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Submitted
Via regulations.gov

May 15, 2017

U.S. Environmental Protection Agency
Washington, D.C. 20004

RE: Docket EPA-HQ-OA-2017-0190

The California Farm Bureau Federation ("California Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 48,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

California Farm Bureau commends the Environmental Protection Agency ("EPA") for requesting input on regulations EPA might consider revising, replacing, or modifying. Regulatory requirements imposed by EPA can have significant impacts on our members; many of these impacts can be felt in the areas outlined by the agency for review.[1] Given this, California Farm Bureau appreciates and supports this effort to reduce the regulatory burden of federal environmental regulations on American businesses while at the same time reasonably achieving the core environmental objectives established by Congress. This effort is an opportunity to thoughtfully revisit some of the areas of regulatory control that impose unreasonable hardships on American businesses and individuals without providing commensurate environmental benefits.

Additionally, California Farm Bureau supports, and incorporates herein by this reference, the letter submitted by agricultural coalitions, including American Farm Bureau Federation, on May 15, 2017. To further support those comments, this letter provides California Farm Bureau's perspective on some of those recommendations.

[1] In its notice, EPA has specifically asked for recommendations that address regulations that, *inter alia,* "(i) eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard or reproducibility…"

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'Waters of the U.S.' (WOTUS) Rule (80 Fed. Reg. 37054, June 29, 2015; 40 CFR § 230.3)

Executive Order 13778 directs EPA to review the WOTUS rule and publish a proposal to develop a better approach by revising or replacing the rule. The existing WOTUS rule (which is also the subject of multiple legal actions and court injunctions) is not reasonably calculated to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," but instead uses an over-expansive interpretation of the phrase "significant nexus" to erode and abridge private property rights, improperly co-opt state control and local land use authorities, and cast a net of over-reaching federal jurisdiction over lands comprising much of the territorial extent of the United States. California Farm Bureau supports the repeal of the existing WOTUS rulemaking and the recent direction to undertake a new rulemaking to more clearly define and limit the reach of the Clean Water Act. California Farm Bureau encourages EPA to prioritize this regulatory action given the range of associated problems currently faced by California's farmers and ranchers. For example:

Both EPA's previous regulations and EPA's subsequently adopted WOTUS rule require farmers to obtain a CWA permit when a farmer's existing practices fail to meet the terms of certain narrowly defined exemptions. Today, the complexity and high cost associated with these permits make it exceedingly difficult, if not impossible for a farm to secure a CWA permit in California. Additionally, the permits require the farmer to conduct a formal delineation of waters of the U.S. on the property. Obtaining a formal jurisdictional determination is not only time consuming, but subject to inconsistent jurisdictional determinations, which prevents California farmers and ranchers from obtaining timely clarity concerning the CWA's jurisdictional reach. The lack of clarity and costly and time-consuming nature of this process has led to delayed projects, unmarketable crops, and arbitrary prohibitions on planting fields.

Moreover, before the current nationwide injunction, it had become apparent in California that regulators jumped the gun, implementing the proposed WOTUS rule before it became final in August 2015. One of the first impacts of this was an immediate and dramatic expansion of jurisdiction. This was observed in cases where the Corps began automatically regulating additional features not historically hydrologically connected. Specifically, Corps regulators expanded jurisdiction to alleged wetland features undetectable on the ground to the human eye. This expansion creates uncertainty for agricultural landowners and businesses in California, prompting the need for the repeal and rewrite of the current rule with a more workable rule comporting with Justice Scalia's plurality opinion in *Rapanos*.

Spill Prevention Control and Countermeasures (SPCC) Rule (40 CFR § 112)

The SPCC Rule imposes a tremendous compliance burden in the agricultural context, without providing commensurate environmental benefit. Under the SPCC, any agricultural "facility" (including even an empty field or pasture) with as little as 1,320 gallons of any form of "oil"—defined to include not only all forms of petroleum derivatives, but also any form of "animal fat" or "vegetable oil–must prepare an elaborate "facility response plan." Farmers and ranchers must undertake and bear costs of consulting fees, training, supervising, physical implementation, and

administrative costs to prepare and maintain such plans, all while the Rule does not contain appropriate tiering, prioritization or differentiation risks. Uncertainties relating to jurisdictional "navigable waters" further complicate matters, while potential liability and substantial penalties represent significant additional burdens on family farming and ranching operations. For all of these reasons, the SPPC should be withdrawn or revised to remove the current burden on California farmers and ranching families.

"Normal farming" activities under §404(f) of the Clean Water Act [33 CFR § 323.4]

The clear language of Clean Water Act section 404(f) (32 U.S.C. § 1344(f)(1)) exempts a wide range of normal farming and ranching activities, including plowing, and Army Corps of Engineers' regulations provide that "plowing" (defined as "all forms of primary tillage . . . for the breaking up, cutting, turning over, or stirring of the soil to prepare it for the planting of crops") "will never involve a discharge of dredged or fill material," (33 C.F.R. § 323.4 (a)). Despite this, enforcement actions have been taken against California farmers for routine practices on agricultural fields the regulatory agencies have classified as wetlands. Agency staff in certain areas of California have taken the position that all plowing, including even disking for the purpose of creating firebreaks, results in a discharge into waters of the U.S. and selectively enforces this interpretation.

Most regulators have no experience evaluating farm practices, activities, and crop rotation decisions based on market conditions. Further, the agencies have developed many exceptions to the normal farming exemptions, so that it is now difficult to determine what agricultural practices individual regulators will consider a discharge and what activities are exempt. For example, the changing of crop types on the land was not previously viewed as a change in "land use." Additionally, the agencies formerly recognized that fallowing fields at various intervals is a normal farming practice. However, this is no longer the case. This has been especially detrimental during California's five-year long drought in which farmers have needed to temporarily fallow fields or change crops based on alterations in irrigation practices or market forces. Where the Corps, under expansive new guidance, maintain there are alleged "waters of the US" on a farm and ranch, routine fallowing, planting, and crop shifting is being hindered, delayed, and prevented as fickle field regulators have required inspections, permits, and mitigation measures for changes formerly considered a common part of any working agricultural operation.

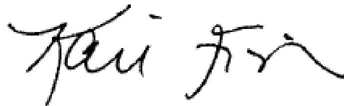
Prior Converted Cropland [33 CFR § 328.3(b)]

Although EPA promulgated regulations in the early 1990s that exempted "prior converted croplands," defined as agricultural lands that were converted from wetlands prior to 1985 from the definition of the waters of the United States, efforts have been made in recent years to erode this exemption and to re-regulate these lands. In Northern California, it is not uncommon for EPA and the Corps to ignore prior converted cropland designations and instead automatically classify

flooded rice fields as jurisdictional wetlands unless and until the farmer proves otherwise. To remove this unfair burden on California farming and ranching operations, EPA should undertake a joint rulemaking in coordination the Army Corps of Engineers to categorically exempt all normal farming, ranching, and silviculture practices, including normal fallowing, consistent with the plain language of section 404(f)(1) of the Clean Water Act.

California Farm Bureau thanks EPA for the opportunity provide these comments on Executive Order 13777, regarding regulatory reform, and EPA's recent efforts to implement the Executive Order. These comments provide California's perspective on a selection of EPA regulations that California Farm Bureau feels place an unreasonable burden on agriculture in excessive of any commensurable environmental benefit. As noted, California Farm Bureau also joins, as member of the American Farm Bureau Federation, in the broader and more detailed set of recommendations separately submitted by American Farm Bureau Federation and a wide array of agricultural organizations throughout the nation.

Sincerely,



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