To: MISSISSIPPI RIVER COMMISSION (FILED FOR THE RECORD) **August 22, 2014**

Subject: (ID)No.EPA-HQ-OW-2011-0880 Farmer, Hydraulic Engineer

From Larry E Banks, P.E. Winnsboro, LA on Proposed Definition of 'Waters of the US' under the Clean Water Act (I have submitted these comments to EPA for the record.

The following are comments relative to the proposed new rule on waters of the US and are filed for the record

COMMISSIONERS:

1. My name is Larry E. Banks, P.E. I reside at 199 Rock crossing Ln, Winnsboro, LA 71295. I am a Prof Engineer in LA and have been involved in wetlands and navigable waters issues for over 44 years. I own 800 acres which I farm in northeast LA. My ancestors and I have always sought to protect the lands and waters of my farm, as evidenced by my Father's quote, "we don't really own this land and water, we're just borrowing them for a while."

2. I have great concerns over the proposed new rule for defining waters of the US. The new rule does not clarify the EPA's regulatory jurisdiction of waters, but greatly confuses the sensitive issue even further. I began first working these type issues in a supporting technical role while with the Vicksburg District Corps of Engineers in the late 1970's and early 1980's on the 'Avolyelles Sportsmans League" and other cases involving the Long Lake Tract in Avolleyes parish LA. Many of the original rules relative to wetlands jurisdiction came from these court cases. The new rule would not have clarified any of the major issues in these cases, but would have continued to produce much controversy just as the original rules did.

3. I attended an EPA meeting in Winnsboro in which Mr Curry, the Region 6 Administrator was present. I want to extend appreciation on behalf of our local farmers for Mr Curry taking time to personally hear our concerns and trust that minutes of the meeting were documented to reflect that most all in attendance seemed to be against the new rule being approved. I have also read the EPA website which defines the impacts of the new rule. Some of the statements on impacts are:

A. The EPA contends that the new rule 'doesn't protect new types of waters'—THIS IS NOT CORRECT! The new rule will be used to extend jurisdiction all the way up trib ditches to the periodically dug water furrows in the field. There will be thousands, no tens of thousands or more of new stream/ditches placed under EPA's jurisdiction under the new rule.

B. The EPA contends that the new rule 'doesn't broaden coverage under the CWA'—THIS IS NOT CORRECT! The new rule's extension of jurisdiction will exponentially expand EPA jurisdictional authority. Proof of this is reflected even in EPA's projected additional costs for additional permitting activity (up to $279,000,000.00/yr). Also- who will pay this-has to be us cash-strapped farmers and folks out in the rural areas where most of the newly ruled jurisdictional ditches will be!

C. The EPA contends that the new rule 'doesn't expand jurisdiction over ditches'—THIS IS NOT CORRECT! Just read the new definitions. Even the EPA leaders at the public meeting couldn't refute the interpretation that jurisdiction can extend right up every ditch to the water furrows, but they still repeated this inaccurate talking-points statement.

D. The EPA contends that the new rule 'does reduce confusion about CWA protection'—THIS IS NOT CORRECT, just reflect back on confusing discussions we had in the public meeting.

E. The EPA contends that the new rule 'does clarify types of water covered under CWA.' Yes, it includes some types of water that was not in original rules, but still is not clear really how far EPA will take their jurisdiction. They say their limit is different/less than the words in the new rule implies. Looks like it is still up to someone's interpretation, thus not really clarifying the situation.

F. The EPA contends that the new rule 'saves business time and money'—HOW CAN THIS BE TRUE? Just look at EPA's own annual cost of additional $279,000,000.00 which will be paid by landowners. Doesn't sound like savings to me.

G. The EPA contends that the new rule 'provides more benefits than costs.' While this is what the Economic Analysis states, I would argue that the CWA 404 Wetlands Mitigation benefits of up to $345,000,000.00 annually should also have been considered as a cost since most of the costs for this mitigation benefit would have to be born by the owners of the additional 1332 acres which will be impacted by this rule change. I believe all these cost numbers are extremely low if EPA interprets the new rule to extend up ditches and drainage waterways on the farm. The remainders of the benefits are supposedly cost savings for Government Agencies who will be able to save money by not having to think and consider what their regulatory jurisdiction limits will be under the new rule?

4. I am also concerned over the potential interpretation which EPA may elect to make using the words "adjacent waters" in lieu of the term "adjacent wetlands". I believe this could allow jurisdiction to extend right up to the water furrows feeding into the headwaters of the field ditches on our farms and would potentially place also under jurisdiction those lands which feed water into the ditches. I have no problems with the EPA and the Corps continuing to protect adjacent wetlands as they have in the past. However, adjacency should not be criteria since many of the alluvial streams in the South have top banks that are higher than lands farther back in the fields and the adjacent lands will not meet present-day wetlands criteria. The criteria for wetlands should continue to have to meet all three aspects consisting of hydric soils, hydric type vegetation and flood inundation for the 14 consecutive days during the crop season of March through November on an average of one year in two. Quite often the hydrology criteria are not adhered to when defining wetlands under present rules. I don't know what criteria could or would be developed for "adjacent waters" because it was not clearly defined in the new rule. I believe it likely will be interpreted to end up as a land use regulatory rule since by EPA's own statements in the public meeting-to control water in the streams; we will have to control what is flowing off the land.

5. I also believe the use of the word 'tributary' in the proposed rule could easily be interpreted to extend jurisdiction right up the field ditches to the water furrows. Again EPA stated in the public meeting that they needed the authority to regulate water off the farm-this would have then to include the use of the land, since water in the tribs results as runoff from the land.

6. Has the Corps/EPA/NRCS and other Fed and state agencies determined the impact of the proposed rule on future flood control, highway construction and infrastructure improvements, erosion control or other ag conservation projects? I believe that with extended jurisdiction(supported by the added $279,000,000.00 annually to evaluate permits), the mitigation requirements for the added jurisdictional areas of impact will be of such magnitude that it will render the benefits/costs of any of the new improvements as infeasible.

7. Will the potential addition limits of EPA jurisdiction on the farms also submit farmers and/or aerial applicators to NPDES permitting requirements. I noticed that aerial application was not listed as one of the 56 approved NRCS practices even though it is currently an approved practice which is used regularly on most all farms. Does this mean that an aerial applicator could be subjected to excessive fines or permitting/mitigation if flying over a newly extended jurisdictional ditch on the farm?

8. As to the 56 exempt practices, most of them are exempt under present rules. Therefore, I don't see why such an emphasis was placed on this by EPA. I still don't understand why the wording is in the rule about farmers only being exempt if they have farmed the same tract of land continously since 1977. Having farmed my land for 'only 26 years since 1988', I still interpret this to mean I will have to get a permit for approved NRCS work on my farms.

9. Apparently EPA, as stated in the public meeting, believes that the proposed rule will not change anything we do on the farm, i.e. as stated in the public meeting, "if you can pursue the practice today without a permit, you can also pursue it under the new rule without a permit". This sounds much like many of the misleading statements made about Obamacare! Yet the additional projected cost of $279,000,000 per year in EPA/Corps administration of the additional permits to be borne by local farmers/landowners tells this ole country boy that this might not be true. I question why EPA is going through all this if things on the farm will not be changing. One doesn't even to have to read the fine print to see that devastating changes will occur if this rule is approved.

10. Having worked flood control and navigation issues with the Corps, USFWL and EPA for 44 years, it seemed the Corps had to abide by the NEPA process on every potential project or even on minor changes in regulation of existing projects. I don't understand why the EPA shouldn't have to abide by NEPA when pursuing an action which they believe will have such a drastic impact on the quality of waters throughout the USA!

11. Because of the vast inaccuracies in the proposed rule and potentially disastrous impacts on local farmers, landowners and developers, I respectfully request that the proposed rule not be approved and implemented.

The Typed signature represents my official signature: //s// Larry E. Banks P.E. 601 831 1988