



September 27, 2017

Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: EPQ-HQ-OW-2017-0203

To Whom it May Concern:

Thank you for the opportunity to comment on the withdrawal of the Waters of the U.S. regulation, Docket Number: EPA-HQ-OW-2017-0203. The National Association of Wheat Growers (NAWG) supports the EPA's action to withdraw and revise the regulation. NAWG is a federation of 20 state wheat grower associations that works to represent the needs and interests of wheat producers before Congress and federal agencies. Based in Washington, D.C., NAWG is grower-governed and grower-funded, and works in areas as diverse as federal farm policy, trade, environmental regulation, agricultural research and sustainability.

NAWG provided comments throughout the regulatory process up to the final regulation issued in 2015 and is concerned about the broad reach of the regulation and areas of land that would come under jurisdiction under the regulation. NAWG was also concerned about the activities EPA engaged in to promote the regulation and the lack of oversight on grant recipients using federal funds to attack agriculture and lobby for the regulation.

Our grower members are seeking clarity in understanding which waters come under the jurisdiction of the Clean Water Act and the regulation finalized in 2015 does not provide that clarification. Descriptive terms used in the regulation such as similarly situated and ordinary high water mark that were not clearly defined. Additionally, references to proximity to water bodies – adjacent to jurisdictional waters within 100 feet of the ordinary high water mark or within the 100 year floodplain and up to 1500 feet from the ordinary high water mark -- were not clear for farmers to interpret and be able to determine if the definitions applied to their land.

The regulation also included references to large geographic regions that would become regulated under the Clean Water Act such as the Prairie Pothole region. The approach of the 2015 regulation did not take into consideration the limits of the law and past court

decisions, and brought large areas of land under the jurisdiction of the Clean Water Act. NAWG does not support designating large landscape areas as jurisdictional under the Clean Water Act due to being similarly situated in the watershed. The determination of jurisdictional waters should be based on navigable waters and those waters flowing into navigable waters.

The 2015 regulation also oversteps the federal role and should allow for state actions and respect the roles of cooperative federalism. EPA should not attempt to regulate in areas that are within the jurisdiction of state authority.

NAWG has also signed on to a broader letter from the agriculture community and we fully support the points outlined in that letter. Thank you for acting to remove this regulation. We look forward to working with you on future proposals on jurisdictional waters under the Clean Water Act.

Sincerely,

A handwritten signature in black ink, appearing to read "David Schemm", followed by a long horizontal line extending to the right.

David Schemm