach in arriving at an accurate determination and provide for adequate due process.

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3. Define jurisdictional features with an eye toward allowing farmers, ranchers, and rural communities the necessary flexibility to implement innovative environmentally beneficial projects that do not adversely impact the function or water quality of WOTUS.
4. Retain exclusions that are critical to farmers, ranchers, and rural communities and recognized regional differences. Waters that do not fit into any of the jurisdictional categories within the new WOTUS rule should not be jurisdictional. There is, however, potential for misinterpretation and misapplication, so well-defined, clear exclusions are necessary for certainty and accurate and consistent implementation. The following exemptions are among the most important for farmers, ranchers, and rural communities:
  - Prior converted cropland (PCC) – PCC no longer exhibits defining characteristics of a wetland and no longer performs wetland functions, and thus, lands should not be considered WOTUS. The PCC definition included in the 2020 Rule codified the principle from the 1993 regulation. Farmers and ranchers nationwide have relied upon the PCC exclusion for decades, and as the agencies move forward with rulemakings, it must be retained as it was in the 2020 Rule.
  - Groundwater – EPA should continue to exclude groundwater in the text of the regulations.
  - Farm ditches, road ditches, canals, ponds, playas, stock ponds, prairie potholes and other isolated features – These are all features commonly found on farms and are used to collect, convey, or retain water for the purpose of agricultural use. Farmers and ranchers should not have the burden of proving the historical status of these features. That burden, instead, should be on the agencies.
  - Storm water detention, tail water recovery, or other environmentally beneficial practices should not be considered WOTUS.
  - Wastewater, reclaimed water, or recycle water systems should not be considered WOTUS.

In addition to the technical comments above, the FRRCC recommends to the agencies to reconsider the round table process. The agencies should retain previous public input processes to hear from the public to include all stakeholders. All parties should be allowed to provide public input and be heard equally. The FRRCC also wants to emphasize the importance of ensuring USDA is in lock step with the regulatory process surrounding WOTUS.