



Idaho Farm Bureau Federation

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June 26, 2015

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

Re: Docket No. 58-0125-1401

Dear Ms. Wilson:

On behalf of the members of the Idaho Farm Bureau Federation (IFBF), I am writing to offer the following comments related to the proposed IPDES program. IFBF is Idaho's largest general farm and ranching organization, representing more than 72,500 Idaho families across each of Idaho's 44 counties and which produce all commodities grown in Idaho.

Again, IFBF commends the DEQ for their open and methodical process and for the opportunities to comment on each of the topics as the IPDES rules are formulated.

IFBF supports a record review appeal process rather than an adjudicatory process. Our members also support using a hearing officer that is selected by the Director of DEQ from a list of pre-approved individuals who have professional expertise and experience. It does not make sense to set up a separate board, nor does it make sense to disband the current DEQ board.

Our next comment on this latest draft relates to a definition in the incorporation by reference section located at the bottom of page 5 of Combined Drafts 1 through 4 and definitions.

Specifically, the draft rule proposes to include "vi. The term Waters of the United States means waters of the State of Idaho." This language, while seemingly innocuous, is very troubling and will lead to disastrous unintended consequences.

As you are well aware, the EPA has promulgated rules attempting to define what Waters of the United States are or are not. Unfortunately, the new rules muddy rather than clarify which waters are included. These rules have been adamantly opposed by many state and local governments (including Idaho), agricultural and business organizations; even the U.S. Small Business Administration has opposed the new rules as written. Due to this strong opposition, Congress has

numerous bills before it that would repeal the rules as written and require EPA to start over after consulting with states and other jurisdictions.

The issue is that the Clean Water Act only authorizes EPA to regulate “navigable” waters. Although EPA has expanded their jurisdiction over time, Congress has repeatedly refused to remove the word “navigable” from the Act, and the U.S. Supreme Court has on two separate occasions also refused to expand EPA’s jurisdiction, each time reigning in EPA’s self-expanded jurisdiction.

There are waters of the State of Idaho which are clearly outside of the scope of EPA, even under the new rule. Groundwater is not contemplated to be governed by EPA under the WOTUS rule, yet we are stipulating in DEQ’s proposed definition that groundwater would be considered Waters of the United States. If the rule is successfully repealed, there are numerous other waters in Idaho which would also not be included within the definition of WOTUS.

This is of grave concern to the members of the Idaho Farm Bureau. We do not in any way want to expand the actual or even perceived authority of the EPA over water in Idaho. The IPDES regulatory regime must not be any more expansive or stringent than the NPDES regime.

Therefore, we suggest a much less sweeping statement for the IPDES rules. Regardless of the outcome of the EPA rules, it is not appropriate, nor do we want ALL Idaho waters to be considered Waters of the U.S.

A more appropriate definition would be “The term Waters of the United States means those waters within the State of Idaho that are clearly under the jurisdiction of EPA as authorized by the Clean Water Act.”

An even more specific definition would be “The term Waters of the United States means navigable waters within Idaho.” If you chose to do so, you could actually list the waters that are currently covered under the NPDES program.

Finally, there are several other proposed definitions that now give us great concern. These are located primarily on page 8 of the Combined Drafts 1 through 4 and definitions. These include “Direct Discharge”, “Discharge of a Pollutant” and “Effluent Limitation”. There may be other similar definitions that we have overlooked as well.

Each of these definitions has been proposed to include “waters of the state”. This again is very troubling since the NPDES program does not currently include ALL the waters of the State of Idaho; it only includes the Waters of the United States as defined in the Clean Water Act, which are “navigable” waters. These definitions appear to expand the IPDES program far beyond the current NPDES program which is not what the Legislature intended when they authorized DEQ to seek primacy from EPA.

Further complicating the issue, the rules currently include on page 16 the definition “Waters and Waters of the State. All the accumulations of water, surface and underground, natural and

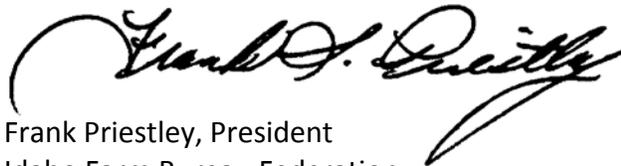
artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.” This clearly includes waters that are not and never have been contemplated to be under the jurisdiction of the EPA. Therefore, it makes no sense to keep referring to waters of the state since that definition includes far more waters than what applies to the IPDES program.

It would be preferable and far clearer to simply define “Waters of the United States” as we have suggested above and then retain the definitions on page 8 as they existed prior to the proposed wording changes so they continue to refer to Waters of the United States. This will avoid any possible inference that the IPDES program applies to additional waters in Idaho that were not previously covered under the NPDES program.

We respectfully request that you change these, and any other similar definitions. We believe that the State Legislature would have grave reservations about approving the rules as proposed since it provides for an expansion of the program over waters not intended to be covered.

Thank you for the opportunity to comment on these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank D. Priestley". The signature is written in a cursive style with a large, sweeping initial "F".

Frank Priestley, President
Idaho Farm Bureau Federation

CC: Senator Steve Bair, Chairman Senate Resources & Environment Committee
Representative Dell Raybould, Chairman House Resources & Conservation Committee