

**STATUTORY AND REGULATORY EXEMPTIONS FOR AGRICULTURAL PRACTICES**  
**UNAFFECTED BY THE PROPOSED CLEAN WATER RULE**

The Proposed Rule does not limit or restrict any existing Clean Water Act agricultural exemptions, either in the statute or in the existing regulations.

**Prior Converted Cropland Exemption:** Proposed 40 C.F.R. § 230.3(t)(2) continues longstanding regulatory exclusion for “prior converted cropland” – such areas may not be considered “waters of the United States.”

**Upland Ditches:** Proposed 40 C.F.R. §§ 230.3(t)(3) & (4) adds new regulatory language explicitly excluding ditches from being considered “waters of the United States” if they are either “excavated wholly in uplands, drain only uplands, and have less than perennial flow” or “do not contribute flow, either directly or through another water” to various types of protected waterways.

**Groundwater, Stock Ponds, Irrigation Lakes or Ponds, Artificial Lakes or Ponds, Gullies and other Erosional Features:** Proposed 40 C.F.R. §§ 230.3(t)(5) adds explicit regulatory language excluding several types of features:

- (1) Artificially irrigated areas that would revert to upland should application of irrigation water to that area cease; [subsection (i)]
- (2) Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; [subsection (ii)]
- (3) Groundwater, including groundwater drained through subsurface drainage systems; [subsection (vi)]
- (4) Gullies and rills and non-wetland swales. [subsection (vii)]

**Irrigation Return Flows:** Section 402(l)(1) of the Clean Water Act prohibits EPA (or an approved State) from requiring a Clean Water Act permit for discharges composed entirely of return flows from irrigated agriculture. Nothing in the Proposed Rule changes this statutory exemption.

**Silvicultural Activities:** Section 402(l)(3) of the Clean Water Act prohibits EPA (or an approved State) from requiring a Clean Water Act permit for discharges of runoff from a defined list of silvicultural (forestry-related) activities. Nothing in the Proposed Rule changes this statutory exemption.

**Agricultural stormwater discharges and return flows:** Section 502(15) of the Clean Water Act excludes agricultural stormwater discharges and return flows from irrigated agriculture from the permitting requirements of the Clean Water Act. Nothing in the Proposed Rule changes this statutory exemption.

**Normal farming, ranching, and silvicultural activities:** Section 404(f)(1) generally excludes “normal farming, silvicultural, and ranching activities” from requiring a Clean Water Act permit for the discharge of dredge or fill materials. Nothing in the Proposed Rule changes this statutory exemption.