



## FACT SHEET

### Waters of the United States (WOTUS)

**Background:** *The U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers issued a proposed rule addressing the “Waters of the U.S. (WOTUS) Definitions Under the Clean Water Act on April 21, 2014. After two cases in which the Supreme Court found the agencies had overstepped their authority, the agencies are working to change their regulations to reflect the more limited jurisdiction set by the court. According to the EPA, the rule was meant to help farmers and others better understand which waters were included in this definition and which waters were exempt. EPA also argues the final rule should reduce litigation and uncertainty in the countryside. Other farm groups have argued that the proposed rule itself is less clear and will regulate farms well beyond what EPA intends.*

On September 22, 2014, National Farmers Union (NFU) submitted comments to the proposed rule in hopes of helping EPA avoid language that could be used to stretch Clean Water Act (CWA) jurisdiction in the future. If NFU’s comments are incorporated into the final rule, a number of important clarifications will be made, reducing farmers’ questions while ensuring clean water today and for future generations. Those clarifications include:

1. A definition of “tributary” that clarifies without increasing CWA jurisdiction.
2. A bright-line rule for "adjacent waters," reducing the need for case-by-case determinations.
3. Codification of agency practice in light of U.S. Supreme Court rulings, increasing the predictability of jurisdictional determinations by the agencies.
4. An exclusion from CWA jurisdiction of ditches that do not connect with wetlands, riparian areas, floodplains or other waters.
5. An exclusion from CWA jurisdiction of all ditches without perennial flow.
6. Affirmation of exemptions for normal agricultural activities.

NFU urged other groups submitting comments to be constructive in critiquing the rule and to remember that EPA has been ordered by the courts to write a rule and that it was up to vested interests, like farmers and ranchers, to provide expertise and insight as to how this rule should operate in the real world. NFU firmly believes that if our comments are incorporated into the final rule, it will remove a lot of uncertainty and protect family farmers from litigation. Participating in the process ensures the interests of family agriculture will be considered by the rulemaking agencies.