



# *National Association of Wheat Growers*

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September 2, 2021

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 20310–0104

Docket ID No. EPA–HQ– OW–2021–0328

<https://www.regulations.gov/document/EPA-HQ-OW-2021-0328-0001>

Dear Damaris Christensen & Stacey Jensen:

Thank you for the opportunity to comment on the agencies' actions related to the Waters of the U.S. definition, Docket ID No. EPA–HQ– OW–2021–0328.. 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. The National Association of Wheat Growers (NAWG) does not support the EPA and U.S. Army Corps of Engineers action to alter important provisions of the Navigable Waters Protection rule that impact agricultural operations

NAWG provided comments throughout the regulatory process up to the final Waters of the United States regulation issued in 2015 and was concerned about the broad reach of the regulation and areas of land that would come under jurisdiction of the Clean Water Act (CWA). NAWG opposed the 2015 regulation and subsequently supported the

Navigable Waters Protection Rule because it provided clarity to growers that allowed them to understand which waters would come under the jurisdiction of the Clean Water Act.

The 2015 regulation used descriptive terms such as similarly situated and ordinary high-water mark that were not clearly defined and greatly expanded the jurisdiction of the CWA. The regulation 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.

The Navigable Waters Protection Rule provided farmers with clarity on the waters that would be jurisdiction under the Clean Water Act and included important provisions for farmers, including the inclusion of prior converted cropland. The NWPR also clearly excluded farm ponds, irrigation ditches and stock watering ponds from jurisdiction so long as they were not constructed in jurisdictional waters.

As the EPA and U.S. Army Corps of Engineers move forward with this regulatory action, the determination of jurisdictional waters should be based on traditionally navigable waters and those waters flowing into navigable waters. The federal action should recognize the partnership with states and not exceed Congressional authority and court rulings on the scope of federal authority. The agencies should not include ephemeral streams that only have water after a precipitation events and isolated wetlands that are not adjacent to jurisdiction waters in any revised definition of Waters of the United States. On farm conservation practices, farm ponds and ditches should be excluded from the definition of Waters of the United States and should not fall under the jurisdiction of the CWA.

NAWG also signed on to a broader letter with several agricultural organizations and we fully support the points outlined in that letter. Thank you for the option to comment on this agency action. While we do not feel the replacement of the NWPR is necessary, we recognize that recent court decisions have impacted the NWPR and we look forward to working with the agencies on this process.

Sincerely,

A handwritten signature in blue ink that reads "David Milligan". The signature is written in a cursive style and is positioned above a horizontal line.

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David Milligan  
President