SOUTHERN ARIZONA CATTLEMEN'S PROTECTIVE ASSOCIATION-(SACPA)

Corps of Engineers and Environmental Protection Agency

REGARDING: Docket ID No. EPA-HQ-OW-2011-0880; FRL-9901-47-0W Definition of "Waters of the United States" Under the Clean Water Act

Dear Agency Officials:

The Southern Arizona Cattlemen's Protective Association (SACPA), opposes the proposed Clean Water Act Rules and Regulations. SACPA represents member cattlemen and women in three Arizona counties (Pinal, Pima and Santa Cruz). SACPA is an affiliate of the Arizona Cattle Growers' Association.

The proposed Clean Water Act Rules and Regulations expand the current federal Corps of Engineers and Environmental Protection Agency regulatory jurisdiction far beyond the intent of the Clean Water Act and the Commerce Clause of the U.S. Constitution. The proposal also runs counter to precedents set by the United States Supreme Court.

These proposed regulations would result in an unconstitutional expansion by a bureaucracy of its own power, without legislative

authorization. The proposed expansion would have an adverse impact on some SACPA members.

United States Supreme Court Decision

The proposed regulations must be rejected since they undeniably contradict the meaning and spirit of the Supreme Court Rapanos Decision . (Rapanos, 447 U.S. at 719 (plurality opinion)

The proposed rule adds far more doubt and perplexing ambiguities to current interpretation of the Clean Water Act. In fact, it "muddies the water"--a deplorable perversion of the Act's intent.

The Corps and EPA Must Follow Congressional Intent

Congress clearly recognized a partnership between the federal and state levels of government when it comes to protecting our waters. This recognition is set forth in Section 101 (b) to the Clean Water Act as follows:

"It is the policy of Congress to recognize, preserve, and protect the primary responsibilities of States to prevent, reduce and eliminate pollution, to plan the development and use (including restoration, preservation and enhancement) of land and water resources..."

It is clear the proposed rule will allow the EPA and the Corps of Engineers to trump states' rights, and wipe out the authority of state and local governments to make local land and water use decisions because the expanded definition of Waters of the United States encompasses potentially every water within the nation. A listing of the waters NOT included in the expansion--carefully excluding from the new definition all non-navigable waters--would have been an appropriate clarification. Instead, as presented, the proposed "clarification" of waters to be included in federal jurisdiction can be read to cover virtually every dry wash and low area on ranches in the counties covered by SACPA.

Lands within SACPA have No Navigable Streams Nor any Nexus to Navigable Streams

There is no way our dry washes and dry "rivers" can be navigated by boats as clearly specified by the framers of the Constitution. Members of the Constitutional Convention, we are confident, would consider the proposed Rule to be both a federal power self-appropriation and, at best, a misinterpretation of clear Constitutional intent.

There are no navigable streams in Pinal, Pima and Santa Cruz counties. There are dry washes with infrequent ephemeral run-off water that join other dry washes and those dry washes connect to two totally non-navigable, usually dry "rivers." The only truly perennial navigable water in Arizona is the Colorado River, which is hundreds of miles from Pinal, Pima and Santa Cruz counties.

It takes Time and Money to Obtain a Permit

As the United States Supreme Court has recognized in the text of the Rapanos decision, "...the average applicant for an individual Clean Water Act permit spends 788 days and $271,596 in complying with the current process and the average applicant for a nationwide permit currently spends 313 days and $28,915 - not counting the substantial costs of mitigation or design changes." Rapanos, 447 U.S. at 719 (plurality opinion)

Our SACPA Members are largely small, rural family enterprises. They would be unfairly burdened by the time and expense required for a small family business to comply with the additional expenses which would result from redefining the realm of applicability of the Clean Water Act.

Agricultural Interpretive Rule

The Agricultural Interpretive portion of the proposed rule should not repurpose Natural Resource Conservation Service (NRCS) standards as regulatory sideboards. Efforts to redefine those standards as regulations and enforce those standards, which were not written to be so used, would deter law abiding citizens who have cooperatively engaged in productive conservation measures with NRCS. Producers would be much less confident to engage in proven cooperative conservation practices by an ex post facto repurposing of those standards because appeal of arbitrary

EPA and Corps of Engineers interpretations of standards as regulations would be beyond the economic means of most.

Regulatory Taking

SACPA believes the proposed regulations to be an easily mutated vehicle to facilitate potential massive regulatory takings. The proposed regulations would effectively devalue private property without just compensation by making its continued use so burdened that future production would be deemed infeasible.

A Power-hungry Bureaucracy

The proposed regulations would allow bureaucrats driven by private agendas--pushing the envelope of the expansive new definition of agency authority over virtually all water--to be empowered to impose their even more draconian personal views. This facilitation of bureaucratic abuse would expand the operative impact of the regulations beyond even the broad parameters set forth in the new regulations.

Such aggrandizing private actions could easily be taken by agency authorities with minimal concern for any probability of being called to account for their over-zealous use of new powers. Appeal by our members of predictably unsupportable bureaucratic decisions--supposedly grounded in these nearly limitless new regulations--would be costly in time, money, and productivity. In significant addition, such cost would likely result in irreparable harm in terms of cultural damage to the multi-generational heritage of many of our SACPA members who are the living representation of the unique, world-recognized western cattle ranching culture and tradition.

Unfortunately, activists among those employed by federal agencies are already aware that they can freely interpret federal regulations to advance their personal philosophy. This *de facto* license, due to the cost of challenging such actions, results in a form of tyranny that supplants the rule of law.

Some of our SACPA members have already experienced or observed examples in which a federal employee may arbitrarily demand environmental mitigation in exchange for a permit. Is it fair for a small business person to be required to finance environmental organizations and /or anti-production agendas in exchange for a permit? Clearly, the power to deny permits can provide nearly unchecked independence to a federal officer who is effectively empowered to extort private resources to support objectives he/she wishes to advance.

SACPA Advocates the Rejection of all of the Proposed Rules and Regulations

The members of SACPA request that the Proposed Rule and Regulations be rejected for the reasons set forth above.

Sincerely,

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