

April 15, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency

The Honorable R.D. James
Assistant Secretary of the Army
Department of the Army, Civil Works

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
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1200 Pennsylvania Avenue NW
Washington, DC 20460
Ow-docket@epa.gov

Re: Revised Definition of “Waters of the United States,” Docket ID No. EPA-HQ-OW-2018-0149

Administrator Wheeler and Assistant Secretary James:

The undersigned 155 organizations, representing millions of members and supporters submit the following comments on the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) proposed *Revised Definition of “Waters of the United States.”* **We urge the Agencies to withdraw this dangerous Dirty Water Rule proposal, which is expected to eliminate Clean Water Act protections for more than half of the nation’s wetlands and thousands of miles of streams, including sources of drinking water.**

Congress passed the Clean Water Act in 1972 in order to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters, and for decades, the Clean Water Act safeguarded nearly all of our rivers, streams, lakes, and wetlands. The proposed Dirty Water Rule is a drastic departure from Congress’s direction, from long-standing policies, and from the protections our water resources need. If the Agencies continue to move forward with this scheme it will be the most severe weakening of clean water protections since the Act’s inception.

The Agencies are proposing to drastically limit which water bodies the Clean Water Act protects from pollution. Under this proposal Clean Water Act protections would likely be cut for thousands of miles of streams, roughly half of the nation’s wetlands, and other critical water bodies. This would leave them without guaranteed protection under the Clean Water Act’s pollution control, prevention, and clean-up programs. The Agencies claim their proposed definition is based in law, but limiting Clean Water Act protections to only waters with a permanent or consistent flow or with a direct surface hydrological connection to other waters, has previously been rejected by a majority of Supreme Court Justices, by the George W. Bush administration, and by courts interpreting the Act.

Even worse, for the first time in the history of the Clean Water Act, the Agencies are proposing to end protections for critical water resources such as ephemeral (rain-dependent) streams, which have been in place for decades. Categorically excluding all ephemeral streams from protections

is a dramatic departure from decades of regulatory practice that followed science and common sense to protect our nation's water resources.

The proposal would supposedly continue protections for intermittent (also called seasonal) streams. But *how* the Agencies propose to determine whether or not a specific stream would be covered is confusing. For instance, the Agencies assert that for an intermittent stream to be protected, it must flow continuously for "certain times of a typical year," but they do not explain what might qualify as "certain times," and information needed to determine what the flow is in a "typical year" could be very difficult to obtain. Because of these and other confusing elements of the proposal, it is difficult to know exactly how many streams the Agencies are proposing to eliminate from protection.

We are also troubled the Agencies are inviting polluters to request even more severe rollbacks, such as whether or not the rules should exclude all streams that don't flow-year round. There is no scientific basis for excluding these streams from protection. We believe that all streams, regardless of size or frequency of flow, should be safeguarded from pollution or destruction, because the science demonstrates that they serve critical functions.

The Agencies' proposal would also be a disaster for our nation's wetlands. The proposal would only include wetlands that literally abut or have some other surface water connection to other protected waters. This would automatically exclude approximately half of the nation's wetlands from Clean Water Act protections and abandons decades of previous regulatory practice.

Excluding so many wetlands from Clean Water Act protections is reckless because it ignores the critical functions these resources perform. Wetlands protect the water quality of entire watersheds by filtering pollutants, storing floodwaters and reducing flood flows that can threaten property and infrastructure, and providing essential fish and wildlife habitat.

Since the Clean Water Act was passed in 1972, we have made significant progress in cleaning up many of our nation's most treasured rivers. The Dirty Water Rule would allow oil and gas companies, real estate developers, and factory farmers to pollute and destroy many of these streams and wetlands, reversing that progress. Instead of giving a free pass to polluters, the Agencies should be doing more to ensure these streams and wetlands are safeguarded in order to better protect and restore the rivers, lakes, and bays on which all communities depend.

Our organizations urge the Agencies to swiftly withdraw this proposal, which would gut Clean Water Act protections for certain streams and most wetlands. This proposal makes no legal or scientific sense and is a giveaway to corporate polluters at the expense of public health and the environment.

Sincerely,

AAUW Duluth Branch
Alabama Rivers Alliance
Alaska Community Action on Toxics
Alliance for the Great Lakes
Alliance of Nurses for Healthy Environments

Amagansett Springs Aquifer Protection
American Chestnut Land Trust inc
American Rivers
American Sustainable Business Council
Anacostia Watershed Society
Appalachian Trail Conservancy
Association to Preserve Cape Cod
Audubon Naturalist Society
Austin Coalition for Environmental Sustainability
Backbone Campaign
Baltimore Tree Trust
Berkshire Environmental Action Team (BEAT)
Black Warrior Riverkeeper
Blue Heron Environmental Network Inc.
Cacapon Institute
Cahaba River Society
Capital Region Land Conservancy
Center for a Sustainable Coast
Center for Progressive Reform
Chemung River Friends
Citizens Coalition for a Safe Community
Citizens for a Healthy Bay
Clark Fork Coalition
Clean Water Action
Columbia River Crab Fisherman's Association
Committee on the Middle Fork Vermilion river
Concerned Citizens of Cattaraugus County
Conservation Alabama
Conservation Voters New Mexico
CT Coalition for Environmental Justice
CURE (Clean Up the River Environment)
Detroit Audubon
Dr. Whyte Pediatrics
Earth Forum of Howard County
Earthjustice
Earthworks
Eastern PA Coalition for Abandoned Mine Reclamation (EPCAMR)
Ecological Land Management
Endangered Habitats League
Endangered Species Coalition
Environment Arizona
Environment California
Environment Colorado
Environment Connecticut
Environment Florida
Environment Georgia

Environment Illinois
Environment Iowa
Environment Maine
Environment Maryland
Environment Massachusetts
Environment Michigan
Environment Minnesota
Environment Missouri
Environment Montana
Environment Nevada
Environment New Hampshire
Environment New Jersey
Environment New Mexico
Environment New York
Environment North Carolina
Environment Ohio
Environment Oregon
Environment Rhode Island
Environment Texas
Environment Virginia
Environment Washington
Environmental Justice Health Alliance for Chemical Policy Reform
Environmental Protection Network
Environmental Working Group
Farmington River Watershed Association
Fort Berthold Protectors of Water and Earth Rights
Friends of Dyke Marsh
Friends of the Middle River
Friends of the Mississippi River
Friends of the Nanticoke River
Friends of the Rappahannock
Friends of the Rouge
Great Rivers Habitat Alliance
Greenpeace US
Groundwork Lawrence
Healthy Gulf
Helene Forst, Chairperson Long Island Businesses for Responsible Energy, Inc.
Hip Hop Caucus
Hip Hop Caucus
Idaho Rivers United
Illinois Council of Trout Unlimited
Interfaith Partners for the Chesapeake
Junction Coalition
Kentucky Resources Council
Kentucky Waterways Alliance
Lancaster Land Trust

Land Stewardship Project
League of Conservation Voters
Los Padres ForestWatch
Maine Conservation Voters
Mankato Area Environmentalists
Maryland League of Conservation Voters
Massachusetts Rivers Alliance
Michigan Wildlife Conservancy
Minnesota Division of the Izaak Walton League of America
Minnesota Environmental Partnership
Minnesota Forestry Association
Minnesota Ornithologists Union
Mystic River Watershed Association
National Wildlife Federation
NeighborSpace
NEOGAP (Network for Oil and Gas Accountability and Protection)
Nevada Conservation League
New Jersey Conservation Foundation
New York Public Interest Research Group
No DAPL & No Pipelines We The People Petition
Ohio Environmental Council
Ohio River Foundation
Oil Change U.S.
Otsego County Conservation Association
OVEC-Ohio Valley Environmental Coalition
Parks & Trails Council of Minnesota
PennEnvironment
Pennsylvania Council of Churches
People Concerned about Chemical Safety
People's Action for Clean Energy
Pollinator Friendly Alliance
Potomac Conservancy
Rachel Carson Council
River Network
Rock Creek Conservancy
Save EPA
Save Lake Superior Association
Save Our Sky Blue Waters
Severn River Association
Sierra Club
St. Mary's River Watershed Association
Surfrider Foundation
Taunton River Watershed Alliance
Tennessee Clean Water Network
The St. Marys EarthKeepers
The Wilderness Society

Trade justice alliance
Tulpehocken Creek Trout Unlimited
Tuolumne River Trust
Utah Rivers Council
Virginia Association for Biological Farming
Virginia Conservation Network
Voyageurs National Park Association
WE ACT for Environmental Justice
Western Colorado Alliance for Community Action
Western Organization of Resource Councils
WildEarth Guardians
Wisconsin Environment