

April 15, 2019

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water
Mail Code 4504-T
1200 Pennsylvania Ave. NW
Washington, D.C. 20460-0001

Submitted electronically via Federal eRulemaking Portal

Re: Comments on Revised Definition of “Waters of the United States,” 84 Fed. Reg. 4,154 (Feb. 14, 2019), Docket ID No. EPA-HQ-OW-2018-0149

The following comments are provided by the National Potato Council on behalf of our grower members who produce more than ninety percent of the potatoes grown in the United States. NPC commends the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corp of Engineers (Corps) (jointly referred to as the Agencies) for developing revisions to the definition of “waters of the U.S.” This will provide needed clarity on the application of WOTUS to the regulatory status of land on farms throughout the country. Growers need to be able to know based on clearly identified criteria the nature of their regulatory status with respect to the Clean Water Act.

In addition, the current uncertainty for growers based on the regulation of pesticide applications under both the CWA and FIFRA is made worse due to lack of a clear understanding of the definition of WOTUS. The proposed regulations to revise the definition of WOTUS are a positive step to resolve these issues favorably.

The underpinnings of the definition and scope of WOTUS is rooted in the definition of Traditionally Navigable Waters (TNW). The proposed revisions to WOTUS regulations appropriately identify limits on what are “jurisdictional waters” that are more consistent with the TNW definition. We suggest adding additional language that more directly links the WOTUS definition to waters that are or have been over history used to transport goods or those waters directly connected to TNWs.

The definition of jurisdictional tributaries in the proposed rule provides a clear definition of what constitutes “jurisdictional waters”. We believe the agency can provide additional specificity to the regulated community by providing clarity to the term “intermittent”. Describing the movement or presence of water by reference to the phrase “certain times of the typical year” is exceedingly vague to growers whose jobs are impacted daily by the uncertainty and variability of weather. Can the Agency delineate specific metrics, standards or data sources that will help more clearly define terms like “typical year?”

The Agencies have taken a huge step forward in developing some relatively easily-understood examples of what is not WOTUS regulated conditions or sites. The clear exclusion of ephemeral surface features and groundwater will answer many grower questions. We believe that the Agencies should provide additional detail on the exclusion of ditches. Construction of agricultural ditches and the maintenance of those ditches should be more directly described as excluded from WOTUS.

The proposed rule represents a solid effort to return to a sensible regulatory approach that can be a part of an effort to improve water quality in the United States. A more clearly defined and understandable regulatory approach coupled with public policies that are carried out with federal, state and local government working in partnership with farmers on working lands can be a difference maker. We look forward to working with the Agencies to complete the final rule in a timely manner.

Sincerely,

John Keeling
Executive Vice President and CEO