

**Testimony of
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State of Florida**

**As submitted to the
Joint Hearing Before the House Committee on Transportation and Infrastructure and the
Senate Committee on Environment and Public Works
Titled “Impacts of the Proposed Waters of the United States Rule
on State and Local Governments”**

**February 4, 2015
10:00 a.m.
Room HVC-210, Capitol Visitors Center**

Chairmen Bill Shuster and James Inhofe, and Ranking Members Peter DeFazio and Barbara Boxer, thank you for the opportunity to appear before this joint hearing of the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works regarding the impacts of the proposed Waters of the United States (WOTUS) Rule on State and Local Governments.

Background

I am Adam Putnam, Florida’s Commissioner of Agriculture. In this role, I am responsible for promoting Florida’s agriculture industry, protecting it from threats, managing the state’s natural resources and safeguarding consumers. I testify before you today on behalf of Florida’s \$120 billion agriculture industry and the two million jobs it supports. I am also here on behalf of the National Association of State Departments of Agriculture, an organization that represents the Commissioners, Secretaries and Directors of the state departments of agriculture in all fifty states and four U.S. territories.

On April 21, 2014, the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) jointly proposed regulations expanding the definition of waters subject to the jurisdiction of the federal government, referred to as WOTUS in the application of the Clean Water Act (CWA) and the Corps jurisdictional regulations.

The EPA asserts that the purpose of the proposed regulations is to clarify what waters are (and are not) covered by the CWA, that the regulations will not significantly change what currently is considered WOTUS, and that they will not substantially affect the regulated community.

However, an evaluation of the proposed rule and its impact on Florida indicates otherwise. It will significantly expand federal jurisdiction. It will impose additional burdensome requirements on agricultural producers. And it will impede current efforts to protect and restore the environment.

Expansion of Federal Jurisdiction

The proposed rule creates a great deal of ambiguity regarding what areas are subject to the requirements of the Clean Water Act because it does not clearly define “adjacent,” “neighboring,” “riparian area” and “floodplain.” In combination, the application of these terms would expand federal jurisdiction to include all wetlands and other waters similarly situated across a watershed or that share a shallow subsurface hydrologic connection.

Furthermore, the EPA failed to take into account the diversity of topographic features that make up the landscape of communities across this nation when developing the one-size-fits-all approach in the proposed rule. For example, in Florida, with its flat topography and broad expanse of floodplains, isolated wetlands located miles from the nearest navigable water and never before considered jurisdictional, would be defined as WOTUS under the proposed rule simply because they are located in the same watershed and, therefore, under federal jurisdiction. Even concrete-lined control conveyances and other man made systems intended to capture and treat stormwater flows could be subject to federal jurisdiction.

An independent analysis by Breedlove, Dennis and Associates, confirms that the proposed rule will in fact expand federal jurisdiction in Florida. The firm used a Geographic Information System (GIS) to evaluate the impact of the proposed rule on two parcels of land representative of rural communities across South Central Florida. The two parcels contained a number of isolated wetlands that are currently not subject to federal jurisdiction. When the proposed rule is implemented, however, federal wetlands jurisdiction would expand by 13 to 22 percent on each of these two parcels.

Additional Burdens on Agriculture

Across this nation, agricultural producers are stewards of more than 914 million acres of farm land, on which they safely and efficiently produce the food and fiber necessary to feed the world. This critical industry, however, will face increased regulations and be forced to pay additional costs for mitigation efforts under the proposed rule, threatening its long-term sustainability and hindering its ability to provide the food and fiber we need to survive.

The expansion of federal jurisdiction under the proposed rule, for example, will deem many areas of farmland as WOTUS and, therefore, subject to federal jurisdiction. Farmers and ranchers rely on adequate supplies of healthy water to support their efforts and use many features of the land, such as low spots, ditches and irrigation channels, to capture, store and carry water from rainfall. In many cases, these features are miles from “navigable” waters and were previously not subject to federal jurisdiction. Under the proposed rule, however, these features would in many cases be categorized as WOTUS.

Furthermore, with more areas of farmland categorized as WOTUS, farmers will be forced to obtain additional permits, including CWA Section 402 and Section 404 permits. The requirement to obtain additional permits often involves fees for lawyers and technical consultants whose expertise is necessary to ensure an accurate application and to develop the plans that must be submitted with the application. There are also costs associated with management practices,

monitoring and reporting. An independent analysis conducted by David Sunding & David Zilberman in 2002 revealed that the Section 404 permit costs an average of \$337,577, or nearly \$300,000 more than the permit required for areas that are not considered WOTUS.

Counter to what the EPA claimed, that regulated industries would not be affected by the proposed rule, the agriculture industry will certainly face increased burdens in the form of permits, delays and costs.

Impediments to Current Environmental Programs

As a national leader in water quality protection and restoration, the state of Florida works closely with Florida's agriculture industry and many others to protect Florida's waters. Several times in the past, the EPA has described Florida's wetlands protection and stormwater management regulatory programs as elements of the most comprehensive state water resource protection program in the nation. Florida has made significant progress in water resources protection, and we recognize that there is more work to do.

Despite the expressed intent of the proposed rule to protect the nation's water resources, the increased regulations will serve to impede, and in some cases dismantle, environmental programs in Florida and across the nation. The expansion of CWA jurisdiction to marginal waters such as stormwater ditches and ponds would divert local, state and even federal funds from restoration efforts for critically impaired and truly important natural water resources. In Florida, major environmental restoration projects such as Lake Okeechobee, the Everglades Protection Area, the Lower St. Johns River, Tampa Bay, the Indian River Lagoon and others would suffer as funding for these priorities is diverted to municipal storm system upgrades that would be required under this rule. Urban and rural communities could be faced with billions of dollars more in compliance costs, with little additional environmental benefit.

Conclusion

For the reasons I have stated above and submitted as comments to the EPA in response to the proposed rule, I am gravely concerned about the unintended consequences of the EPA's proposed rule.

While many of the concerns I've expressed represent that of Florida, these concerns transcend any one industry or one state. The lack of clarity will present significant challenges in many situations. The expansion of federal jurisdiction will impose burdensome requirements on many private landowners, businesses, municipalities and states, but yield little, positive, measurable benefit. Worst of all, forcing these entities to shift priorities and resources to meet new requirements will stall or cancel existing environmental programs proven to have a positive, measurable impact.

I urge Congress to prevent the EPA and the Corps from taking further action on the proposed regulations until a more detailed assessment of their economic impact is completed, and we can better understand the scope of additional waters that would be considered jurisdictional.