

CLEAN WATER UNDER ATTACK:

**HOW ACTIONS OF THE TRUMP EPA HASTEN THE
RETURN OF POLLUTED RIVERS, LAKES, AND
STREAMS**

Executive Summary

Fifty years ago, the Cuyahoga River burned – but that fire sparked a bipartisan movement to restore and maintain our Nation’s waters – and culminated in a 10-to-1 vote to enact the 1972 Federal Water Pollution Control Act, more commonly known as the Clean Water Act. By declaring the goal of the Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” Congress sought to respond to the water quality disasters of the 1970s and recognized the importance of protecting our rivers, streams, lakes, and wetlands.

Together, we, as a Nation, have made tremendous progress in improving the health and safety of our rivers, streams, and wetlands through steady implementation of the Clean Water Act. Collectively, we have doubled the number of rivers, lakes, and streams that are now safe for fishing and swimming, but we still have a way to go to ensure *all* our waters are safe – the ultimate goal of this landmark environmental law.

Today, thanks to the Clean Water Act, our Nation’s rivers are no longer dumping grounds or open sewers. This universally popular law has provided communities, large and small, urban and rural, with the tools and financial resources to protect locally-important waters, while ensuring a strong, national baseline of protection.

Yet, the Clean Water Act and the U.S. Environmental Protection Agency (EPA), charged by Congress to implement the Act, have been under relentless attack by the Trump administration – headed by a president who campaigned on the promise to “get rid of [EPA] in almost every form.”¹

This is not a rhetorical battle over the efficacy of lightbulbs, paper straws, and low-flow toilets. This is about an administration actively seeking to undermine (or eliminate) critical protections for human and environmental health for generations to come. As a former Republican EPA Administrator recently testified:

Today, as never before, the mission of EPA is being seriously undermined by the very people who have been entrusted with carrying that mission out. ... The Trump administration has explicitly sought to reorient the EPA towards industrial and industry-friendly interests, often with little or no acknowledgement of the agency’s health and environmental missions.²

Since taking office, the Trump administration has advanced a radical pro-polluter agenda to dismantle critical safeguards that protect the health and well-being of our families, our communities, and our economy. When faced with a choice between protecting the health of our rivers, lakes, and streams for future generations, or eliminating those protections to benefit polluters, the actions of the Trump EPA highlighted in this report make clear where its priorities lie.

This report highlights the most egregious attacks by the Trump administration on our waters. It also highlights efforts by the Trump administration to radically alter the effectiveness of the Clean Water

¹ <https://www.breitbart.com/clips/2016/03/03/trump-ill-balance-budget-with-better-negotiation-cutting-doe-epa-and-waste-fraud-and-abuse/>.

² <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony%20-%20Todd%20Whitman%2020190611.pdf>.

Act by weakening multiple, critical provisions of the Act and undermine Congress' intent. Finally, the report highlights actions taken by the Democratic Members of the Committee on Transportation and Infrastructure to hold the Trump administration accountable for its actions that weaken our Clean Water Act protections.

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Table of Contents

Trump EPA’s Failure to Hold Polluters Accountable	1
Democratic Actions:	2
Trump Administration Proposal to Roll Back Historic Clean Water Protections	3
Democratic Actions:	4
Trump Administration’s Failure to Invest in Critical Wastewater Infrastructure Upgrades	5
Democratic Actions:	6
Trump’s EPA Pursues Plan to Increase Discharges of Human Sewage	6
Democratic Actions:	7
Trump’s EPA Weakens Joint Federal-State Implementation of Clean Water Act	8
Democratic Actions:	8
Trump Administration’s Plan to Restart Projects Already Found to Have Unacceptable Adverse Impacts on the Nation’s Environment – Pebble Mine, AK and Yazoo Pumps, MS.....	9
Democratic Actions:	10
Trump’s EPA Reverses Historic Clean Water Act Protection Against Pollution Traveling Through Groundwater	11
Democratic Actions:	12
Trump’s EPA Seeks to Overturn Previously-Approved State Water Standards that Protect Public Health	12
Democratic Actions:	13
Other Actions of Trump’s EPA to Weaken the Clean Water Act and Place the Health of American Families at Risk.....	13
Trump’s EPA Drops Plan to Stem the Release of Toxic Pollutants from Power Plants.....	13
Trump’s EPA Decides that Chemical Spills into Drinking Water Sources Are Not Worthy of Additional Prevention Measures	14
Trump’s EPA Seeks to Expand Discharge Options for Oil and Gas Fracking Wastewater.....	15
Trump’s EPA Fails to Take Adequate Steps to Protect Public Health from PFAS-related Chemicals.....	15
Democratic Actions:	16
Appendix	17

CLEAN WATER UNDER ATTACK: HOW ACTIONS OF THE TRUMP EPA HASTEN THE RETURN OF POLLUTED RIVERS, LAKES, AND STREAMS

Trump EPA's Failure to Hold Polluters Accountable

Last October, the Nation recognized the 46th anniversary of the enactment of the Clean Water Act. This landmark environmental law has played a critical role in reducing water pollution and greatly improving the health of U.S. waterways, and in turn, the protection of our economy and the health of our families and our environment. Congress vested the Environmental Protection Agency (EPA) with primary Federal responsibility for implementation of the Clean Water Act, and authorized approved States to co-administer the program with appropriate Federal oversight.

However, there is growing evidence that the Trump administration is attempting to dismantle the Clean Water Act, both within EPA itself and through reduced oversight of approved State programs.³

For example, a 2018 report highlighted how, over a 21-month period ending September 2017, “major industrial facilities released pollution that exceeded the levels allowed under their Clean Water Act permits more than 8,100 times . . . [and, often], these polluters faced no fines or penalties.”⁴ Similarly, two additional reports highlight how the Trump EPA finalized fewer civil enforcement actions in its first year, including actions under the Clean Water Act, than the previous three administrations during a similar timeframe. Further, of those enforcement actions for which the Trump administration takes credit, many were actually initiated during the Obama administration, so this disparity regarding EPA enforcement will only worsen as additional data becomes available.⁵ As the former head of EPA's enforcement office recently noted, civil penalties in 2018 were the lowest since EPA's enforcement office was created, and “they are on track to get worse.”⁶

In addition, in December 2017, several EPA regional offices announced efforts to lessen their oversight of State programs, including Clean Water Act programs.⁷ Soon afterward, in a March 2018 memo, the political head of EPA's enforcement office imposed new procedural hurdles on how future enforcement cases would be initiated, including a requirement for specific sign-off by agency political appointees before any enforcement action could move forward.⁸ The Committee has received information that this new political process has significantly curtailed Federal inspection

³ See e.g. Environment America and Frontier Group, *Troubled Waters: Industrial Pollution Still Threatens American Waterways*, March 15, 2018 (<https://environmentamerica.org/reports/amc/troubled-waters>); Environmental Integrity Project, *Paying Less to Pollute: A Year of Environmental Enforcement Under the Trump Administration*, February 15, 2018 (<https://www.environmentalintegrity.org/reports/paying-less-to-pollute/>); and Public Citizen, *Corporate Impunity: “Tough on Crime” Trump Is Weak on Corporate Crime and Wrongdoing*, July 25, 2018 (<https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>).

⁴ See *Troubled Waters* at Note 3.

⁵ See *Paying Less to Pollute and Corporate Impunity* at Note 3.

⁶ See Knickermeyer, Ellen, “EPA Enforcement drops sharply in Trump's 2nd year in office”, AP News (February 8, 2019).

⁷ See “EPA Enforcement Letter May Signal Weaker Oversight of States' Programs”, *InsideEPA* (December 5, 2017).

⁸ See “The Energy 202: Trump appointee at EPA to scrutinize which pollution cases may go do court”, *The Washington Post* (June 15, 2018).

responsibilities and the number of enforcement referrals made to EPA staff. What enforcement staff described as normally being a steady stream of Federal inspection-led enforcement referrals from regional offices to EPA headquarters during prior administrations, has all but stopped under the Trump administration's EPA.

Further, in August 2018, EPA quietly initiated an effort to transition away from formal enforcement activities toward an undefined "national compliance initiative."⁹ Similarly, in July 2019, EPA issued a memo¹⁰ ending the practice of unannounced inspections of regulated facilities – in essence, requiring that facilities be given advance notice of compliance inspections. While the exact implications of these efforts are not clear, in the context of other actions taken by the Trump administration's EPA to weaken Federal oversight and enforcement of the Clean Water Act, collectively, these efforts will likely fail to hold polluters accountable for their actions, fail to provide any effective deterrent against other potential polluters, and fail to ensure the health of the public, our waters, or the environment.

Finally, the Trump administration has repeatedly attempted to underfund Federal programs and agency personnel responsible for oversight and enforcement of our Federal environmental laws, including the Clean Water Act. For example, in its fiscal year 2020 budget request, the Trump administration proposed to cut EPA's budget by more than 20 percent and to transfer greater enforcement of Federal environmental laws to individual states to "rebalance the power between Washington and the states."¹¹ Robbing Federal agency personnel of the resources they need to implement the Clean Water Act will further weaken effective enforcement at a time when States and localities do not have sufficient resources to adequately backfill these critical responsibilities.

Democratic Actions:

Democrats on the House Committee on Transportation and Infrastructure remain committed to the overarching goal of the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."¹² To that end, the Democratic Leadership of the Committee remains committed to holding the Trump administration accountable for efficient and effective implementation of the Clean Water Act – through both strong Congressional oversight of actions by the Trump EPA and the development of legislative proposals to further advance these goals.

The Democratic Leadership of the Committee have sent several oversight letters to both the Trump administration and the U.S. Government Accountability Office (GAO) to investigate how the current administration is implementing and enforcing the Clean Water Act.

On June 27, 2018, the Chairman of the Committee, Peter A. DeFazio (D-OR), cosigned a bicameral oversight letter to the former EPA Administrator, Scott Pruitt, and the former Attorney General of

⁹ See <https://www.epa.gov/sites/production/files/2018-08/documents/transitionfromneitonci082118.pdf>.

¹⁰ See <https://www.epa.gov/compliance/memo-enhancing-effective-partnerships-between-epa-and-states-civil-enforcement-and>.

¹¹ See "EPA Fiscal Year 2020 Justification of Appropriations Estimates for the Committee on Appropriations" (March 2019) at 29.

¹² See 33 U.S.C. 1251(a).

the United States, Jeff Sessions, requesting information surrounding the administration's unprecedented inaction on enforcement of the Clean Water Act.¹³

On October 18, 2018, Chairman DeFazio and the Chairwoman of the Subcommittee on Water Resources and Environment, Grace F. Napolitano (D-CA), jointly sent a letter to GAO requesting an investigation into EPA's implementation and enforcement of the Clean Water Act.¹⁴

Trump Administration Proposal to Roll Back Historic Clean Water Protections

Clean water is a fundamental human need. Our families rely on rivers and streams to supply clean drinking water to their homes and businesses. Our farmers and brewers rely on clean water to produce food and drink. Hunters, anglers, and birders need waters and wetlands to sustain wildlife, and outdoor recreation, an \$887 billion industry, depends upon clean water to recreate.

Congress recognized the importance of protecting our rivers, streams, lakes, and wetlands when, on a bipartisan basis, it overwhelmingly enacted the Clean Water Act over the veto of President Nixon in 1972. Over the past four decades, the Clean Water Act has been instrumental in addressing the most obvious sources of water pollution – the open discharge of chemicals and untreated sewage into U.S. waters – as well as bringing the country closer to the bipartisan goal of “no net loss” in wetlands.

However, if the Trump administration's proposed Dirty Water Rule¹⁵ goes into effect, many water quality improvements our Nation has fought for, and made significant Federal investments to achieve, would be traded away under the guise of regulatory “certainty” and “clarity.” While these are certainly important goals, certainty and clarity should not come at the expense of eliminating current Clean Water Act protections on over half of the wetlands in the United States and potentially as many as 60 percent of U.S. rivers, streams, and lakes. This is especially true when more than three in five American voters believe the government should do more to protect our waters from pollution – not less.

Yet, the Trump administration's Dirty Water Rule would radically reinterpret decades-old Clean Water Act protections endorsed by Republican and Democratic administrations alike – virtually assuring the destruction of rivers, streams, lakes, and wetlands throughout the country. Further – as if the proposed Dirty Water Rule was not bad enough – the Trump administration is actively seeking

¹³ See <https://transportation.house.gov/news/press-releases/defazio-carper-press-doj-and-epa-on-the-unlawful-slowing-of-enforcement-of-the-clean-water-act->.

¹⁴ See <https://transportation.house.gov/news/press-releases/defazio-napolitano-ask-for-gao-investigation-into-epas-enforcement-of-clean-water-protections>.

¹⁵ The Dirty Water Rule refers to the Trump administration's proposed rule to redefine the term “waters of the United States” which established the legal scope of waters and wetlands protected by the Clean Water Act, and for which a Federal permit is required before any person may discharge a pollutant into one of these waters. This proposed rule, found at 84 Fed. Reg. 4154 (February 14, 2019), would significantly narrow the types of waters that have been protected by the Clean Water Act since its enactment in 1972. Accordingly, if a waterbody (or wetland) is no longer protected by the Act, polluters would, legally, be able to discharge pollutants into these waters or fill these wetlands – a practice that, under current law, would be illegal and subject polluters to criminal or civil fines and penalties.

support for an even more radical proposal to further roll back Clean Water Act protections first established by the Reagan administration.¹⁶

The Dirty Water Act's radical departure from historic Clean Water Act protections will only cause harm across the country. If our network of smaller rivers and streams are no longer protected by the Clean Water Act, then roughly 60 percent of stream miles in the lower 48 states that do not flow year-round – estimated to be millions of stream miles – will no longer be protected. Further, the Dirty Water Rule would end protections on the approximately 50 million acres of wetlands in the continental United States that do not have a surface water connection to other covered waterways, in spite of contributing to the health of those waters.

The Dirty Water Rule flies in the face of science, economics, and the law. Streams and wetlands are critically important for ecosystem services, including filtering water that helps provide clean drinking water, and storing water that helps protect communities from flooding and drought.

At the end of the day, the Trump administration's Dirty Water Rule will mean that fewer streams, wetlands, and other waterways will be protected. It means more pollution into the streams and lakes that are sources for our drinking water, fishing, and swimming. It means the likely destruction of wetlands that serve as both irreplaceable habitat for countless birds, fish, and mammals, and protection for our homes, lives, and livelihoods from flooding, coastal storms, and the challenges faced by climate change and extreme weather.

If the Trump administration's claim that our waters are the "cleanest they've ever been"¹⁷ is true, it is because of the decades of investment, effective enforcement, and stringent standards established by the Clean Water Act – and which the administration's Dirty Water Rule will all but eliminate.

Democratic Actions:

Committee Democrats stand in strong opposition to the attempts of the Trump administration to roll back Clean Water Act protections under the guise of providing regulatory certainty and are committed to meeting the fishable and swimmable goals of the Clean Water Act. Chairs DeFazio and Napolitano continue to question the legal, scientific, and practical consequences of the Dirty Water Rule and have sent five letters to the administration demanding additional information on these consequences.

On August 18, 2017, Chairman DeFazio and Chairwoman Napolitano joined with over 100 of their congressional colleagues in a letter to EPA in opposition to the Trump administration's proposal to withdraw the 2015 Clean Water Rule. (*Appendix*)

¹⁶ While the proposed Dirty Water Rule would, itself, be a radical departure from the over 40 years of practice on establishing the scope of the Clean Water Act, the Rule suggests a willingness to rollback protections even further, including limiting the scope of the Act to just cover perennial waters. See 84 Fed. Reg. at 4177. This approach is estimated to exempt up to 70 percent of the waters and wetlands currently protected by the Clean Water Act today.

¹⁷ See <https://thehill.com/policy/energy-environment/449239-trump-says-air-and-water-are-the-cleanest-theyve-ever-been-before>.

On April 24, 2018, Chairman DeFazio cosigned a bicameral letter to EPA expressing concern over the agency's efforts to consolidate local decisions on Clean Water Act protections with political appointees in Washington, D.C. (*Appendix*)

On February 12, 2019, Chairman DeFazio and Chairwoman Napolitano joined with over 190 bipartisan and bicameral congressional colleagues in a letter requesting extension of the public comment period for the Trump administration's Dirty Water Rule.¹⁸ This extension was not granted.

On April 9, 2019, Chairman DeFazio and Chairwoman Napolitano joined with Democratic leaders of the Senate Environment and Public Works Committee in submitting public comments to EPA Administrator Andrew Wheeler and Assistant Secretary of the Army (Civil Works) R.D. James urging the Trump administration to abandon its Dirty Water Rule and, instead, leave historic, bipartisan clean water protections in place.¹⁹

On July 29, 2019, Chairman DeFazio sent an oversight letter to EPA requesting specific information on the consequences of the Dirty Water Rule, including the impact of proposal on the 16,000 existing Clean Water Act permitted facilities most likely to be affected by the proposal. (*Appendix*)

Trump Administration's Failure to Invest in Critical Wastewater Infrastructure Upgrades

To a great extent, the successes of the Clean Water Act were a result of significant Federal investment in wastewater infrastructure improvements throughout the country. Since 1972, the Federal Government has provided more than \$90 billion for wastewater infrastructure, which has dramatically increased the number of Americans enjoying better water quality and improved the health of the environment.

Treating, and in many cases eliminating, the flow of direct discharges of untreated sewage into U.S. waters has been one of the best investments the Federal Government has ever made. Originally through the Federal construction grants program, and now the Clean Water State Revolving Loan Fund (Clean Water SRF) program, Federal investment in water infrastructure has been integral to improving water quality in the United States.

The critical need for Federal investment in our water infrastructure is clear. In recent memory, we have all witnessed the impacts of failed drinking water and wastewater treatment infrastructure, ranging from ruptured pipes and sewage overflows or stormwater runoff that contaminate local waters, to chemical spills contaminating drinking water supplies and corroded distribution systems that deliver contaminated water to homes and businesses.

Over the last few years, we have learned that neither large urban communities nor small rural towns are immune from the consequences of failed drinking water and wastewater systems. Consequences that include public health emergencies, disruptions in service caused by water contaminated with

¹⁸ See <https://transportation.house.gov/news/press-releases/over-160-representatives-and-36-senators-urge-epa-to-extend-comment-period-for-proposed-wotus-rule>.

¹⁹ See <https://transportation.house.gov/news/press-releases/as-the-trump-administration-attempts-to-carry-out-the-largest-ever-rollback-of-our-nations-clean-water-protections-leading-members-of-congress-urge-administration-to-reverse-course-immediately->.

bacteria, algal toxins, or other toxic materials, and, unfortunately, even death. In addition, these infrastructure failures cost businesses, individuals, and State and local governments millions of dollars in emergency repairs, responses, and lost revenue.

Simply put – the health and safety of our communities depend on safe, reliable, and efficient drinking water and wastewater treatment systems, including the pipes that distribute treated water to our homes and businesses or that convey domestic and industrial wastes for appropriate treatment.

According to EPA’s latest survey of capital improvement needs for wastewater infrastructure systems, the Nation needs to invest an additional \$270 billion over the next 20 years to meet identified wastewater and stormwater treatment and collection needs. That estimate is likely much higher as the impacts of increased storms and extreme weather events have not been factored in.

However, the Trump administration has, time and again, underfunded the Federal commitment to addressing our water infrastructure needs and has, in his most recent administration budget request, proposed further cuts to the Clean Water SRF program – requesting just over \$1.1 billion for the entire program for fiscal year 2020.

Democratic Actions:

Committee Democrats believe that the Federal government plays a significant role in addressing national water and wastewater infrastructure needs. Earlier this year, the Democratic Leadership of the Committee introduced bipartisan legislation renewing the Federal commitment to addressing our water infrastructure challenges. This legislation, H.R. 1495, the Water Quality Protection and Job Creation Act, would authorize over \$23 billion in new Federal investment over the next five years to address America’s crumbling wastewater infrastructure and local water quality challenges, including \$20 billion over the next five years for the Clean Water SRF program alone.²⁰ Committee Democrats continue to work to ensure this proposal is enacted into law this Congress.

In addition, the Democratic Leadership of the Committee joined a March 10, 2017, letter to the Trump administration calling for robust investment in both the Clean Water and Drinking Water SRF programs – building on the campaign promises of then-candidate Trump to “triple” the amount of funding provided to these critical water infrastructure programs. (*Appendix*) A promise he has yet to fulfill.

Trump’s EPA Pursues Plan to Increase Discharges of Human Sewage

Earlier this year, the Trump administration initiated the development of a Federal rule to allow sewage treatment plants to discharge inadequately treated sewage into waterways. Under this concept, sewage treatment plants could divert sewage around legally required treatment, then combine the filtered but untreated sewage with fully treated wastewater before discharge, in a process known as “blending.” The administration signaled it is also looking at removing the current prohibition on bypassing the biological treatment of sewage – the crucial treatment process that removes most pathogens (including viruses, E. coli and salmonella) from wastewater to protect public health.

²⁰ See <https://transportation.house.gov/committee-activity/water-quality-protection-and-job-creation-act->

The discharge of raw or partially treated sewage into our waterways poses significant risk to public health and the health of our environment. Unfortunately, today, many of our beaches and coastal recreational waters are contaminated from stormwater runoff, sewage overflows, and failing septic systems – and contamination from these sources often leads to significant human health concerns, ranging from nausea to viral infections, such as hepatitis, to even death. According to EPA’s most recent Beach Report,²¹ states, territories, and tribes issued over 11,000 notification actions (i.e. beach advisories or closings) during the 2018 swimming season, and 38 percent of all coastal beaches that were monitored had at least one advisory or closure during the 2018 season.

In addition, our Nation is experiencing frequent outbreaks of toxic algal blooms that can be traced to excessive levels of nutrients and other pollutants and viruses in our coastal waterways and freshwater lakes. For example, earlier this summer, a bloom of toxic algae forced the State of Mississippi to close 25 recreational beaches along its Gulf Coast, with State environmental officials warning people to avoid any contact with the water.

The Clean Water Act was enacted with a basic premise that there should be less pollution entering our environment, not more. Accordingly, the Trump administration should not expand opportunities for sewage treatment plants to discharge inadequately treated sewage into waterways beyond those already outlined in current regulations. Alternatively, it makes much more economic and environmental sense to invest additional Federal resources into effective sewage treatment infrastructure upgrades, which ensures that the United States maintains its healthy and vibrant ecosystems, economy, and communities, rather than allow more sewage into our environment, which does not.²²

Further, outside interest groups have expressed concern that EPA is moving forward on this proposal with insufficient evidence to justify changing current Clean Water Act regulations, including inadequate information on the number of wastewater treatment plants that, today, engage in blending under existing requirements, the frequency with which plants engage in blending, and the volumes, types, and impacts of pollutants, including pathogens harmful to human health and the environment, that could be legally discharged under this proposal.

Democratic Actions:

The Democratic Leadership of the Committee is concerned about the unintended consequences of allowing the discharge of additional sewage into the Nation’s waters, including the potential to increase the likelihood of exposure of families and children to harmful pathogens and viruses commonly found in raw or partially treated sewage. On July 30, 2019, Chairman DeFazio sent an oversight letter to EPA requesting additional information on the consequences of allowing increased levels of sewage into our Nation’s waters.²³

²¹ See <https://www.epa.gov/sites/production/files/2019-07/documents/beach-swimming-season-report-2018.pdf>.

²² See <https://newrepublic.com/article/148032/deja-poo-epa-considers-rule-blending-sewage>.

²³ See <https://transportation.house.gov/news/press-releases/in-new-letter-chair-defazio-demands-information-from-epa-administrator-about-trump-administration-effort-to-allow-more-untreated-sewage-into-local-rivers-and-waterways>.

Trump's EPA Weakens Joint Federal-State Implementation of Clean Water Act

The Clean Water Act gives the States a key role in protecting local waters through State-established standards for water quality. Under Section 401 of the Act, States and Tribal authorities enjoy the ability to ensure that federally-approved actions comply with state water quality standards and state law. States and Tribal authorities can require that permit applicants obtain State or Tribal certification that their projects have met those conditions that would ensure the project's compliance with applicable Federal, State, and Tribal law. The role of States under Section 401 is an essential component of the Act's system of cooperative federalism.

However, at the apparent request of the regulated industry,²⁴ the Trump administration issued three documents – an April 2019 executive order,²⁵ a June 2019 guidance document,²⁶ and an August 2019 proposed rulemaking²⁷ – seeking to limit state oversight authority over actions that could affect state water quality. Yet, the Trump administration has failed to adequately justify these actions, providing no evidence of misuse of state oversight authority or the perceived problem this proposal seeks to address.

The language and intent of these actions seem to undermine State authority to protect its waters. First, these actions seem more focused on accelerating decision timelines rather than ensuring adequate review of water quality impacts. For example, these proposals start the clock for State review when a request is made by an applicant – regardless of whether this request contains sufficient information for the State to understand the scope of the proposal, let alone its potential impact on state water quality. Second, the proposals limit the scope of information available to States to that contained in the application materials, again, restricting States from making their own determination of what information they may need to understand a project's impact, an authority States have had for decades. Finally, these proposals establish a new process that could potentially waive State review authority altogether, if a Federal agency believes a state requirement is “beyond the scope” of State review.

Several state organizations, including the Western Governors Association, the National Conference of State Legislatures, and the Association of Clean Water Administrators, have expressed concern both with the substance of limiting State authority over Federal actions that could adversely affect state waters, as well as the lack of substantive information supporting the need for this action.²⁸

Democratic Actions:

Committee Democrats support the joint efforts of Federal and State governments to implement the Clean Water Act. As Congress wisely determined in 1972, the framework of the Act – strong EPA

²⁴ See e.g., <https://www.api.org/news-policy-and-issues/news/2019/06/07/api-supports-clarification-of-epa-guidance-on-section-401-of-the-clean-water-act>.

²⁵ See <https://www.federalregister.gov/documents/2019/04/15/2019-07656/promoting-energy-infrastructure-and-economic-growth>.

²⁶ See https://www.epa.gov/sites/production/files/2019-06/documents/cwa_section_401_guidance.pdf.

²⁷ See https://www.epa.gov/sites/production/files/2019-08/documents/cwa401certification_2060-af86_nprm_20190807_prepublication_version.pdf.

²⁸ See May 24, 2019 letter from the Western Governors' Association, et al., found at <http://westgov.org/letters/letter-wga-partners-express-continued-concerns-about-epas-plans-to-revise-clean-water-act-section-401>.

established federal water quality standards implemented or further strengthened by approved State programs – has proven successful in significantly increasing the number of rivers, lakes, and streams safe for fishing and swimming, and providing critical protection of our Nation’s wetlands.

On July 30, 2019, Chairman DeFazio sent an oversight letter to EPA requesting justification for the proposed changes to section 401 of the Clean Water Act, as well as potential impacts on the environment and public health of the administration’s proposals.²⁹

Trump Administration’s Plan to Restart Projects Already Found to Have Unacceptable Adverse Impacts on the Nation’s Environment – Pebble Mine, AK and Yazoo Pumps, MS

The Clean Water Act prohibits the discharge of any pollutant from any point source into a jurisdictional water, except in compliance with a permit issued under one of the two permit programs established by the statute. The two permit programs are the National Pollutant Discharge Elimination System (NPDES) program, administered by EPA under Section 402, and the dredge and fill permit program administered by the Army Corps of Engineers (Corps) under Section 404.³⁰

The Corps and EPA have complementary roles in implementing the Section 404 permit program. Under Section 404, the Corps issues permits for the discharge of dredged or fill material, using a set of environmental guidelines promulgated by EPA in conjunction with the Corps.³¹

These guidelines are intended to provide a comprehensive means of evaluating whether any discharge of dredged or fill material is environmentally acceptable and seek to balance the probable consequences of the activity, including economics, flood hazards, land use, navigation, energy and mineral needs, conservation, and, in general, the needs and welfare of the people.

Section 404 also authorizes EPA to prohibit or otherwise restrict the specification by the Corps of a site for the discharge of dredged or fill material, if EPA determines that the activity will have an unacceptable adverse effect on water supplies, fish, wildlife, or recreational areas. This authority, commonly called the EPA’s 404(c) veto authority,³² provides the agency with the final say on whether any proposed activities in covered waters, including activities subject to a permit issued by the Corps, would adversely affect local water quality. EPA has historically exhibited great restraint in its use of section 404(c) – issuing only 13 “vetoes”³³ in the past 45 years – and Federal courts have

²⁹ See <https://transportation.house.gov/news/press-releases/chair-defazio-presses-epa-on-its-decision-to-limit-states-rights-within-the-clean-water-act>.

³⁰ The Act authorizes delegation of permit programs to qualified States. The NPDES program has been delegated to 46 states. The Section 404 program has been delegated to two States, Michigan and New Jersey.

³¹ 33 CFR §320.4(a)(1).

³² Section 404(c) authorizes EPA to “prohibit the specification (including the withdrawal of a specification) of any defined area as a disposal site, and ... to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever it determines, after notice and opportunity for public comment, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas.” See 33 U.S.C. 1344(c).

³³ See EPA, “Clean Water Act Section 404(c) ‘Veto Authority’”, <https://www.epa.gov/sites/production/files/2016-03/documents/404c.pdf>.

consistently upheld EPA's use of section 404(c) authority each time that it has been challenged in court.³⁴

Yet, despite the clear direction from Congress for joint implementation of section 404 of the Clean Water Act and the judicious use of EPA's veto authority over the decades, the Trump administration has inexplicably proposed³⁵ that EPA relinquish its own section 404(c) veto authority.

In addition, the Trump administration has suggested or taken active steps to overturn recent actions of prior Republican and Democratic administrations that vetoed projects that EPA determined have "unacceptable adverse impacts" to the environment.

For example, in July 2019, the EPA Region 10 Administrator withdrew a 2014 proposed determination under section 404(c) for the potential 6.9 mile open-pit Pebble Mine project in Alaska, which EPA determined could inalterably damage the Nation's most productive salmon habitat and result in "irreversible" adverse impacts on streams, wetlands, and aquatic resources in the region.³⁶

Similarly, in April 2019, EPA Administrator Wheeler testified before the Senate that the EPA is reconsidering a 2008 decision by the Bush administration³⁷ to veto the Yazoo Pumps project in Mississippi – a \$400 million project, lambasted by groups such as Taxpayers for Common Sense,³⁸ that would degrade up to 100,000 acres of wetlands and habitat.

Both the Pebble Mine preliminary veto and the Yazoo Pumps final veto were valid exercises of EPA's statutory-provided oversight authority based on the potential impacts of these two projects. It is unprecedented for an administration to overturn prior 404(c) decisions simply because they disagree with the outcomes – an action that weakens the rule of law related to regulatory certainty.

Democratic Actions:

Committee Democrats have historically supported the complimentary roles enacted for the Corps and EPA to implement the Clean Water Act. Committee Democrats also strongly oppose efforts by the Trump administration to overturn prior actions of the Bush and Obama administrations that blocked the Pebble Mine and Yazoo Pumps projects – two projects that are well documented as having unacceptable adverse effects on the natural resources surrounding them.

³⁴ See e.g., *Mingo Logan Coal Co. v. EPA*, 714 F. 3rd 608 (D.C. Cir. 2013), cert. denied, 134 S. Ct. 1540 (U.S. Mar. 24, 2014).

³⁵ See Memorandum of E. Scott Pruitt, Administrator to EPA General Counsel, et al., "Updating the EPA's Regulations Implementing Clean Water Act Section 404(c)," dated June 28, 2018 (hereinafter June 2018 memorandum), https://www.epa.gov/sites/production/files/2018-06/documents/memo_cwa_section_404c_regs_06-26-2018_0.pdf.

³⁶ See https://www.epa.gov/sites/production/files/2014-07/documents/pebble_es_pd_071714_final.pdf; see also, <https://transportation.house.gov/news/press-releases/chairs-defazio-napolitano-respond-to-epas-decision-to-streamline-approval-for-pebble-mine->.

³⁷ See <http://www.gpo.gov/fdsys/pkg/FR-2008-09-19/pdf/E8-22002.pdf#page=1>.

³⁸ See <https://www.clarionledger.com/story/news/politics/2019/04/04/mississippi-flooding-yazoo-pumps-delta-epa-may-revive-trump-epa-bryant/3356591002/>; see also "Lott'sa Pork for Mississippi", Taxpayers for Common Sense, <https://www.taxpayer.net/infrastructure/lotts-pork-for-mississippi/>.

On July 19, 2018, Chairman DeFazio cosigned an oversight letter requesting EPA withdraw its efforts to weaken Clean Water Act oversight and enforcement of the section 404 program and provide the Committees of jurisdiction in the U.S. House and Senate with additional information on the potential impacts of the Pebble Mine project in Alaska.³⁹

The Democratic Leadership of the Committee also plans to hold additional oversight hearings on the Pebble Mine project in the near future.

Trump’s EPA Reverses Historic Clean Water Act Protection Against Pollution Traveling Through Groundwater

Again, the basic premise of the Clean Water Act is to prohibit the discharge of pollutants into jurisdictional waters unless in compliance with a permit. Section 502 of the Clean Water Act specifically defines discharge of a pollutant as *any* addition of *any* pollutant to a navigable water from *any* point source.

Historically, EPA has required a Clean Water Act permit for pollutants that travel through certain sub-surface flow conveyances (or groundwater), holding that “pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements.”⁴⁰ While EPA is clear to state that Clean Water Act permits are not required for groundwater pollutant discharges in all cases, it also states “when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.”⁴¹

However, on April 15, 2019, the Trump administration issued an interpretative statement that reverses these decades-old Clean Water Act protections for surface waters contaminated by pollutants that pass through hydrologically-connected groundwaters. This interpretative statement provided little rationale for making this change, and no explanation of the potential impacts this reversal of agency interpretation will have on existing permits or water quality.

This action, if fully-implemented, will likely have adverse consequences on both water quality and existing permits. The Committee is aware of numerous existing Clean Water Act permits (both general permits and individual permits) issued either by EPA or by States authorized under section 402 of the Act that address the discharge of pollutants through hydrologically-connected groundwater or subsurface connections. The Committee is also aware of numerous waterbodies where water quality is impaired or threatened by pollutants emanating from neighboring sources that seemingly fit the Clean Water Act’s definition of a point source.

³⁹ See <https://transportation.house.gov/news/press-releases/defazio-carper-press-acting-epa-administrator-on-enforcement-of-the-clean-water-act>.

⁴⁰ See 83 Fed. Reg. 7126, 7127 (February 20, 2018).

⁴¹ Id.

Democratic Actions:

Committee Democrats are concerned with the real-life consequences of the Trump administration's new interpretation on what types of pollution discharges are no longer covered by the Clean Water Act and believe that this reinterpretation of the Clean Water Act will have lasting, adverse impacts on the quality of the Nation's waters.

On July 29, 2019, Chairman DeFazio sent an oversight letter to EPA requesting detailed information on the number of facilities affected by this new interpretation, as well as the potential adverse water quality implications. (*Appendix*)

Trump's EPA Seeks to Overturn Previously-Approved State Water Standards that Protect Public Health

Again, the Clean Water Act was enacted with clear roles for both EPA and individual States to protect water quality. For example, section 303(c) of the Act authorizes individual States to develop water quality standards for state waters (i.e. establishing appropriate designated uses for state waters, such as fishing, swimming, wildlife propagation, and water quality criteria that protect those uses) and to submit these standards to EPA for approval or disapproval. If a State water quality standard is disapproved by EPA, a State is given time to revise the standard, and if it fails to do so, EPA is directed to issue a final water quality standard for state waters. In addition, States are required to review state water quality standards every three years, and if appropriate, to revise or adopt new standards subject to EPA approval.

This process allows States to establish appropriate water quality standards to protect locally-important waters and priorities, yet directs EPA to ensure that these standards are sufficiently robust to meet the goals of the Clean Water Act.

However, earlier this year, EPA, in response to a request from industry,⁴² took an unprecedented step of proposing to unilaterally withdraw existing state water quality standards previously approved by the agency. In this instance, in 2016 the State of Washington submitted criteria for toxic chemicals in state waters for approval to EPA. In November 2016, EPA approved some of the State-submitted criteria, and proposed revisions to other criteria, which were adopted later that month.⁴³ These revised criteria were put into effect, and the State of Washington indicated it “does not seek revision or repeal” of these standards.⁴⁴

The State of Washington has filed a lawsuit challenging EPA's decision and authority to unilaterally modify previously approved state water quality criteria.⁴⁵

⁴² See <https://thelens.news/wp-content/uploads/2017/03/2017-02-15-WTR-Petition-for-Rulemaking-FINAL.pdf>.

⁴³ See 81 Fed. Reg. 85419 (November 28, 2016).

⁴⁴ See Letter from the Director of the State of Washington, Department of Ecology to EPA Administrator, dated May 7, 2019, found at <https://ecology.wa.gov/Asset-Collections/Doc-Assets/Water-quality/Freshwater/WQ-Standards/5-7-19-DirectorBellonLettertoEPA>.

⁴⁵ See <https://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-trump-administration-over-reversal-water-quality-protections>.

Democratic Actions:

The Democratic Leadership of the Committee is concerned that the actions taken by the Trump administration to overturn previously approved state water quality standards are without merit and without legal justification in the Clean Water Act.

Later this month, the Subcommittee on Water Resources and Environment will hold an oversight hearing on several Clean Water Act related topics and has invited a representative of State government to testify on the impacts of the Trump administration's proposal to overturn previously approved state water quality standards.

Other Actions of Trump's EPA to Weaken the Clean Water Act and Place the Health of American Families at Risk

Trump's EPA Drops Plan to Stem the Release of Toxic Pollutants from Power Plants

Steam electric power plants account for approximately 30 percent of the industrial toxic pollution discharged into surface waters, the largest discharger in the United States. Many of the pollutants power plants discharge into wastewater – including arsenic, lead, mercury, selenium, chromium, and cadmium –are known carcinogens and neurotoxins. If left unregulated, they can contaminate drinking water and impact wildlife and ecosystems. According to EPA,⁴⁶ ingestion of these carcinogens through contaminated fish or drinking water pose serious human health concerns, including forms of cancer and diminished IQ among children. The threats to fish and wildlife include deformities, reproductive harm, and decreases in ecosystem diversity. Already, 6,000 river miles are unsafe for recreational fishing, and over 10,000 miles are unsafe for subsistence fishing.

In June 2013, the Obama administration EPA proposed setting Clean Water Act permit limits on the amount of toxic pollutants that power plants can discharge. If this rule was allowed to go into effect, it would be the first update to regulations on power plant water discharges since 1982, and the first ever to focus specifically on toxic metals. The rule was finalized in 2015, and when fully implemented, was expected to reduce heavy metals entering waterways by 1.4 billion pounds a year⁴⁷, or 90 percent.

The Obama administration EPA summarized the human and environmental impacts of power plant discharges, and the benefits to be achieved by new regulations, as follows:

There are numerous documented instances of environmental impacts associated with steam electric power plant discharges, including widespread aquatic life impacts and toxic metal bioaccumulation in wildlife. In addition, there are increased cancer and non-cancer risks to humans from the pollutants. This regulation will greatly reduce these impacts. Of the benefits that could be monetized, EPA projects \$451 to \$566 million per year in benefits associated with this rule.⁴⁸

⁴⁶ See <https://www.govinfo.gov/content/pkg/FR-2015-11-03/pdf/2015-25663.pdf>.

⁴⁷ See https://www.biologicaldiversity.org/news/press_releases/2017/power-plants-09-13-2017.php.

⁴⁸ See https://www.epa.gov/sites/production/files/2015-10/documents/steam-electric-final-rule-factsheet_10-01-2015.pdf.

The analysis also showed that the new discharge limits would have “minimal impacts on electricity prices and the amount of electricity generating capacity.”⁴⁹

However, in response to industry petitions,⁵⁰ the Trump administration EPA blocked implementation of the updated discharge requirements associated with power plants and announced that the agency would be conducting a new rulemaking “to potentially revise the new, more stringent” discharge standards finalized in 2015.⁵¹

Trump’s EPA Decides that Chemical Spills into Drinking Water Sources Are Not Worthy of Additional Prevention Measures

In January 2014, a chemical storage facility in West Virginia released an estimated 10,000 gallons of an industrial chemical used in coal processing just upstream of the drinking water intake pipes for Charleston, West Virginia. As a result, over 300,000 residents of the state capital of West Virginia were without access to drinking water for over a week.

In the aftermath of the chemical spill, Federal and State regulators investigated the causes of the spill and identified categories of chemical storage facilities that were under-regulated by various Federal laws. For example, while underground storage tanks are extensively regulated, above-ground chemical storage tanks (that do not contain oil) are not. In Charleston, West Virginia, the facility that stored the chemical MCHM (or 4-methylcyclohexane) was not adequately maintained, nor did it contain functioning spill prevention devices capable of preventing the release of the chemical into the Elk River which was adjacent to the storage facility.

In 2015, several nongovernmental organizations filed a lawsuit against EPA for failing to comply with an alleged duty to issue regulations to prevent and contain Clean Water Act hazardous substance discharges, and in 2016, the U.S. District Court for the Southern District of New York entered a consent decree between EPA and the litigants requiring EPA to issue a notice of proposed rulemaking on hazardous substance regulations.

Yet, in 2019, the Trump EPA reversed itself and finalized its plan⁵² to recommended no new regulatory requirements under the Clean Water Act to prevent the release of hazardous substances, or to require the public notification of chemical spills that threaten public health. According to EPA’s press release announcing this decision, former EPA administrator Scott Pruitt stated that, “after engaging the public and analyzing the best available data, EPA believes that additional regulatory requirements for hazardous substances discharges would be duplicative and unnecessary.”⁵³ In fact, EPA’s own data gathered in connection with this effort documents almost 2,500 individual chemical spills into local waterways over a 10-year period, including over 600 that

⁴⁹ See id.

⁵⁰ See <https://www.epa.gov/aboutepa/uwag-petition-reconsider-effluent-limitations-guidelines-and-standards-steam-electric-power>.

⁵¹ See https://www.epa.gov/sites/production/files/2017-08/documents/steam-electric-elg_epa-letter-to-petitioners_08-11-2017.pdf.

⁵² See 84 Fed. Reg. 46100 (September 3, 2019).

⁵³ <https://www.epa.gov/newsreleases/administrator-pruitt-proposes-rule-provide-regulatory-certainty-spill-prevention>

occurred in the 3year period following the chemical spill in Charleston, West Virginia – 14 of which were severe enough to contaminate local drinking water supplies.⁵⁴

Trump's EPA Seeks to Expand Discharge Options for Oil and Gas Fracking Wastewater

Hydraulic fracturing (also known as fracking) is frequently used to enhance oil and gas production from underground rock formations. During the fracking process, fluids (and additives) are injected into production wells and targeted rock formations to fracture the oil and gas bearing rock – a process that has significantly contributed to the surge in domestic oil and gas production. However, because fracking heavily relies on large quantities of water and associated chemical additives (which are generally not publicly disclosed), it can have a significant impact on the availability and quality of local water supplies, as well as require proper disposal of large quantities of byproduct (produced water) left over after the fracking materials are separated from usable oil and gas.

In December 2016, EPA released a report⁵⁵ highlighting the impacts of hydraulic fracturing on drinking water resources in the United States. Notably, this final report rejected an earlier assumption that there was lack of evidence that fracking systematically contaminates water supplies. According to a contemporaneous news report⁵⁶ on the 2016 study, EPA noted that this assumption was deleted because “it could not be quantitatively be supported.”

Yet, earlier this year, EPA surprisingly initiated a study⁵⁷ on increasing the reuse of fracking wastewater, without clearly responding to concerns about the undisclosed mixtures of chemicals contained in the wastewater, any potential increased risks to human or environmental health from these mixtures, or other impacts to local water quality. Reports suggest EPA is exploring greater use of fracking wastewater for agricultural uses or even to supplement drinking water supplies.⁵⁸ It is not clear whether EPA has a timeline or public plan for next steps on reuse of fracking wastewater, or how EPA proposes to address the potential toxicity and human health and ecological implications of increased discharges or reuse of fracking wastewater.

Trump's EPA Fails to Take Adequate Steps to Protect Public Health from PFAS-related Chemicals

Per- and Polyfluoroalkyl Substances (PFAS) cover a group of man-made chemicals that can be found in food, commercial household products, production facilities or industries, drinking water, and living organisms. PFAS have been manufactured and used by many industries globally, and in the United States since the 1940's. They are extremely persistent chemicals, slow to biodegrade and able to accumulate over time in the environment and human body, with links to adverse human health effects.

Produced for decades, industry has known of the potential negative health effects linked to PFAS as far back as 1961. Classic “disinformation playbooks” kept the dangers hidden until 1998, when a

⁵⁴ <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0024-0002>

⁵⁵ See <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>.

⁵⁶ See <https://www.nytimes.com/2016/12/13/us/reversing-course-epa-says-fracking-can-contaminate-drinking-water.html>.

⁵⁷ See https://www.epa.gov/sites/production/files/2019-05/documents/oil-and-gas-study_draft_05-2019.pdf.

⁵⁸ See https://www.washingtonpost.com/national/health-science/a-push-to-make-fracking-waste-water-usable-in-agriculture--and-even-for-drinking/2018/12/07/9a22e496-f803-11e8-8d64-4e79db33382f_story.html.

West Virginia case involving unexplained illnesses in cattle led to the release of thousands of documents by Dupont, revealing internal research linking PFAS to negative health effects and showing contamination of local water supplies. To date, Dupont has paid more than \$1 billion to people affected by the contamination; the chemical manufacturer 3M also recently settled a contamination lawsuit for \$850 million after concealing or downplaying its knowledge of PFAS for more than 40 years.⁵⁹

While there is a significant amount of research on the human health impacts of certain PFAS-related chemicals, such as perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), and GenX, there is a lack of data on the chemical class as a whole (approximately 4,700 variants), and they face no restrictions on the market. The chemicals have been linked to diseases including liver damage, kidney cancer, and thyroid problems. They are widespread in drinking water and groundwater, sometimes at dangerously high concentrations particularly on or near U.S. military installations.

The EPA released its PFAS Action Plan in February 2019. The plan arrived after much delay, and even then, is a list of proposed actions and future steps, but no immediate or aggressive action. It promises a decision within the year on Federal maximum contaminant level regulations for the chemicals, but many States have already taken action independent of EPA, citing an “absence of federal leadership.”⁶⁰ The Plan is widely derided as a too-tentative step towards an already widespread threat, placing the burden on States and localities to clean up a toxic mess without holding polluters accountable. In response, the Democratic Leadership of the Committee supported the establishment of stringent, scientifically-defensible, and protective pollution control standards under existing authorities, such as the Clean Water Act,⁶¹ to minimize the release of PFAS-related chemicals into the environment and to spur action to clean up PFAS-related contamination around the country.

Democratic Actions:

As stated earlier, Committee Democrats remain committed to achieving the goal of the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

To that end, the Democratic Leadership of the Committee will continue to hold the Trump administration accountable for efficient and effective implementation of the Clean Water Act – through both effective Congressional oversight of actions by the Trump EPA and through the development of legislative proposals to advance these goals.

⁵⁹ <https://www.ucsusa.org/sites/default/files/attach/2018/09/a-toxic-threat-pfs-military-fact-sheet-ucs-2018.pdf>.

⁶⁰ <https://www.eenews.net/stories/1060123043>.

⁶¹ See e.g. <https://www.congress.gov/amendment/116th-congress/house-amendment/537?s=a&r=28>. Chairs DeFazio and Napolitano also joined with over 160 bipartisan members of the U.S. House of Representatives in calling for strong PFAS-related provisions to be included in the FY2020 National Defense Authorization Act (<https://andylevin.house.gov/media/press-releases/162-bipartisan-house-members-ask-ndaa-conferees-retain-pfas-provisions>).

Appendix

Congress of the United States

Washington, DC 20515

March 10, 2017

The Honorable Scott Pruitt
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1101A
Washington, D.C. 20460

Administrator Pruitt:

We write to seek your strong support for the U.S. Environmental Protection Agency's Clean Water State Revolving Fund (Clean Water SRF) and Drinking Water State Revolving Fund (Drinking Water SRF) programs and urge this administration to request robust funding for these programs in the forthcoming Presidential Budget request for fiscal year 2018.

As you know, President Donald J. Trump called for robust funding of the Clean Water and Drinking Water SRFs during the last Presidential election campaign. In fact, President Trump included a commitment to triple the funding for both the Clean Water and Drinking Water SRF programs¹ as part of his Vision on Infrastructure – a pledge that would require approximately \$4 billion for Clean Water SRF capitalization grants and \$2.5 billion for Drinking Water SRF capitalization grants for fiscal year 2018.

According to recent press accounts, you recognize the importance and value of SRF funding. We welcome your statement in the *Wall Street Journal* that improving America's water infrastructure is also one of your top priorities, and that you will be “advancing [investment in water infrastructure] with the president.”² We also welcome the commitment you made to the U.S. Conference of Mayors to ensure that the Administration considers water infrastructure in any infrastructure efforts.³

The critical need for Federal investment in our water infrastructure is clear. In recent memory, we have all witnessed the impacts of failed drinking water and wastewater treatment infrastructure, ranging from ruptured pipes and sewage overflows or stormwater runoff that contaminate local waters, to chemical spills contaminating drinking water supplies and corroded distribution systems that deliver contaminated water to peoples' homes and businesses.

¹ <https://www.donaldjtrump.com/policies/an-americas-infrastructure-first-plan/> (Last visited December 15, 2016). See also, Saiyid, Amena H., “Trump's Pitch for Water Infrastructure Funds Leaves Groups Cautious”, *Bloomberg BNA*, <https://www.bna.com/trumps-pitch-water-n73014448714/>.

² Strassel, Kimberly A., “Scott Pruitt's Back-to-Basics Agenda for the EPA”, *The Wall Street Journal*, <https://www.wsj.com/articles/scott-pruitts-back-to-basics-agenda-for-the-epa-1487375872>.

³ Tamborrino, Kelsey, “Pruitt Gets By With a Little Help From Mayors,” *Politico Pro*, Mar. 2, 2017.

The Honorable Scott Pruitt

March 10, 2017

Page 2

Over the last few years, we have learned that neither large urban communities nor small rural towns are immune from the consequences of failed drinking water and wastewater systems, ranging from public health emergencies, to disruptions in service caused by water contaminated with bacteria, algal toxins, or other toxic materials, and, unfortunately, even to death. In addition, these infrastructure failures cost businesses, individuals, and State and local governments millions of dollars in emergency repairs, responses, and lost revenues.

Simply put – the health and safety of our communities depend on safe, reliable, and efficient drinking water and wastewater treatment systems, including the pipes that distribute treated water to our homes and businesses or that convey domestic and industrial wastes for appropriate treatment.

According to EPA's latest survey of capital improvement needs for public water systems, the Nation needs to invest more than \$384 billion in drinking water infrastructure improvements over the next 20 years to ensure the delivery of safe water, and an additional \$270 billion to meet the Nation's wastewater and stormwater treatment and collection needs.

Robust funding of these critical financing authorities helps protect public health, and ensures safe and clean water and is vital to our economy. In addition, investment in water infrastructure creates well-paying jobs right here in the United States. According to data from the National Utility Contractors Association (NUCA), for every \$1 billion in investment in water-related infrastructure, approximately 27,000 new jobs are added; \$3.4 billion is added to the Gross Domestic Product (GDP); and personal (household) spending is increased by \$1.06 billion.

Last year, Congress recognized the additional burdens facing our communities in meeting their water infrastructure needs and provided an additional \$100 million over the fiscal year 2017 continuing resolution appropriation for the Drinking Water SRF to address local water infrastructure needs, such as those faced by the City of Flint, Michigan. Unfortunately, many communities are facing significant burdens in providing their citizens with the basic right to safe and affordable drinking water and wastewater treatment.

The experiences of Toledo, Ohio; Flint, Michigan, and Charleston, West Virginia need to stop – and the only way to accomplish this goal is to provide the necessary resources our States, our communities, and our citizens are demanding. The Clean Water SRF and the Drinking Water SRF remain critical tools for pollution prevention, economic growth, and public health. Therefore, we urge you to honor the calls of the new President and renew the Federal commitment to water infrastructure by seeking funding for these programs at levels that will begin to reduce the backlog of repair and replacement projects for these vital systems.

The Honorable Scott Pruitt
March 10, 2017
Page 3

Thank you for your consideration of this request, and for your continued commitment to clean and safe water for our communities.

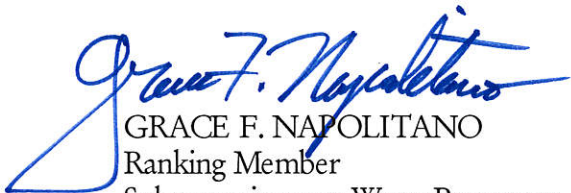
Sincerely,



PETER DeFAZIO
Ranking Member
Committee on Transportation and Infrastructure



FRANK PALLONE, JR.
Ranking Member
Committee on Energy and Commerce



GRACE F. NAPOLITANO
Ranking Member
Subcommittee on Water Resources
and Environment



PAUL TONKO
Ranking Member
Subcommittee on Environment
and the Economy

Congress of the United States
Washington, DC 20515

August 18, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

We write in opposition to the proposed rule rescinding the Clean Water Rule (*Docket No. EPA-HQ-OW-2017-0203*), also called the Waters of the United States (WOTUS) rule. Americans need an Environmental Protection Agency that will use the best possible science to protect our health and this nation's natural heritage. This rule to rescind WOTUS and reports of plans to reduce protections under the Clean Water Act are deeply concerning. Rather than protecting Americans, these actions ignore science and undermine our clean drinking water, our public health and our outdoor recreation economy.

The Clean Water Rule finalized by the Obama Administration protects the drinking water of roughly one-third of Americans. 117 million people rely on drinking water sources fed by headwater, intermittent or ephemeral streams—waterways protected under the Clean Water Rule. Rescinding this rule puts Americans' health at risk by endangering their drinking water.

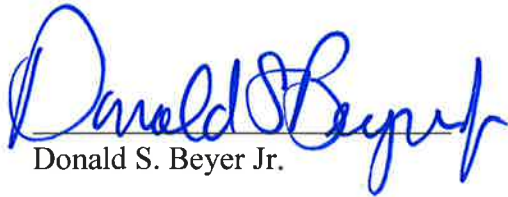
Eliminating this rule also threatens our safe access to the great outdoors and the outdoor recreation economy, which generates \$887 billion in consumer spending annually and supports 7.6 million American jobs. Pollution in unprotected streams and wetlands can threaten the health of the lakes and rivers that our constituents use for swimming, boating and other recreation. Wetlands protected under the Clean Water Rule provide some of the country's best habitat for hunters and anglers. As EPA Administrator, it is imperative to protect the water bodies that our constituents use for recreation, both to protect public health and the millions of jobs these places have helped create.

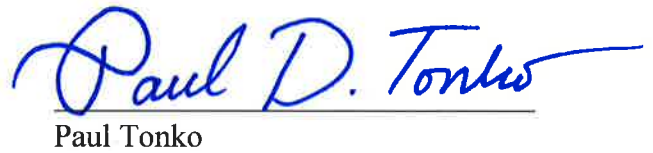
Rescinding this clean water safeguard ignores science. Years of research and peer-reviewed science have told us that intermittent and ephemeral streams and wetlands provide critical services, from filtering our drinking water to protecting communities from flood and drought. They also connect directly to major waterways, which means they can pose a danger to drinking water and recreation if polluted or degraded. The science is clear - what we do to these water bodies impacts large, continuous water sources.

Americans agree that we should protect these waterways. The previous Administration crafted the Clean Water Rule using the comments of over one million Americans, the vast majority of which were in support of the rule. Some opponents have used scare tactics to confuse the public by stating that there are new requirements for agriculture and that the rule covers new types of waters. This is not the case. In reality, the rule provides certainty over streams and wetlands that have historically been covered by the Clean Water Act while preserving agricultural and other common sense exemptions, including for things like drainage ditches and stock watering ponds on dry land.

The Clean Water Rule is a science-based rule that keeps our communities safe and our natural resources protected—exactly what Congress intended the Clean Water Act to do. We would be willing to work with an Administration that wants to develop thoughtful changes that maintain protections for this life-sustaining resource, but this repeal is reckless. In rescinding this rule, the Agency is risking the health and safety of the American people and our natural resources. We urge you to reconsider this rescission and instead focus on fairly and fully enforcing the Clean Water Act.

Sincerely,


Donald S. Beyer Jr.

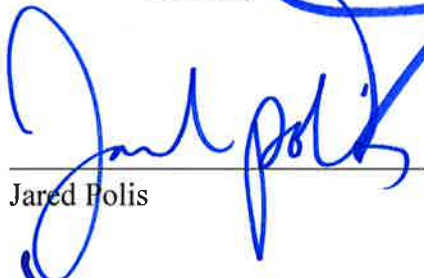

Paul Tonko


Doris Matsui


Alan Lowenthal


Gerald E. Connolly


Matt Cartwright


Jared Polis


Mike Quigley


Marcy Kaptur

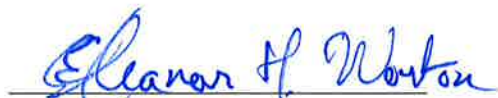

Grace F. Napolitano


Jared Huffman


Peter A. DeFazio



Barbara Lee



Debbie Dingell


Eleanor Holmes Norton



Brenda L. Lawrence



André Carson


Adam Smith



Jerrold Nadler


Gregorio Kilili Camacho Sablan


Dwight Evans


Keith Ellison


Donald M. Payne, Jr.


Stephen F. Lynch


Niki Tsongas


Sander M. Levin



Seth Moulton



Bill Foster



Nanette Diaz Barragan



Jamie Raskin



Anthony Brown



Madeleine Z. Bordallo



A. Donald McEachin



Earl Blumenauer



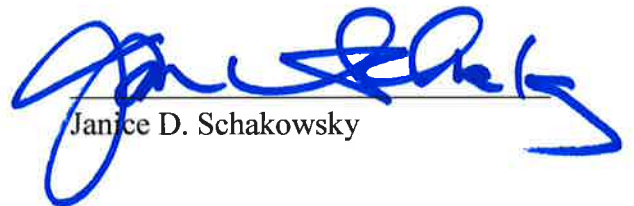
William R. Keating




James P. McGovern



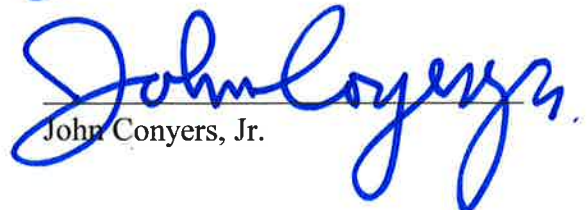
Sheila Jackson Lee



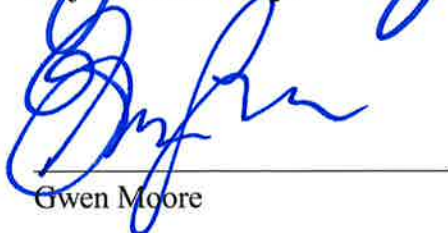
Janice D. Schakowsky



Elijah E. Cummings



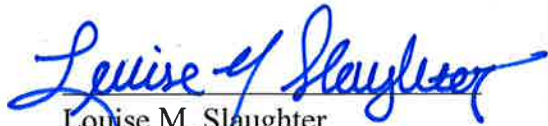
John Conyers, Jr.



Gwen Moore



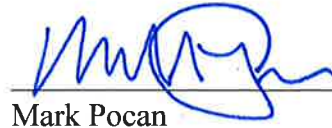
Debbie Wasserman Schultz


Louise M. Slaughter



Hakeem Jeffries


Raúl M. Grijalva




Mark Pocan


Carol Shea-Porter



Michael E. Capuano

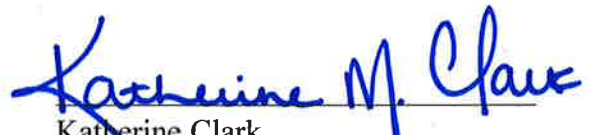
Michael E. Capuano


David N. Cicilline



John K. Delaney


Mike Doyle



Katherine Clark

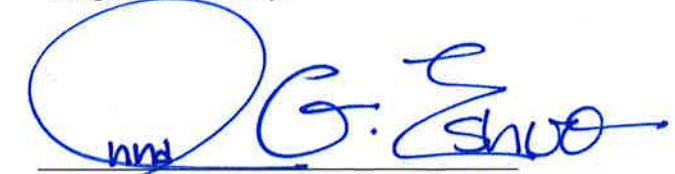
Katherine Clark


Bonnie Watson Coleman


Joseph P. Kennedy, III

Joseph P. Kennedy, III


Nydia M. Velázquez


Anna G. Eshoo


Anna G. Eshoo


Mark DeSaulnier


Frank Pallone, Jr.

Frank Pallone, Jr.



John Yarmuth



Alma S. Adams, Phd.


Donald Norcross


Mike Thompson


Betty McCollum

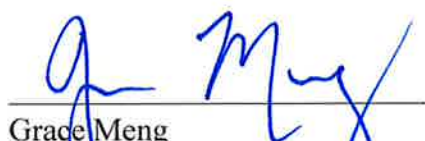

Zoe Lofgren


Chellie Pingree


Lucille Roybal-Allard


Ruben J. Kihuen


Jackie Speier



Grace Meng


Robert C. "Bobby" Scott


Diana DeGette


Daniel T. Kildee


Henry C. "Hank" Johnson Jr.


Luis V. Gutiérrez



Rick Nolan



Steve Cohen



John Sarbanes



David E. Price



Suzanne Bonamici



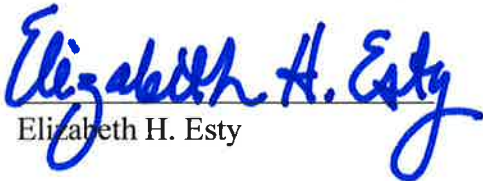
Judy Chu



Daniel W. Lipinski



Jim Langevin



Elizabeth H. Esty



Linda Sánchez



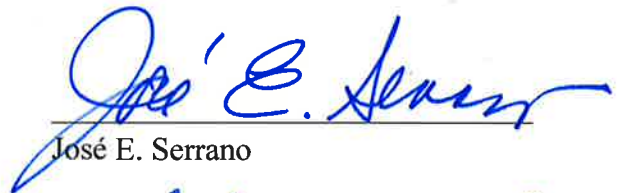
Marcia L. Fudge



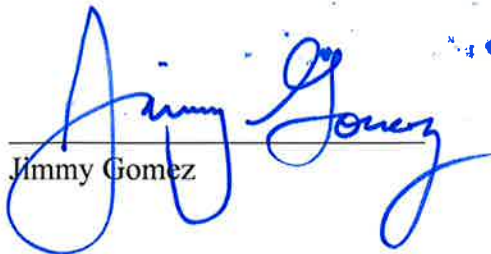
Robert A. Brady



Albio Sires



José E. Serrano



Jimmy Gomez



Salud O. Carbajal

Brendan F. Boyle

Brendan F. Boyle

Tony Cárdenas

Tony Cárdenas

Bill Pascrell Jr

Bill Pascrell, Jr.

Richard E. Neal

Richard E. Neal

Darren Soto

Darren Soto

Jerry McNerney

Jerry McNerney

Pramila Jayapal

Pramila Jayapal

Adam B. Schiff

Adam B. Schiff

Brad Sherman

Brad Sherman

Stephanie Murphy

Stephanie Murphy

Josh Gottheimer

Josh Gottheimer

Ted W. Lieu

Ted W. Lieu

Congress of the United States
Washington, DC 20515

April 24, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

We are writing to express our concern over recent actions by the U.S. Environmental Protection Agency (EPA) to strip EPA experts across the country of their authority to make important decisions about Clean Water Act protections, and to consolidate this authority in your offices in Washington, D.C. These actions call into question your commitment, as EPA Administrator, to follow the law (including existing precedent of the U.S. Supreme Court), as well as to ensure that Clean Water Act decisions are based on established science and precedent, and conducted in a transparent manner.

In your March 30, 2018, Memorandum to the Assistant Administrator for the Office of Water and EPA Regional Administrators (hereinafter the 2018 Memorandum), you consolidate, within your office, absolute power over how EPA will make geographic jurisdictional determinations under the Clean Water Act, effectively sidelining the local EPA offices who have historically informed this process. We are concerned that this newly announced process provides no guidance on how EPA will evaluate jurisdictional decisions, whether those decisions will be informed by science or appropriate legal precedents, or whether the decisions will be publicly available for review. Your actions appear nothing more than a power grab to consolidate absolute authority in your personal offices, with no assurance that you will follow the rule of law, science, or the precedents of the agency in exercising your statutory responsibility under the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”¹

Similarly, we are concerned that, by centralizing Clean Water Act jurisdictional decisions in Washington D.C, especially precedent-setting, special case determinations, you will ignore important regional differences in rivers, streams, and wetlands. Understanding of these regional differences has historically been informed by the local, on-the-ground efforts of EPA regional offices and affected States. As you noted in an October 2017 news report, the “challenges for air and water quality are

¹ See 33 U.S.C. § 1251(a).

very diverse across the country.”² Yet, by divorcing Clean Water Act jurisdictional determinations from the local EPA offices where they originate, you imply that your office in Washington, D.C., knows more about local water conditions than those Federal and State officials based in the affected area.

In light of these concerns, and in furtherance of our Congressional oversight of the Clean Water Act program, we ask that you respond immediately to the following questions and requests for information and documentation:

- 1) Please provide a detailed description of the new EPA process (created by the 2018 Memorandum) regarding the EPA’s determinations of its jurisdiction under the Clean Water Act, including the specific roles undertaken by specific offices within EPA (including regional offices) in this process.
 - a. Please identify the specific EPA offices that will interact with the U.S. Army Corps of Engineers in carrying out this authority.
 - b. Please include a description of the specific safeguards and technical personnel in place to ensure that such actions will be consistent with law, science, and agency precedents, and performed in a consistent, uniform, and transparent manner.
 - c. Please specifically describe how this new process is consistent with, or proposes to change, the existing 1989 Memorandum of Agreement³ between EPA and the Corps related to determinations of geographical jurisdiction under section 404 of the Clean Water Act, including whether EPA proposes to expand or limit its authority over “special case” determinations or “special 404(f)” determinations defined in the 1989 MOA.
 - d. Please include in this description a detailed comparison of this new process with the one that existed immediately prior to the 2018 Memorandum, as well as any documentation or memorandum issued by the agency to describe this process prior to the issuance of the 2018 Memorandum.

- 2) Please provide a detailed description of the following:
 - a. How the 2018 Memorandum proposes to change the current process for restricting or prohibiting the designation of disposal sites under section 404(c) of the Clean Water Act, and a specific justification for this change. Please include in this description how this potential change could affect the process for reviewing pending (or expected) projects, such as the proposed Pebble Mine project, Bristol Bay, Alaska.
 - b. How the 2018 Memorandum proposes to change the current process for EPA to request a review by the Assistant Secretary of the Army of proposed permit decisions, and a specific justification for this change.

² See <http://www.ksdk.com/article/news/nation-now/pruitt-moves-to-shake-up-epa-advisory-boards-further-antagonizing-environmental-activists/465-47a84660-85ec-47d8-89e4-3bff481cd431>.

³ See Memorandum of Agreement: Determination of Geographic Jurisdiction of the Section 404 Program and Application of Exemptions Under Section 404(f) of the Clean Water Act, <<https://www.epa.gov/cwa-404/memorandum-agreement-determination-geographic-jurisdiction-section-404-program-and>>

- 3) The 2018 Memorandum highlights specific changes to the implementation of the section 404 program under the Clean Water Act. Please describe whether this memo proposes any similar changes to implementation of the National Pollution Discharge Elimination System program, under section 402 of the Clean Water Act. Please describe the current process by which Clean Water Act jurisdictional determinations are made under section 402, including the respective roles for approved State programs under section 402(b), EPA regional offices, or EPA headquarters (including the Offices of the Administrator or Water).

- 4) In December 2008, EPA and the Corps released a joint memorandum, titled “Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in Rapanos v. United States & Carabell v. United States”⁴ (hereinafter the 2008 Guidance), to provide guidance to EPA regions and Corps districts on implementing decisions of the U.S. Supreme Court related to Clean Water Act jurisdiction over waters of the United States. In that document, EPA and the Corps stated that they would assert Clean Water Act jurisdiction over three categories of waters: (1) traditionally navigable waters and their adjacent wetlands; (2) relatively permanent non-navigable tributaries of traditionally navigable waters and wetlands with a continuous surface connection with such tributaries; and (3) certain adjacent wetlands and non-navigable tributaries that are not relatively permanent. With respect to this last category, the 2008 Guidance stated it would assert Clean Water Act jurisdiction “where such tributaries have a significant nexus to a traditionally navigable water”⁵ and outlined several hydrologic and ecological factors for how the agency would determine such a significant nexus existed.
 - a. Do EPA headquarters and its regional offices continue to utilize the 2008 Guidance as a basis for how the agency determines whether a particular waterbody or wetland is jurisdictional under the Clean Water Act? If not, what is EPA’s current basis or guidance for asserting Clean Water Act jurisdiction?
 - b. Does EPA believe that the Rapanos significant nexus analysis is a basis for asserting Clean Water Act jurisdiction over a waterbody or wetland? If so, please provide the percentage of waters/wetlands where Clean Water Act jurisdiction was established using the significant nexus test during calendar year 2017 and to date in calendar year 2018?
 - c. What percentage of waters, for which jurisdictional determinations are reviewed by EPA, rely on the relatively permanent waters legal analysis of the Rapanos decision, and what percentage rely on a significant nexus approach?
 - d. Press has reported that staff in EPA’s Office of Enforcement and Compliance Assurance “were directed to quickly compile a list of ongoing CWA enforcement cases based on a significant-nexus finding” which may have been a pretext for “slowing or even dropping work on those cases.” Has any employee at EPA, including in the Administrator’s office or the Offices of Water or Enforcement and Compliance Assurance, been directed to compile or already produced a list of potential or active Clean Water Act enforcement cases where the issue of jurisdiction based on the significant nexus has been identified as a factor? If such a list has been compiled or produced, please provide a copy to our offices.

⁴ See https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf

⁵ See id at 8.

- 5) In June 2007, EPA and the Corps released a joint memorandum, titled "Memorandum for Director of Civil Works and US EPA Regional Administrators"⁶ (hereinafter the 2007 Memorandum). The 2007 Memorandum outlines the coordination procedures for EPA and the Corps related to Clean Water Act jurisdictional determinations, including the respective roles, procedures, and responsibilities of EPA regional offices and headquarters.
 - a. In light of the 2018 Memorandum, will EPA headquarters and its regional offices continue to utilize the 2007 Memorandum regarding how the agency will coordinate jurisdictional determinations?
 - b. In light of the 2018 Memorandum, please describe any changes to the coordination procedures outlined in the 2007 Memorandum.
 - c. If changes are intended, will the Corps and EPA issue a revised coordination memorandum to replace the 2007 Memorandum?

Thank you for your prompt attention to this matter, and we request a reply as soon as possible, but in no event later than May 31, 2018. If you have any questions, please contact us or have your staff contact Ryan Seiger of the House Committee on Transportation and Infrastructure Democratic at (202) 225-0060 or Christophe Tulou of the Senate Committee on Environment and Public Works at (202) 224-8832.

Sincerely,



PETER DeFAZIO
Ranking Member
U.S. House of Representatives
Committee on Transportation
and Environment



TOM CARPER
Ranking Member
U.S. Senate
Committee on Environment
and Public Works

⁶ See <https://www.epa.gov/sites/production/files/2016-04/documents/rapanosmoa6507.pdf>.



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

July 29, 2019

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

This letter requests that the U.S. Environmental Protection Agency (“EPA”) provide the Committee on Transportation and Infrastructure with information that will assist the Committee in further understanding the impacts of the Revised Definition of the Waters of the United States (“proposed rule”)¹ on implementation of the Clean Water Act.

In his Executive Order 13778, entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule,” President Trump directed EPA and the U.S. Army Corps of Engineers (“Corps”) to “rescind or revise” the Obama administration’s Clean Water Rule, dated June 29, 2015 (“2015 rule”)². In 2019, the EPA and Corps published a proposed rule to replace the 2015 rule that, if finalized, would eliminate bedrock Clean Water Act protections over rivers, lakes, streams, and wetlands in the single-largest rollback of clean water protections in history. The proposed rule will force everyday families to pay more to protect their own health and safety, while alleviating polluters of existing responsibilities to protect our water resources. Though its stated intent is to increase predictability and consistency, neither goal is achieved through this proposed rule, but instead it represents an abdication of EPA’s responsibility to protect America’s water resources.

In order to evaluate the effects and basis for the proposed replacement to the 2015 rule on the jurisdictional scope of the Clean Water Act, I am requesting EPA to provide the following information to the Committee on Transportation and Infrastructure:

1. In 2007, EPA estimated that over 16,000 Clean Water Act permitted facilities are located on the categories of waterbodies likely to lose Clean Water Act protections under the proposed rule. Please provide the Committee with updated information on the number, location, and type of regulated discharge for each existing National Pollutant Discharge Elimination System (“NPDES”) permitted facility located on an intermittent, ephemeral, and/or headwater stream, and whether each of these NPDES permitted facilities would continue to be covered under the Clean Water Act under the proposed rule.

¹ 84 Fed. Reg. 4154 (2019).

² 80 Fed. Reg. 37054 (2015).

The Honorable Andrew R. Wheeler

July 29, 2019

Page 2

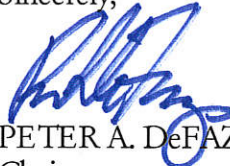
2. Please provide the Committee with any record developed or in the possession of the EPA that contains any estimate, including drafts and preliminary estimates, of the potential effects the proposed rule would have on the following:
 - a. aquatic resources, including interstate waters, ponds, wetlands, and streams;
 - b. water pollution levels in any waterbody, individually or cumulatively;
 - c. human health effects related to fish consumption, drinking water contamination, or primary or secondary recreational contact; or
 - d. flooding.

3. Please provide the Committee with any record developed or in the possession of the EPA that contains any estimate, including drafts and preliminary estimates, of the potential economic effects the proposed rule would have on the following:
 - a. drinking water treatment costs;
 - b. property damage from flooding;
 - c. individuals' willingness to pay for preservation of aquatic resources;
 - d. costs associated with potential adverse human health effects of swimming in, eating fish or shellfish from, or using drinking water obtained from, water bodies contaminated by pollutants;
 - e. jobs in, and economic activity by, businesses using water in production processes;
 - f. jobs in, and economic activity by, businesses related to water-dependent outdoor recreation, such as tourism, outfitting companies, and fishing guides;
 - g. jobs in, and economic activity by, ecological resources companies, such as mitigation banks; or
 - h. jobs in, and economic activity by, businesses engaged in commercial fish and shellfish harvesting.

4. Please provide the Committee with any emails, text messages, or other electronic correspondence between employees of EPA, employees of the Army Corps, or employees of the Office of Information and Regulatory Affairs (OIRA), or inter-agency communications involving any of those agencies' staff concerning the posted Economic Analysis or the Resource and Programmatic Analysis for the proposed rule.

Thank you for your prompt attention to this matter, and I request you provide this information as soon as possible, but no later than September 3, 2019. Please provide two sets of copies of all the requested data above. Please deliver one set of these records to the Majority Staff in Room 2165 of the Rayburn House Office Building and one set of records to the Minority Staff in Room 2164 of the Rayburn House Office Building. If you have any questions, please contact Ryan Seiger of the Committee on Transportation and Infrastructure at (202) 225-0060.

Sincerely,


PETER A. DeFAZIO
Chairman

cc: Representative Sam Graves, Ranking Member



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

July 29, 2019

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

On April 15, 2019, the Trump administration's U.S. Environmental Protection Agency ("EPA") issued an interpretative statement that reverses decades-old Clean Water Act protections for surface waters contaminated by pollutants that pass through hydrologically-connected groundwaters. Because of the potential adverse impacts of this new interpretation, I am writing to request information on how this interpretative statement will affect existing Clean Water Act permits regulating pollutant discharges, how this statement might impact similar ongoing discharges of pollutants (and associated water quality impacts), and the process followed by EPA and other Federal agencies in the formulation of this interpretative statement.

In its February 2018 request for public comment on this issue, EPA highlighted the Agency's historic position that "that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements."¹ While EPA was clear to state that Clean Water Act permits are not required for pollutant discharges in all cases, "when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection."²

The Committee is aware of numerous existing Clean Water Act permits (both general permits and individual permits) issued either by EPA or by states authorized under section 402 of the Act that address the discharge of pollutants through hydrologically-connected groundwater or subsurface connections. The Committee is also aware of numerous waterbodies where water quality

¹ See 83 Fed. Reg. 7126, 7127 (February 20, 2018).

² Id.

is impaired or threatened by pollutants emanating from neighboring sources that seemingly fit the Clean Water Act's definition of a point source.

In furtherance of Congressional oversight of Clean Water Act programs, the Committee requests that EPA provide the following information:

1. A detailed summary of all existing Clean Water Act permits (both general and individual permits) issued by EPA where the pollutants addressed in the permit are "discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water." For each permit, please provide the Committee with information on the pollutants covered by the existing permit, the waterbody into which the discharge is released, and how the 2019 interpretative statement will impact the existing permit and the associated discharge (e.g., the permit will remain unchanged, the permit will not be continued once it expires, or the permit is no longer required).
2. A detailed summary of all existing Clean Water Act permits (both general and individual permits) issued by approved states (for which EPA has oversight responsibility under section 402) where the pollutants addressed in the permit are "discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water." For each permit, please provide the Committee with information on the pollutants covered by the existing permit, the waterbody into which the discharge is released, and how the 2019 interpretative statement will impact the existing permit and the associated discharge.
3. Any records or documentation EPA has related either to: (a) existing pollutant discharges (not covered by a state- or EPA-issued permit) to jurisdictional surface waters via groundwater or other subsurface flow that have a direct hydrologic connection to the jurisdictional water for; or (b) surface water pollutant levels associated with and/or in the vicinity of, the following types of discharges –
 - i. oil and gas refining operations;
 - ii. oil and gas production operations, including fracking operations;
 - iii. mining operations (including uranium mining operations);
 - iv. coal combustion waste impoundments;
 - v. concentrated animal feeding operations and associated manure management facilities (such as livestock waste lagoons);
 - vi. septic systems;
 - vii. underground pipeline leaks;
 - viii. sewage injection wells;
 - ix. Department of Defense waste pits; and
 - x. any additional discharge types that have an adverse impact on human health or water quality.

The Honorable Andrew R. Wheeler

July 29, 2019

Page 3

4. A copy of any emails, text messages, or other electronic correspondence between EPA employees, or employees of the Department of Justice, or interagency communications involving either of those agencies' staff, concerning the interpretative statement.

Thank you for your prompt attention to this matter, and I request you provide this information as soon as possible, but no later than September 3, 2019. Please provide two sets of copies of all the requested data above. Please deliver one set of these records to the Majority Staff in Room 2165 of the Rayburn House Office Building and one set of records to the Minority Staff in Room 2164 of the Rayburn House Office Building. If you have any questions, please contact Ryan Seiger of the Committee on Transportation and Infrastructure at (202) 225-0060.

Sincerely,



PETER DeFAZIO
Chairman

cc: Representative Sam Graves, Ranking Member