

# TEXAS DEPARTMENT OF AGRICULTURE

TODD STAPLES  
COMMISSIONER



July 1, 2011

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Administrator Jackson:

Thank you for the opportunity to comment on the December 2010 draft Clean Water Protection Guidance.

The Texas Department of Agriculture (TDA) supports the goal of protecting water quality and promoting the responsible use of land and water. However, TDA believes this guidance document goes beyond its original intent to clarify the extent of “waters of the United States” and will unnecessarily lead to a significant expansion of federal control over waters that have not been traditionally considered to be waters of the U.S. Interpretation of the guidance is left to individual inspectors, and this can lead to inconsistent enforcement across the United States.

Unlike the 2003 and 2008 guidance documents, the 2010 document appears to shift the burden of proving that a waterbody is not subject to the Clean Water Act to the landowner or local/state governments. This is a radical departure of current EPA and Corps of Engineers policy that agencies provide scientifically valid proof that a water body is indeed “waters of the United States.” TDA also believes this guidance document bypasses the normal rulemaking process and does not provide states and other stakeholders a mechanism to provide effective input.

I respectfully request EPA clearly define “waters of the United States” in the guidance document to ensure the definition is not misconstrued or expanded beyond the intent of the Clean Water Act and used to allow over-zealous and unnecessary federal regulation of our water resources. Thank you again and please feel free to contact me with any questions or concerns.

Sincerely yours,

Todd Staples

TS/RE/kh

