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

April 19, 2017

Dear Administrator Pruitt:

On behalf of our millions of supporters, we write to provide our perspective on your avowed intention to eliminate the important federal safeguards included in the 2015 Clean Water Rule -- a process initiated when President Trump signed Executive Order 13,778 on February 28. We seek your commitment to carry out any such rulemaking in a way that is at least as deliberate, inclusive, and protective of vital waterways as the Clean Water Rule process was and that is based in sound science.

In contrast to the extensive and inclusive process that led to the Clean Water Rule, the administration reportedly plans a hasty rulemaking without meaningful public participation. We are dismayed by reports that the agency intends to provide very little time for stakeholder engagement before proposing to undermine the Clean Water Rule's protections and for official public comment on the proposal. And we especially fear the damage that a final rule would inflict on the nation's waterways if, as Executive Order 13,778 forecasts, it relies on a legal test that a majority of the justices on the Supreme Court rejected and that would weaken the federal rules so that they protect fewer resources than they have in several decades.

The water bodies that could be endangered by a rollback rulemaking serve numerous critical functions. Most notably, more than 117 million Americans receive drinking water from public water systems that draw supply from headwater, seasonal, or rain-dependent streams. Wetlands cover roughly 110 million acres in the continental U.S., and those waters perform numerous functions; for example, wetlands filter pollution from contaminated runoff, recharge groundwater supplies, and an acre of wetlands can store upwards of a million gallons of flood water. Regulatory changes interpreting the scope of the Clean Water Act's pollution control programs must therefore not be taken lightly.

Accordingly, EPA and the Army Corps of Engineers developed the Clean Water Rule over a period of several years, providing ample opportunities for stakeholders to evaluate the technical and legal basis for the rule and express their views. The rulemaking process started in 2011,<sup>1</sup> which itself followed many years of public debate about the proper scope of the Clean Water Act after the Supreme Court's ruling

in *Rapanos v. U.S.*<sup>ii</sup> The agencies took comment on the proposal from April 21-November 14, 2014, receiving more than 1.1 million comments. In parallel, EPA produced an extensively peer-reviewed scientific report confirming that the physical, chemical, and biological integrity of water bodies depend significantly on upstream streams, wetlands, and other waters;<sup>iii</sup> this process included a peer review by the independent Science Advisory Board, during which the agency received more than 130,000 comments. During the comment period on the proposed rule, EPA met with more than 400 stakeholders.<sup>iv</sup> The agencies then developed a rule that relied on the public input, on a strong scientific record, and on the Supreme Court's direction about the kinds of waters the Clean Water Act protects:

For any planned rulemaking, the agencies should provide ample opportunity for affected communities to express their views about any proposal and should base any rule on the Act's purpose, history, and text, and on the best scientific evidence available about water bodies' functions. Any attempt to revise or rescind the Clean Water Rule should be as inclusive of diverse stakeholder opinions as the Clean Water Rule rulemaking. Any rollback initiative should also provide as much time to evaluate rule options prior to proposal, and to receive public input on any proposal, as the Clean Water Rule process did. The planned repeal rule should be built on a scientific foundation that is as robust as the Clean Water Rule's is. Finally, any new action should ensure that water bodies would receive at least as much protection from pollution as they would under the Clean Water Rule.

Thank you in advance for your consideration of this request.

Sincerely,

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President  
Natural Resources Defense Council

Trip Van Noppen  
President  
Earthjustice

Michael Brune  
Executive Director  
Sierra Club

Margie Alt  
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<sup>1</sup> See 80 Fed. Reg. 37,054, 37,102-03 (June 29, 2015) (describing consultation with states, local governments, and Indian tribes at the "onset of rule development in 2011"); Definition of "Waters of the United States" Under the Clean Water Act; Proposed Rule, 79 Fed. Reg. 22,188, 22,196 (Apr. 21, 2014) (stating that a draft of EPA's report on the connectivity of streams, wetlands, and downstream waters, which provides much of the scientific basis for the Rule, was completed in October 2011).

<sup>2</sup> See, e.g., EPA and Army Corps of Engineers Guidance Regarding Clean Water Act Jurisdiction after Rapanos, Notice of Availability, 72 Fed. Reg. 31,824 (June 8, 2007) (issuing immediately effective guidance for agencies' staff & soliciting public comment); EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act, Notice of Availability & Request for Comments, 76 Fed. Reg. 24,479 (May 2, 2011) (making draft guidance available for public comment without making it effective; agencies received more than 230,000 comments on this document).

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<sup>iii</sup> See generally 80 Fed. Reg. 37,054, 37,061-65 (June 29, 2015) (final Clean Water Rule summary of science report findings).

<sup>iv</sup> See EPA Headquarters Proposed Rule Meetings/Events For Docket EPA-HQ-OW-2011-0880 (following the release of the proposed rule), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13183>; 2014 EPA Regional Proposed Rule Meetings/Events for Docket EPA-HQ-OW-2011-0880, available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13182>; EPA Headquarters Stakeholder Meetings for Docket EPA-HQ-OW-2011-0880 Occurring After the Close of the Comment Period (November 14, 2014), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-20870>.