Kenneth Dierschke, President
Texas Farm Bureau
February 5, 2014
Subject: "Examining the Science of EPA Overreach: A Case Study in Texas"

THE TEXAS FARM BUREAU
TO THE
HOUSE SCIENCE, SPACE, AND TECHNOLOGY COMMITTEE
REGARDING
THE ENVIRONMENTAL PROTECTION AGENCY'S
REGULATORY IMPACT ON TEXAS FARMERS

Mr. Chairman, I am Kenneth Dierschke, President of the Texas Farm Bureau, and a cotton farmer from Tom Green County, Texas. In full disclosure, I am a former constituent of Chairman Lamar Smith, under a previous composition of the 21st District. I appreciate the opportunity to appear before the Committee. We thank the Chairman and Members for the important role you perform overseeing EPA regulatory activities.

Effective environmental policies balance scientific, economic, social, and environmental outcomes. Such policies create opportunity for farmers to improve net farm income, enhance the nation's economic opportunities, and preserve property rights while enabling farmers and ranchers to produce an abundant and affordable supply of food, fiber, and energy.

Farmers and ranchers – like Americans in all walks of life – support sound environmental policy. We believe such policies depend on sound science. Just as the productivity of American agriculture is dependent on sound science to feed and clothe the nation, sound science – not politicized science – must be the foundation of the nation's environmental policy. We appreciate the oversight role of the Committee, and we support your efforts to ensure that sound science is used in the regulatory process.

Texas farmers and ranchers are increasingly concerned about the intrusion into their daily operations by the Environmental Protection Agency and its proposed rule-making process in an expansion of the Clean Water Act regulatory authority. The reputation of the Environmental Protection Agency among farmers and ranchers may be at its lowest ebb in history. We believe there is good reason.

In September 2013, the EPA and U.S. Army Corps of Engineers sent a draft proposed rule defining the waters they intend to regulate under the Clean Water Act (CWA) to the Office of Management and Budget for interagency review. We believe the draft rule fails to comply with important regulatory safeguards and is based on a scientific report that has not had sufficient peer review. It is troubling that EPA's "scientific" report implies that, because nearly all water is in some way connected, EPA's authority under the CWA is virtually limitless. Thus the report, currently being reviewed by the Science Advisory Board (SAB), disguises what is nothing more than a policy preference as a claim that is justified by science and the law. The impact of this broad interpretation, if rolled into federal regulation, will mean more permits, additional permit requirements, and government and environmental group scrutiny of the things we do in agriculture, and the threat of additional litigation against farmers and ranchers. CWA jurisdiction also triggers other federal requirements, such as enforcement under the Endangered Species Act, National Environmental Policy Act, and National Historic Preservation Act. This draft proposal, by itself, has created much outrage in farm country toward the EPA.

EPA Effectively Removes "Navigable" from CWA Regulations

The CWA was enacted in 1972 and limited federal jurisdiction to "navigable" waters of the United States. Congress at that time explicitly left a role for state regulation of certain waters by stating: "It is

the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." In 2001 and in 2006, the U.S. Supreme Court reaffirmed those limits on Federal authority. It appears EPA now seeks to expand its authority beyond the limits approved by Congress and reaffirmed by the U.S. Supreme Court.

The Supreme Court decisions reaffirmed that the term "navigable waters" under the CWA does not extend to all waters. It is important to note that, shortly after those Court decisions, legislation was introduced to overturn them. Despite aggressive lobbying campaigns, bills in both the House and Senate failed to even reach a floor vote. That happened primarily for two reasons. First, leaders from both parties continue to strongly support the structure and goals of the CWA and do not want to see EPA intrude on traditional state prerogatives relating to land use planning and economic growth. Second, the legislation would have allowed EPA to use the CWA to regulate activities even on dry land and even when those activities are not connected to interstate commerce. Such an over-reach goes well beyond anything contemplated by the framers of the 1972 law.

SAB Panels Lack Transparency and Balance

We are also troubled that EPA seems to routinely ignore the requirement that SAB panels be "fairly balanced." The agency routinely selects scientists who are EPA grantees to serve on SAB panels. EPA grantees are by definition financially dependent on EPA and couldn't possibly serve as "independent" advisory panelists. According to the Congressional Research Service, nearly 60 percent of the members of EPA's chartered SAB panels have received EPA research grants that total nearly 140 million taxpayer dollars. On the other hand, private sector expertise on SAB panels is typically minimal, and in many cases entirely excluded, despite statutory requirements that membership "be fairly balanced in terms of the points of view represented." It is also evident that SAB panel members are not afraid to take strong policy preferences on issues of which they are being asked to provide impartial scientific reviews.

Mr. Chairman, we applaud your efforts to ensure an open, transparent and fair scientific SAB investigation process. And we appreciate your effort to get EPA to answer these and other important scientific questions. I will be happy to answer any questions at this time.