

U.S. Senate Committee on
ENVIRONMENT & PUBLIC WORKS
From the office of Chairman Jim Inhofe

Final “Waters of the U.S.” Rule

Misleading Farmers, Local Governments & Rural Utilities

On Wednesday, May 27, 2015, the Environmental Protection Agency (EPA) released its final rule defining “waters of the United States” (WOTUS). Despite EPA’s spin, the final rule will greatly increase regulation of the activities of farmers, local governments, and utilities.

Misleading Farmers

EPA says that the final rule “will provide greater clarity and certainty to farmers, will not create any new permitting requirements, and will not add economic burden on agriculture.” This statement fails to admit the many ways the final rule gives EPA the tools to regulate a farmer’s field.

The final rule preamble claims jurisdiction over irrigation canals and the rule fails to exempt irrigation ditches.

The final rule excludes waters used for ordinary farming activities from the category of “adjacent” waters, but EPA can claim a “significant nexus.”

By allowing remote sensing technology such as LIDAR to identify tributaries, the rule has no meaningful limit on the definition of tributary and can include erosion features on farmers’ fields.

The definition of “significant nexus” is so broad it can capture any water feature that holds water, infiltrates groundwater, or is used by animals, birds, and insects.

Misleading Local Governments

EPA says “Counties, cities and townships need the clarity of knowing which waters are protected to administer their clean water programs and to build and maintain their infrastructure.” The final rule fails to provide that clarity.

The final rule exempts ditches built in dry land but fails to define this term, leaving local governments at the mercy of federal officials.

The final rule fails to give stormwater and wastewater management systems operated by local governments the same consideration given waste treatment systems operated by industry.

The final rule fails to address drinking water management systems or water managed by irrigation districts.

The final rule fails to meaningfully distinguish between erosion features and tributaries.

Misleading Rural Utilities

EPA says “The energy and utility sector will benefit from the greater clarity and certainty provided by the Clean Water Rule.” This statement is not supported by the final rule.

The definition of tributary and adjacency are so broad that new transmission lines and new generation, including solar arrays and wind farms, will require even more federal permits that will slow down, tie up, and increase the cost for these critical infrastructure projects.