

## Rebecca Messinger

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**From:** Kathleen Otto  
**Sent:** Monday, October 23, 2023 2:22 PM  
**To:** Rebecca Messinger; Kristin Phillips  
**Subject:** FW: EXCLUSIONS FROM WATERS OF THE UNITED STATES



**Kathleen Otto**  
County Manager

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**From:** Clark County Citizens United, Inc. <cccuinc@yahoo.com>  
**Sent:** Monday, October 23, 2023 2:21 PM  
**To:** Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Jose Alvarez <Jose.Alvarez@clark.wa.gov>  
**Subject:** Fw: EXCLUSIONS FROM WATERS OF THE UNITED STATES

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Clark County Council  
P.O. Box 5000  
Vancouver, Washington 98666

October 23, 2023

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN UPDATE

**Re: EXCLUSIONS FROM WATERS OF THE UNITED STATES**

Dear Councilors,

Clark County Citizens United, Inc. has determined that there are 8 specific exclusions in the WOTUS rule, according to the United States Environmental Protection Agency and Department of the Army (Corp of Engineers).

**Fact Sheet for the Final Rule:**

**Amendments to the Revised Definition of “Waters of the United States”**

August, 2023

1. **Prior converted cropland**, adopting USDA's definition and generally excluding wetlands that were converted to cropland prior to December 23, 1985.
2. **Waste treatment systems**, including treatment ponds or lagoons that are designated to meet the requirements of the Clean Water Act.
3. **Ditches** (including roadside ditches), excavated wholly in and draining only dry land, and that do not carry a relatively permanent flow of water.
4. **Artificially irrigated areas**, that would revert to dry land if the irrigation ceased.
5. **Artificial lakes or ponds**, created by excavating or diking dry land that are used exclusively for such purposes as stock watering, irrigation, settling basins or rice growing.
6. **Artificial reflecting pools or swimming pools**, and other small ornamental bodies of water created by excavating or diking dry land.
7. **Waterfilled depressions**, created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction operation is abandoned and the resulting body of water meets the definition of "waters of the United States."
8. **Swales and erosion features** (e.g., gullies, small washes), that are characterized by low volume, infrequent, or short duration flow.

All of these exemptions are being regulated, in some way, by Clark County at this time. That has to change, if this county is to be compliant to the EPA, DOE and WOTUS. They are all intertwined and the new WOTUS ruling must be followed by all of these agencies, including Clark County. Where we see the biggest problem is the inappropriate designations and inappropriate mitigation requirements in these exempt areas.

CCCU just received a new case that falls into all of these categories, to such a degree that the whole lot is consumed by regulation. CCCU wonders if this is a takings case, that needs to go to federal court. CCCU has already given testimony that the US Supreme Court has ruled that a "takings" is a federal matter and not a state matter. It can go straight to federal district court, bypassing the Hearings Board, Superior Court, Court of Appeals and Washington Supreme Court. The reason is that a "takings" is a federal matter, and not a state matter.

After CCCU has researched and processed what has happened to the landowner and his property rights, we will know more. But, one thing is for sure, the Wetland and Habitat Ordinance must be changed to reflect the WOTUS rule, and likewise the process and results used by Clark County.

Sincerely,

Susan Rasmussen, President

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