National Farmers Union

Testimony of Joe Logan

Before the
U.S. House of Representatives
Committee on Transportation and Infrastructure

Concerning the Status of the Nation's Waters, including Wetlands, Under the Jurisdiction of the Federal Water Pollution Control Act

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STATEMENT OF JOE LOGAN

PRESIDENT, OHIO FARMERS UNION

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COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

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Chairman Oberstar, Ranking Member Mica and members of the committee, thank you for the opportunity to testify today. My name is Joe Logan, and I am the president of the Ohio Farmers Union. I am a fifth generation family farmer from northern Ohio and have experience growing row crops, grazing cattle, and producing Maple syrup and wine grapes. Currently, I hold a seat on the National Farmers Union board of directors, where I serve as the chairman of the Budget and Audit Committee.

Today I am here on behalf of the National Farmers Union (NFU), our nationwide organization representing family farmers, ranchers, fishermen and rural residents. NFU is proud to be an organization whose policy positions actually come from producers. Polices are written at a local, regional, state and ultimately the national level. NFU recognizes that the purpose of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (Act), is to provide clean, safe and useable waters for citizens of the United States. At the same time, the Act reminds us that preserving clean water is a shared responsibility to be borne equally by all who use, benefit from and rely upon a healthy, safe supply of water.

National Farmers Union Policy in Regard to Water and the Environment

NFU's policy states that family farmers and ranchers have historically been our best soil and water conservationists when given the economic incentives and flexibility necessary to do so. Further investigation into our policy pertaining to water quantity distribution reveals that we support:

- The use of conservation as a primary tool for water development;
- Adoption of legislation to protect agricultural water rights through state water rights in order to prevent future power and energy plants from consuming water to the detriment of agriculture;
- Subjecting new large enterprises that will use a significant quantity of water to a permitting process that will assess the environmental and community impact of the proposed use; and

- Enforcement of the limitations on the size of farm operations eligible for federally subsidized irrigation water.

We oppose any efforts by the federal government through the usage of a national water policy to usurp the rights and prerogatives of individual states.

In regard to protecting water quality, the protection of our groundwater resources is critical not only to continuing farm operations, but as a source of drinking water for the vast majority of rural residents. Any legislation or regulations affecting groundwater should balance these interests in an effort to keep groundwater from becoming contaminated in the first place and to move quickly to clean up already contaminated sources of drinking water.

In constructing national policy to address the issues associated with water quality, we support the following actions:

- Efforts in research that address the issue of non-point source pollution;
- Concentrated Animal Feeding Operations (CAFOs) be required to post the appropriate bonds to cover the cost of cleaning up any contamination of ground and water resources. When posting these bonds, CAFOs should also be required to develop and submit waste storage closure plans;
- National minimum guidelines, or standards that give primacy for implementation and flexibility in regional planning to the states. A national policy should discourage polluters from "shopping" among the states for the lowest environmental standards and encourage states and localities to establish standards beyond the federal minimums;
- Cost-share provisions targeted to small and medium-sized farmers. Responsibility for submitting a waste management plan and complying with the waste management provisions should be shared by the owner of the livestock and the operator of the facility;
- Increasing funding for the Environmental Quality Incentive Program (EQIP) which provides federal cost-share and technical assistance to enable farmers to comply with environmental requirements;
- Family farmers being appointed to serve as advisers to any federal agency when a national waste standard is developed; and
- Targeting water subsidies to family-sized farm operations to conserve water and taxpayer dollars.

Administering Clean Water Policy in the Agriculture Sector

The original intent of Congress when it enacted the Federal Water Pollution Control Act Amendments of 1972 was to restore and maintain the chemical, physical and biological integrity of the waters of the United States. Since 1992, governments at all levels have struggled to redesign environmental policy for the twenty-first century. The Environmental Protection Agency (EPA) has tried to re-invent environmental regulation though use of community-based environmental protection, collaborative decision making, pubic-private partnerships and enhanced flexibility in rulemaking and enforcement.

NFU believes that EPA policies should be administered uniformly throughout the nation. EPA should strive to stop the practice of targeting specific regions with stricter standards than applied in non-target regions. Failure to curb this practice will result in an exodus of sensitive industries, including family farming, thereby jeopardizing the economic viability of producers and other rural residents.

Current language grants EPA and the Army Corp of Engineers (Corp) authority to regulate only the "navigable" waterways of the United States. The ambiguity associated with the term "navigable" causes problems in regard to how to accurately define the scope of jurisdiction for these regulatory agencies. By changing the wording of the Act to simply "waters," a national set of guidelines can be established for eligible waterways, creating uniformity in the jurisdiction process and expediting the subsequent permitting process. Additional time devoted to determining jurisdiction comes at great cost to both farmers and tax payers. Like many aspects of agricultural policy, a clear and concise method of determining jurisdiction and permitting encourages farmers and ranchers to be proactive stewards of water resources. Therefore, we urge lawmakers to clarify the Act and reduce the burdensome litigation and paperwork currently experienced by producers, regulators and the courts.

Changing the current wording to read "waters" of the United States restores us to the world before 2001. Supreme Court cases have done little or nothing but cause additional confusion and perpetuate a lack of consensus. Simply stated, we need legislative reform that addresses jurisdiction, not permitting. If questions or concerns regarding the permitting protocol exist, then we urge the committee to have that conversation with stakeholders in the future. Fear over changes in the permitting system should not interfere with passing legislation that clarifies the jurisdiction of EPA and the Corp.

Our members spend the vast majority of their time on their family farming and ranching operations. Day-to-day, these producers do not realize a drastic difference between the pre and post "SWANCC world." Restoring clean water practices to the methods used before 2001 would not cause unwarranted hardships on farmers, nor would it deliver them into a state of constant fear of EPA or Corps. Above all, agriculture producers are eager to highlight the unique set of circumstances that warrant attention when formulating clean water laws.

In an article written for the May-June National Wetlands Newsletter, Sen. Russ Feingold, D-Wis., discussed the implications of adopting a statutory definition of "waters of the United States" based on longstanding goals of protecting the nation's waters. He stressed that a reauthorized Act would not change the activities regulated by EPA or Corps. Current regulatory exemptions related to farming, forestry, ranching and infrastructure maintenance that have been in place since 1977 could not be overruled. Activities such as plowing, seeding, cultivating and harvesting, along with construction and maintenance of farm or stock ponds, irrigation ditches and farm or forest roads have been exempted from permitting requirements and would remain so under his proposed legislation. We encourage you to include the exhaustive list in further reauthorizations of the Act.

Moreover, NFU supports the following agriculture-related exemptions realized by our members:

- Discharges composed entirely of agricultural return flows;
- Discharges of dredged or fill materials from normal farming, silviculture and ranching activities;
- Discharges of dredged or fill materials for the purpose of maintenance of currently serviceable structures;
- Discharges of dredged or fill materials for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches and maintenance of drainage ditches;
- Discharges of dredged or fill materials for the purpose of construction or maintenance of farm roads or forest roads or temporary roads for moving mining equipment;
- Discharges of dredged or fill materials from activities with respect to which a state has an approved program under section 208(b) (4) of such an Act.

Recognizing the Unique Characteristics of Agriculture in Water Policy

Many of our states have witnessed closures of major rivers to fishing or swimming after documented cases of illness from contact with water. In 1969, the Cuyahoga River in my home state of Ohio burst into flames, dramatizing the deplorable conditions that had come to characterize many of our nation's bodies of water. In the summer of 1997, Maryland Governor Parris Glendening was compelled to deny citizens access to two rivers in his state. Tests uncovered the presence of a toxic microbe that was thought to be caused by runoff of chicken manure that had been spread as fertilizer on farmers' fields. The acute case garnered national attention on a long-overlooked problem: how do agricultural operations contribute to the pollution of fresh water? Uproar from the state's poultry industry countered arguments by environmental groups and debate among farmers, ranchers, environmentalists and regulators over how to control pollution began. While a final policy is far from determined, as evident by this hearing, farmers and ranchers like myself and other NFU members endorse aggressive approaches to maintaining clean water supplies and taking responsibility for agriculture practices that contribute pollutants to fresh water.

It is important to keep in mind that although it is time to address agriculture's contribution to water pollution, the damage is uneven in scope and severity. It tends to occur where farming is done at industrial levels and fresh water resources are vulnerable. Therefore, blanket regulations are unwise and hard to justify to producers.

Determining the relationship between what runs off of a given parcel of land and how it affects water quality is complicated. How manure and fertilizer are spread and how land is tiered and tilled each contribute to unique circumstances on individual farming practices. Therefore, when crafting water policy careful consideration must be given to the agriculture sector and its distinct challenges in meeting guidelines and national

mandates. Farmers should not suffer from flawed policies, just as our fresh water supply should not be jeopardized by lax standards and a backlog of regulatory discrepancies.

Conclusions

It is important to know what progress has been made toward the goals of the Act and whether the goals themselves provide a useful meaningful basis for federal water pollution-control policy. Any legislation impacting clean water must be clear enough for farmers and ranchers to be able to predict which lands and waters will be covered.

Farmers and ranchers should applaud efforts by Congress to clarify the intent of clean water legislation, ensuring that all waters of the United States remain valuable for drinking, fishing, swimming and a variety of other economically viable uses, many of which are put into practice on family farms and ranches around the country.

Farmers and ranchers have long acknowledged that clean, safe water is critical to the success of their agriculture operations. What will help farmers and ranchers in the future is a less cumbersome and more expedient process by which agriculture, EPA and the Corps can come to a consensus about what problems do or do not need to be addressed and the most practicable way by which challenges can be solved.

The ultimate challenge facing lawmakers is how to account for the differences between family farming operations and industrial agriculture. Family-sized producers should not be penalized, either through statue or financial burdens, for the irresponsible actions of massive corporate agriculture outfits who conduct business with little regard for environmental sustainability.

Interactions with our nation's natural resources do not need to set agricultural producers in opposition to the environment. As NFU members have demonstrated for many generations, farmers, ranchers and fishermen are our best environmental stewards and their astute understanding of the natural world deserves to be recognized and rewarded.

With that Mr. Chairman, I thank you again for the opportunity to testify. I would be pleased to take any questions and thank all of the members of the subcommittee for their support and work on these important issues.