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U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket
Mail Code 2822 1T, 1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Attention: ID No. EPA-HQ-OW-2018-0149

To whom it may concern:

On behalf of the Healing Our Waters – Great Lakes Coalition and 79 nonprofit organizations representing millions of concerned citizens in the Great Lakes region, we write in opposition to the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Army Corps”) proposed rule revising the definition of “waters of the United States” (84 Fed. Reg. 4154) under the Clean Water Act.

The Coalition believes that the Clean Water Rule, finalized in 2015, was an important step in protecting and restoring our Great Lakes. In our view, the actions already undertaken by the EPA and the Army Corps to clarify the Clean Water Act’s jurisdiction were necessary and justified. This ongoing attempt to assume a narrower view of the Clean Water Act’s scope would be a step back, leaving millions of acres of wetlands and tens of thousands of river miles and streams completely unprotected from pollution under federal law. Our Coalition supported the 2015 rulemaking and urges the agencies to withdraw this proposed rule and take no action to undermine the clean water benefits of the current definition. The bottom line is that with many of our cities and towns living with unsafe drinking water, now is not the time to cut back on clean water enforcement. We need more – not less – protection for clean water.

Clean Water Protections at Risk

For years the Clean Water Act protected wetlands and streams, which was Congress’ intent. Congress recognized the interconnectedness of U.S. waters when it passed the act in 1972. It clearly articulated its intent that the tributaries of navigable waters be protected when it stated in a January 1973 report: “Water moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source.”¹

Yet, prior to the 2015 definition many of the waters on which the Great Lakes depend were at increased risk of degradation and had been for nearly 15 years. Supreme Court decisions in 2001 (*SWANCC vs. Army Corps of Engineers*) and 2006 (*Rapanos vs. United States*) and subsequent agency actions created a confusing, time-consuming, and frustrating process for determining what waters were protected under the Clean Water Act and state laws. The

¹ Congressional Research Service. 1973. “A Legislative History of the Water Pollution Control Act Amendments of 1972.” Library of Congress, Washington, D.C. Volume 2, P. 77.

ambiguity of the court decisions left intermittent and headwater streams, which previously received protections, vulnerable to pollution and adjacent wetlands open to be filled and destroyed. Half of the streams in Great Lakes states do not flow all year, putting them, and adjacent wetlands, at risk of increased pollution and destruction. Over 117 million Americans get their drinking water from these surface waters, including nearly 37 million people in Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New York. More importantly, over a third of the 85 million people that call Great Lakes states home are dependent on public drinking water systems that rely on intermittent, ephemeral, and headwater streams.² In addition, according to the U.S. Fish and Wildlife Service, the rate of wetlands loss accelerated nationally by 140 percent from 2004 to 2009—the years immediately after the Supreme Court rulings.³ The Great Lakes region has already lost 66 percent of their historic wetlands, making it all the more urgent that clean water protections include the wetlands and streams that feed drinking water supplies for people.⁴

This new proposal would be a significant step backwards, putting in place substantial rollbacks to clean water protections and leading to time-consuming confusion regarding Clean Water Act jurisdiction. The proposal could threaten a return to an era that saw the rapid loss of wetlands and increase pollution of waterways across the region. Of significant concern is the threat to ephemeral streams. Under the proposal, these rain-dependent streams would be categorically excluded from protection under the Clean Water Act. Additionally, intermittent streams could see their jurisdictional determination undergo an ill-defined review process with a broad standard threatening a loss of protection to a significant percentage of these waterways. The lack of clarity in the proposed rule will lead to the confusion that it claims to address. In so doing, it puts 18 to 70 percent of our nation's waterways (56 percent of the waterways critical to surface drinking water systems in the Great Lakes region) at risk of losing Clean Water Act protections.

Small Streams, Large Rivers, and our Great Lakes are all Connected

Protecting and restoring wetlands and streams is critical to the restoration and protection of the Great Lakes. According to a review of more than 1,000 publications from peer-reviewed scientific literature conducted by an EPA Science Advisory Board, streams, tributaries (e.g., headwater, intermittent, ephemeral), and wetlands are clearly connected to downstream waters. The overwhelming science concludes that upstream waters in tributaries, even when they are intermittent or ephemeral, exert strong influence on the physical, biological, and chemical integrity of downstream waters. Common sense also tells us this is true. Pollution in a tributary is carried downriver into bigger and bigger waterways. Upstream waters also feed water to rivers and lakes, like the Great Lakes.

Additionally, other water features connected to rivers and lakes also play important roles. Healthy wetlands improve water quality by filtering polluted runoff from farm fields and city streets that otherwise would flow into rivers, streams, and water bodies across the country,

² U.S. Environmental Protection Agency. 2009. "Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S."

³ Dahl, T.E. 2011. "Status and trends of wetlands in the conterminous United States 2004 to 2009." U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 45.

⁴ Dahl, T.E. 1990. "Wetlands Losses in the United States 1780's to 1980's." U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 6.

including the Great Lakes. Wetlands and tributaries provide vital habitat to wildlife, waterfowl, and fish, reduce flooding, and replenish groundwater supplies. According to the EPA's Science Advisory Board, all this science supports the key components of the rule finalized in 2015 and contradicts the logic of the proposed rule.

An example of how pollution upstream impacts bigger waters downstream is the drinking water crisis in Toledo, Ohio, in 2014. Excess phosphorus and other pollutants washing off the land and impervious urban surfaces during heavy rains flow into the Maumee River, which empties into Lake Erie. Excess phosphorus mixes with a complicated brew of threats in the lake driving the re-emergence of harmful algal blooms.⁵ In 2014, the harmful algal outbreaks that blanketed Western Lake Erie produced deadly toxins harmful to human health requiring city officials to issue a "do not drink" advisory. To protect drinking water systems like Toledo's, it is vital to protect the source of drinking water upstream.

The 2015 Rule Supports Great Lakes Restoration Investments

Recognizing the important role wetlands and streams play in the overall health of the Great Lakes, the region's business, environmental, and government leaders endorsed a plan that calls for the restoration of more than 1 million acres of wetlands.⁶ Over the last ten years, the federal government has invested more than \$3.1 billion to restore the Great Lakes. These efforts are producing results in communities around the region, removing 73 beneficial use impairments across the region, completing management actions on 11 Areas of Concern (AOCs), and restoring more than 225,000 acres of wetlands and other habitat as of 2017.^{7,8}

The 2015 rule protects these restoration investments by helping to control and limit pollution and habitat loss. Investments are restoring our waters, creating jobs, and leading to long-term economic benefits for the Great Lakes states and the country. A recent study produced by a team of Great Lakes organizations working with the University of Michigan shows that every \$1 invested in Great Lakes restoration between 2010 and 2016 is estimated to generate more than \$3 in additional economic activity regionwide through 2036.⁹ Research from Grand Valley State University shows that the return for certain projects is closer to 6-to-1.¹⁰ The University of Michigan has also demonstrated that over 1.5 million jobs are connected to the Great Lakes, accounting for more than \$60 billion in wages annually.¹¹

The proposed rule currently under consideration would place these ecological and economic benefits at risk. By eliminating protections to upstream waterways (whether ephemeral

⁵ According to the Ohio Lake Erie Phosphorus Task Force, "...there are multiple contributors to phosphorus into Lake Erie, but agriculture is the leading source [of phosphorus] due to the majority of land use in agriculture in the Maumee River..." See: Ohio Department of Agriculture, et.al. 2013. "Ohio Lake Erie Phosphorus Task Force II Final Report." P. 1. Members of this Task Force included the Ohio Department of Agriculture, Ohio Farm Bureau Federation, and Ohio Environmental Council, among others.

⁶ Great Lakes Regional Collaboration. 2005. "Strategy to Restore and Protect the Great Lakes." Found at: http://www.glrc.us/documents/strategy/GLRC_Strategy.pdf

⁷ U.S. Environmental Protection Agency. 2015. "Great Lakes Restoration Initiative Report to Congress and the President: Fiscal Years 2010-2014." P. 22. Found at: <https://www.glri.us/sites/default/files/fy2014-glri-report-to-congress-20150720-50pp.pdf>

⁸ U.S. Environmental Protection Agency. 2018. "Great Lakes Restoration Initiative Report to Congress and the President: Fiscal Year 2017." P. 29. Found at: <https://www.glri.us/sites/default/files/fy2017-glri-report-to-congress-201902-36pp.pdf>

⁹ University of Michigan. 2018. "Socioeconomic Impacts of the Great Lakes Restoration Initiative." Research Seminar in Quantitative Economics.

¹⁰ Isely, et.al. 2011. "Muskegon Lake Area of Concern Habitat Restoration Project: Socio-Economic Assessment." Grand Valley State University, Grand Rapids, Michigan. P. 23

¹¹ Michigan Sea Grant. 2011. "The Great Lakes: Vital to our Nation's Economy and Environment." University of Michigan. 2 pp.

or intermittent) the rollback would threaten the goals established under the Great Lakes regional plan. It limits the federal government's ability to monitor and enforce the pollution controls and programs critical to reducing non-point source pollution and its impact on the growing threat of harmful algal outbreaks, and protect the water we drink and recreate in. Moreover, restricting the applicability of the Clean Water Act protections of wetlands across the region will leave them at risk and impact the progress that has been made to reestablish a portion of these important ecosystem services that have been lost. It is critical that we continue to support Great Lakes restoration efforts and ensure that restoration gains are protected so that as we take one step forward, we aren't taking two steps back. Rolling back clean water protections will only undermine local and federal investments to protect and restore the Great Lakes.

Conclusion

The Healing Our Waters-Great Lakes Coalition strongly opposes the current proposal to weaken clean water protections. The people, businesses, industry, tribes, city and state and federal entities which have worked together to restore the Great Lakes cannot do it alone. They need the help from the Clean Water Act to ensure all Great Lakes rivers, streams, and wetlands can provide clean drinking water, habitat for wildlife, and safe opportunities for fishing, paddling, and swimming. This proposal ignores the overwhelming scientific evidence of the connectivity of waterways that we all rely on, discounts the impacts of unregulated pollution in ephemeral and intermittent streams, and places our drinking water and the waters that drive our economy at great risk. We urge the agency to withdraw this proposed rule and take no action to undermine the clean water benefits of the Clean Water Act.

Please do not hesitate to contact Chad Lord, our coalition's policy director, at (202) 454-3385 or clord@npca.org with questions.

Sincerely,

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