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Nebraska's Natural Resources Districts take stand against EPA "Water Rule"

On behalf of the Nebraska Association of Resources Districts, we would like to personally commend Governor Pete Ricketts for leading the effort in opposition to the new Waters of the United States (WOTUS) rule that will significantly expand federal regulatory authority by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (CORPS) over Nebraska citizens.

While NARD supports efforts to protect water quality and quantity in Nebraska, and has a proven track record of cooperation with local residents and other agencies to do so, we believe the Final Rule will have the federal government more involved in the daily lives of Nebraskans and will not result in improved water quality. Rather, it will only result in significant cost increases and delays in economic and management activities for landowners, homeowners, agencies and businesses.

"Based upon the NRDs' experience, conservative estimates for 404 permit requirements under the current rule already take about 18 months to process and it is not uncommon for them to cost upwards of \$100,000," said Dean Edson, NARD Executive Director. "We believe expanding the CORPS and the EPA's permitting authority will only add to the existing delays and increase the cost to more individuals and businesses. Further, under the rule there is no guarantee that after incurring the additional time delays and financial cost that individuals or businesses would be granted a federal permit to enhance and use their property," Edson said.

The application of the rule is not "Black and White" as portrayed by the EPA. The rule cites that the "100-year flood plain" and "ordinary high water mark" on rivers and tributaries will be relied upon to assert categorical jurisdiction. Although this sounds definite, these benchmarks are not defined for every river and tributary in Nebraska and are not delineated on any map. The definitions for these terms grant the EPA and the CORPS wide latitude to expand their jurisdiction. It is safe to assume that thousands of individuals, businesses, farmers, ranchers and public works projects that were once exempt from the rule, will now be subject to federal oversight and permitting.

For anyone that had erosion on their land this year due to the heavy rains or flooding, before repairs can be done you will need to check with EPA and the CORPS to see if you need a permit to repair the damage to your land, as filling a hole with dirt, may impact a newly-defined water of the U.S. under the Final Rule. Due to the sweeping breadth of the new definitions, everyone will need to evaluate whether a permit is necessary, or whether an exemption applies, which often involves hiring legal counsel and engineers to help with the process. If you think you don't need a permit, and the EPA or CORPS determines later that you did, you will be subject to hefty fines and penalties for making the repairs to your land without the permit.

For those that end up in these situations, the "Black and White" definitions portrayed by the federal agencies will probably feel more like "Black and Blue" regulations for those that get caught up in the heavy hand of the federal government.

Nebraska has a successful system in place through the local Natural Resources Districts (NRDs) to allow local citizens to help craft resource management plans that have a proven track record of protecting water and land resources for current and future uses. The Nebraska state agencies also provide sound, common sense regulations to protect natural resources.

Current federal laws require the agencies in a rule-making process to consider account for impacts to small businesses and existing actions that local and state government entities may already have in place to address regulatory concerns. This is required under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. The agencies failed to engage in this process and take these under consideration. The US Supreme Court earlier this week just ruled against EPA for ignoring this provision in their new Air Quality Regulations.

“The federal laws are clear that land use and water regulation is reserved to the states to protect and regulate. This policy has been upheld several times by the federal courts. However, the rule ignores these long-standing policies and extends the heavy-hand of the federal government into the daily lives of Nebraska citizens,” said Edson.

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The Nebraska Association of Resources Districts (NARD), the trade association for Nebraska's 23 natural resources districts, works with individual NRDs to protect lives, protect property, and protect the future of Nebraska's natural resources. These districts are unique to Nebraska. NRD's are local government entities with broad responsibilities to protect our natural resources. Major Nebraska river basins form the boundaries of the 23 NRDs, enabling districts to respond best to local conservation and resource management needs. To learn more about Nebraska's NRDs visit www.nrdnet.org. Or you can head to the Natural Resources Districts' Facebook page at www.facebook.com or follow NARD's Twitter page at [@nebnrd](http://www.twitter.com). NARD is located at 601 S. 12th St. Suite 201, Lincoln, Nebraska 68508. Email NARD at nard@nrdnet.org or call NARD at (402) 471-7670.

The NARD is a member of Common Sense Nebraska, which is a coalition of organizations and entities that have come together in response to EPA's WOTUS rule: a regulatory proposal that would harm both rural and urban Nebraskans through expansion of EPA's powers and authorities under the federal Clean Water Act. The coalition's purpose is to build awareness and understanding of the EPA proposal and the adverse impacts it would have on Nebraskans.