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Via: regulations.gov

Damaris Christensen  
Oceans, Wetlands and Communities Division  
Office of Water (4504-T)  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Stacey Jensen  
Office of the Assistant Secretary of the Army for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310-010

Re: Docket No.: EPA-HQ-OW-2021-0328. Notice of Public Meetings  
Regarding “Waters of the United States”; Establishment of a Public Docket;  
Request for Recommendations

To Whom It May Concern:

My name is Mark McKean, a third-generation farmer from California. My two sons and I farm cotton, grapes, almonds, processing tomatoes, onions, garlic, and wheat in Fresno County.

In California, the ability to irrigate is critical to maintaining a successful farming operation for growers. Our state’s producers face restrictive water allocations caused by increasing droughts, overburdensome regulations, climate change and other environmental factors.

Water conservation, efficiency and sustainability is vital to the long-term success of any California producer. Conservation also plays a major role in our energy use as we have constructed several solar facilities to reduce and sometimes eliminate our use of fossil fuels. We use a strict integrated pest control system that reduces our use of pesticides as well as multiple soil and plant tissue analysis that fine tunes our inputs to secure plant health throughout the growing season. This mechanism diminishes the ability of nutrients to leach into groundwater which provides protection to other groundwater users.

I am also involved in several agricultural organizations in California and the U.S., including serving as chairman of the American Cotton Producers (ACP), an organization of cotton growers elected from their peers from across the Cotton Belt with membership uniformly distributed among the 17 major cotton states. The ACP is affiliated with the National Cotton Council (NCC) and is the producers’ advocate within the NCC and is responsible for initiating and developing most recommendations on farm legislation and other matters affecting price and production policy.

The ACP was disappointed when the Environmental Protection Agency and the US Army Corps of Engineers (Agencies) announced their intention to revise their definition of “Waters of the United States” (WOTUS). This announcement created more fear and uncertainty as growers and landowners witnessed another Administration attempting to regulate water on private farmland. Growers across the cotton belt have grown tired of the regulatory uncertainty created by the changing of Administrations and the different legal interpretations it has created.

The Obama Administration (WOTUS) expanded federal regulatory jurisdiction over water on private lands and granted EPA and the Corps control over many small tributaries, streams and ditches that crossed the property of numerous landowners. The Trump Administration’s “Navigable Waters Protection Rule (NWPR) was a better approach as it respected private property rights and provided the regulatory clarity needed by putting regulatory control in the hands of state and local officials. We were disappointed to learn this week that an Arizona district judge vacated the NWPR, and we would urge the Agencies to appeal this decision and exhaust every effort to keep the NWPR in place.

The Agencies expansion of federal control over water is inconsistent with the partnership USDA and other federal agencies have made with growers to address climate change through the adoption of on-farm conservation practices. As ACP Chairman, I have appointed a cotton-grower led working group to provide feedback to USDA as they implement strategies and practices that assist in sequestering carbon from agriculture.

Cotton producers across the belt are continuously improving their environmental footprint through the adoption of “climate smart” agricultural/conservation practices such as no-till and planting cover crops to enhance soil moisture and productivity. These practices allow us, as cotton producers, to become a part of the solution to address the global challenge of climate change. Unfortunately, the Agencies are creating a scenario where growers could need approval or even federal permits to conduct some of the most basic conservation practices such as planting a cover crop through a grassy depression that may contain water at times. A gross expansion of federal water authority with a regulation like the Obama Administration’s WOTUS rule would be counterintuitive to achieving the Administration’s carbon sequestration goals.

If the Agencies move forward with a rewrite of the “WOTUS” rule, Congressional Clean Water Act intent and Supreme Court precedent must be respected. For decades, Congress and the Courts have left the primary responsibility of water pollution control with states and local jurisdictions. It has never been the intent of Congress for a dry ditch on private land to be considered a “navigable water of the U.S.”, and any new EPA regulation on water should adhere to Congressional intent, statute and judicial precedent.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark McKean". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark McKean, Chairman  
American Cotton Producers