



James Mulhern, President & Chief Executive Officer | Randy Mooney, Chairman

Agri-Mark, Inc.
Arkansas Dairy Cooperative Association
Associated Milk Producers Inc.
Continental Dairy Products, Inc.
Cooperative Milk Producers Association
Dairy Farmers of America, Inc.
Dairymen's Marketing Cooperative, Inc.
Ellsworth Cooperative Creamery
Farmers Cooperative Creamery
FarmFirst Dairy Cooperative
First District Association
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk Producers
Maryland & Virginia Milk Producers Cooperative Association
Michigan Milk Producers Association
Mid-West Dairymen's Company
Northwest Dairy Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Scioto County Cooperative Milk Producers' Association
Select Milk Producers, Inc.
Southeast Milk, Inc.
St. Albans Cooperative Creamery, Inc.
Swiss Valley Farms Company
Tillamook County Creamery Association
United Dairymen of Arizona
Upstate Niagara Cooperative, Inc.
Zia Milk Producers, Inc.

May 30, 2014

The Hon. Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

The Hon. Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Washington, DC 20310

Re: Request for Extension of Comment Period on EPA and Corps Proposed Rule Defining “Waters of the United States” Under the Clean Water Act (Docket ID No. EPA-HQ-OW-2011-0880)

Dear Administrator McCarthy and Assistant Secretary Darcy:

The National Milk Producers Federation (NMPF), based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. NMPF's member cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on Capitol Hill and with government agencies.

NMPF and its members are committed to protecting U.S. waterways through voluntary efforts, as well as through regulatory compliance with the Clean Water Act. For this reason, NMPF has taken great interest in the Proposed Rule defining “Waters of the United States” (Docket ID No. EPA-HQ-OW-2011-0880). It is imperative that the EPA go about this effort in the right way, in light of the potential impact of this measure on dairy farmers.

Given the significance of the proposal, NMPF believes the agencies should ensure ample time is given to review and comment on the rule, as well as its supporting documentation. The latter includes two lengthy appendices (Appendix A – Scientific Evidence, Appendix B – Legal Analysis), an Economic Analysis, and a Draft Report on the “Connectivity of Streams and Wetlands to Downstream Waters.” As a result, NMPF requests an extension of the comment period to either 90 days beyond the current deadline, or 90 days beyond EPA's release of the final connectivity report. There are two primary reasons why we believe an extension is warranted.

Reason No. 1 -- The agencies have not completed the underlying scientific basis for the proposed rule. Additional comment time is warranted for the agencies to complete their assessment and for the public to respond with complex technical information.

In order for dairy farmers to understand, assess and adequately comment on the proposed changes, the science behind the WOTUS proposal must be clear and conclusive. But the proposal relies on the scientific conclusions of the EPA's draft connectivity report, which is still under review by the EPA Science Advisory Board (SAB). The discussions during recent public teleconferences demonstrate that the SAB is still determining the criteria under which a connection amounts to a significant nexus for the purposes of establishing CWA jurisdiction. A significant amount of time and technical expertise is needed, first to evaluate the SAB report and the agencies' scientific conclusions, and then, to prepare substantive and thoughtful responses. Therefore, NMPF requests the comment period be extended at least 90 days after EPA issues a final connectivity report to give U.S. dairy producers the time needed to review these lengthy, complex scientific analyses and provide meaningful feedback.

Reason No. 2 -- The draft rule as proposed leaves key concepts unclear, undefined, or subject to agency discretion. This is generating much greater uncertainty among farmers concerning how the proposed rule will be applied. Additional time is needed to fully analyze potential issues arising from the proposal's lack of clarity, and to provide constructive comment.

The proposed rule asserts CWA jurisdiction over waters or wetlands using terms such as "neighboring," "riparian area," "floodplain," "tributary," and "significant nexus." These terms are as clear as muddy water, and, therefore, will create confusion for dairy producers. Additionally, the proposed rule heavily relies on "best professional judgment" in application of these and other terms. This will only exacerbate the lack of certainty for farmers. Because a significant amount of time and technical expertise will be needed to evaluate definitional alternatives, more time will be required to fully evaluate these alternatives to assure greater regulatory certainty to U.S. dairy producers.

In conclusion, given the scope and complexity of the proposed rule and its supporting documents, NMPF requests an extension of the comment period to either 90 days beyond the current deadline, or 90 days beyond EPA's release of the final connectivity report, whichever is later. It would be a disservice to farmers and others to rush this proposal through the review process without sufficient scientific support or time to better understand the complexities of the issue. NMPF and its members are committed to protecting U.S. waterways through voluntary efforts and regulatory compliance with the Clean Water Act and we appreciate consideration of this request. If you wish to discuss any of these concerns, please contact me at (703) 243-6111.

Sincerely,



James Mulhern
President and CEO

cc: Donna Downing, Jurisdiction Team Leader, Wetlands Division, U.S. Environmental Protection Agency

cc: Stacey Jensen, Regulatory Community of Practice, U.S. Army Corps of Engineers