

Testimony of John Crabtree, Center for Rural Affairs, Lyons, Nebraska...

Madam Chair and members of the Committee, my name is John Crabtree. I live and work in the Northeast Nebraska small town of Lyons. I am testifying today on behalf of the Center for Rural Affairs, where I work as Media Director and rural public policy analyst advocate.

The U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers have proposed a joint rule to clarify the types of waters that are and are not covered by the Clean Water Act. This proposed rule, is, of course, the reason for this hearing and the Center for Rural Affairs thanks Senator Fischer for arranging to have this field hearing here in Nebraska. I thank you as well Senator.

The need for this rulemaking process arises out of the chaos, confusion and complexity surrounding Clean Water Act enforcement that resulted from Supreme Court decisions in 2001 and 2006. The proposed rule focuses on reducing that confusion and the Center for Rural Affairs is encouraged by the rulemaking process so far. We encourage the EPA and Army Corps of Engineers to move this rulemaking process forward.

Since its inception, the Center has resisted the role of advocating for the interests of any particular group. Instead, we have chosen to advance a set of values - values that we believe reflect the best of rural and small town America. Ultimately, we believe it is in the interest of all to create a future reflecting those values, and clean water is an essential part of rural values.

Conservation and environmental stewardship are also core values of the Center for Rural Affairs as we work to establish strong rural communities, social and economic justice, environmental stewardship, and genuine opportunity for all while engaging people in decisions that affect the quality of their lives and the future of their communities. We have a long history of advocating for federal conservation policies and programs that support farmers and ranchers in preserving our natural resources.

It is worth clarifying that the Center for Rural Affairs is supportive of the formal rulemaking process, as it has provided the opportunity to craft a stronger and more suitable rule through increased citizen input and engagement. While no proposed rule is perfect, we believe that the rulemaking process will improve the rule, which is why we provided detailed and substantive comments to EPA and the Army Corps of Engineers during the public comment period. And we believe that an improved rule can and should reduce confusion and provide clarity for regulated entities including farmers and ranchers, and ultimately improve the quality of the nation's waters for the hundreds of millions of us who utilize and depend upon clean water from our rivers, lakes and streams.

Why Clean Water is Vital

Clean water is vital to farming, ranching and small towns. Water for livestock, irrigation and other purposes is crucial to the day to day operations of farms and ranches. And farmers and ranchers are the tip of the spear for protecting water quality in America because much of the surface water of the U.S. falls first on American farms and ranches.

Streams and wetlands create economic opportunities in small town America through hunting, fishing, birding, recreation, tourism, farming, ranching and small manufacturing. Farmers, ranchers and America's small towns depend heavily on water and our neighbors downstream count on us to preserve the quality of that water for their use as well.

Moreover, despite assertions by some that understate the economic benefit and vastly overstate the cost of implementing the proposed rule, the true cost of implementation will range from \$160 to \$278 million. According to multiple econometric models, the estimated economic benefits of implementing the proposed rule range from \$390 to \$510 million, or likely double the costs.

Clean Water is crucial here in Nebraska too, of course. And vulnerable surface waters are prevalent in Nebraska as well. EPA estimates that 52 percent of Nebraska streams have no other streams flowing into them, and that 77 percent do not flow year-round. Under varying interpretations of the most recent Supreme Court decision, these smaller water bodies are among those for which the extent of Clean Water Act protections has been questioned.

EPA has also determined that 525,566 people in Nebraska receive some of their drinking water from areas containing these smaller streams and that at least 197 facilities located on such streams currently have permits under the Clean Water Act and other federal statutes regulating their pollution discharges. In addition, the Nebraska Game and Parks Commission has estimated that nearly 829,000 acres of wetlands in the state could be considered so-called "isolated" waters – water bodies that are particularly vulnerable to losing Clean Water Act safeguards.

Clearing the Regulatory Waters

The Waters of the U.S. rule is the product of exhaustive scientific examination and years of conversations with farming, ranching, manufacturing, hunting, fishing, recreation and other economic interests. The Waters of the U.S. rule is also a response to repeated calls from Congress and the Supreme Court to clarify Clean Water Act regulations and enforcement.

Chief Justice Roberts has specifically said that rulemaking would most likely be required to provide necessary clarification of Clean Water Act jurisdiction. And this is a proposed rule, EPA and the Army Corps has already undergone the required public comment period on the proposed rule, during which the Center for Rural Affairs and thousands of other organizations and concerned individuals provided detailed, substantive comments. EPA and the Army Corps should undertake revisions to the proposed rule, based upon those comments, to improve the rule before it becomes final.

The Waters of the U.S. rule goes to great lengths to ensure that farmers and ranchers benefit from preserving water quality but are not overly burdened with the rule's implementation. All the historical exclusions and exemptions for farming and ranching are preserved. Moreover, the proposal retains the normal farming and ranching exemption. But it also adds 56 conservation practices to that exemption.

This means that dramatic rhetoric such as statements that farmers and ranchers will need a permit to move cattle across a wet field or stream is absolutely false. Likewise, despite public statements to the contrary by detractors, farm ponds would continue to fall under the long-standing exemption for farm ponds.

The new rule would, however, go one step further, and specifically exclude stock watering and irrigation ponds built in dry lands. Statements by detractors that the proposed rule will apply to wet areas or erosional features in fields and pastures are also unfounded and needlessly alarm farmers and ranchers. In truth, water-filled areas on crop lands are not within the jurisdiction of the Clean Water Act under the proposed rule and the new rule specifically excludes erosional land features.

The proposed rule actually reduces regulation of ditches because it would exclude ditches that are constructed through dry lands and do not have water year-round. This Section is helpful in alleviating concerns for farmers by excluding prior converted cropland and ditches that do not deliver water directly to jurisdictional waters from the definition of Waters of the United States.

While we welcome the clarity excluding ditches, certain key definitions are missing in this section. First and foremost, the rule fails to define "ditch." One of the most contentious points of this proposed rule has been a lack of clarity surrounding regulation of agricultural drainage ditches. While it may seem unnecessary to explicitly define something as basic as a ditch, given the concern surrounding the proposed rule it would be better for the EPA and Army Corps of Engineers to err on the side of clarity.

We have, therefore, recommended the following definition of ditch informed by multiple state--level wetland regulations: *Ditch. The term ditch means a water conveyance channel with bed and banks of human construction. This does not include channelized, redirected, or otherwise manipulated natural water courses.*

I have heard and read criticisms of the proposed Waters of the U.S. rule, claiming that it will regulate puddles. This is, of course, absurd. Puddles and other transient accumulations of water have never been under the jurisdiction of the Clean Water Act and would not be jurisdictional under the proposed rule.

In the final analysis, streams that only flow seasonally or after rain have been protected by the Clean Water Act since it was enacted in 1972. As well they should be, since more than 60 percent of streams nationwide do not flow year-round and yet, those very same streams contribute to the drinking water supply for 117 million Americans, many of whom reside in America's small towns and rural areas.

Here in the west, we understand that there is much truth in the old joke that whiskey is for drinking and water is for fighting. Water is life, for people, crops, livestock, and wildlife as well as farms, ranches, business and industry (both small and large). It is in all our interest to protect this most vital of our natural resources. The proposed Waters of the U.S. rule is a crucial step in clearing the regulatory waters and protecting the quality of America's surface waters.

We should all continue earnest dialogue over our hopes and concerns for this rulemaking process, such as the dialogue we are having here today. EPA and the Army Corps of Engineers should continue to listen to concerns and make substantive improvements to the rule, and then move it forward to finalization. Thank you.

Respectfully submitted,

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