



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

April 15, 2019

Comments on Proposed Rule: Revised Definition of Waters of the United States

RE: Docket EPA-HQ-OW-2018-0149-0003

The BlueGreen Alliance, a coalition of the nation's largest labor unions and environmental organizations collectively representing millions of members and supporters, urges the Environmental Protection Agency (EPA) to withdraw its proposal to revoke crucial protections for bodies of water laid out in the Clean Water Act of 1972 (CWA). Protecting our waters, the most sacred of our natural resources, is simply common sense. The proposed rule rolls back protections for our waters and upends the progress we've made as a nation in cleaning up our waterways for drinking, recreating, and other uses.

Congress passed—and overrode the veto of President Nixon in a bipartisan fashion—the CWA in 1972 because wide-ranging and comprehensive protections had not yet existed for our nation's water bodies. The law was enacted with the intention to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters,”¹ and since its enactment, the law has successfully provided such protection for the vast majority of the country's rivers, lakes, streams, and wetlands.

The law was intended to ensure clean waterways for our drinking water, for swimmers and fishers to recreate in, and to ensure our wetlands are preserved, thereby aiding in flood prevention.

Since the CWA was enacted, multiple amendments have been added to the original bill to strengthen protections for our nation's bodies of water. The proposed rule currently under consideration at the EPA is a drastic departure from the intention of the 1972 law, and its amendments since that time. The proposal at hand represents the most severe weakening of protections for clean water since the CWA's enactment.

This rollback goes against long-standing policy, flies in the face of established case law, and removes protections our communities rely on for clean, safe water. The effects of the proposal have the potential for disaster. According to the EPA's own numbers, thousands of

¹ “U.S. Environmental Protection Agency (EPA), “Federal Water Pollution Control Act, As Amended by the Clean Water Act of 1977.” Available online: www3.epa.gov/npdes/pubs/cwatxt.txt

miles of streams—at least 18 percent—and an estimated half of the nation’s wetlands, as well as other critical bodies of water, would likely lose protection under the CWA.²

Our nation’s waters are better off today than they were before the CWA was passed. The EPA found that water bodies once too polluted for basic use are now up to CWA standards.³ And many of our country’s most treasured waterways have greatly improved. These improvements have been achieved because the CWA has set out clear laws governing pollution levels and other protections for waterways, and because enforcement of the law has been robust.

As it is, too many cities across America are struggling to provide clean, safe water to their residents. The federal government should lead the way to make sure that having clean, safe water is not a luxury for American families.

The Clean Water Rule is Needed

Following Supreme Court rulings in 2001 (SWANCC) and 2006 (Rapanos), CWA protections were called into question for an estimated 20 million acres of wetlands and about two million miles of streams.⁴ These wetlands and waterways feed a larger system of waters, upon which communities depend for health and economic productivity. That is why the BlueGreen Alliance supported the Obama administration’s EPA’s clarification in its promulgation of the Clean Water Rule: Definition of “Waters of the United States” (80 FR 37054), which remedied this confusion and protected drinking water for 117 million Americans.⁵

The Clean Water Rule (CWR) covers wetlands with no surface connection to rivers, streams, and tributaries that flow only after it rains or during certain seasons, and intermittent ponds. This expansion of water bodies represented a roughly 3 percent increase in the water protected by the CWA.⁶

² Science, “EPA Claims ‘No Data’ on Impact of Weakening Water Rule. But the Numbers Exist.” December 11, 2018. Available online: www.sciencemag.org/news/2018/12/epa-claims-no-data-impact-weakening-water-rule-numbers-exist

³ U.S. EPA, *Water Quality Assessment and TMDL Information*. Available online: http://ofmpub.epa.gov/waters10/attains_index.home

⁴ E&E News, “CLEAN WATER RULE: Will Scalia’s Dictionary Haunt Trump’s WOTUS Overhaul?” May 15, 2017. Available online: www.eenews.net/stories/1060054554

⁵ Federal Register, “Clean Water Rule: Definition of ‘Waters of the United States.’” June 29, 2015.. Available online: <https://www.federalregister.gov/documents/2015/06/29/2015-13435/clean-water-rule-definition-of-waters-of-the-united-states>

⁶ U.S. EPA, *Clean Water Rule Comment Compendium, Topic 10: Legal Analysis*. Available online: https://www.epa.gov/sites/production/files/2015-06/documents/cwr_response_to_comments_10_legal.pdf

The Clean Water Rule is Essential for Recreation and Enjoyment of the Environment

Clean water is critical for allowing individuals to enjoy the benefits of our natural resources. Without clean water, individuals are unable to take part in the pastimes we often take for granted—including swimming, fishing, and taking in scenic views. The regulations under the CWA, and the enforcement thereof, allow for a robust recreational sector of our economy, and for the continued enjoyment and conservation of our environment.

Failing to keep water adequately healthy can have major impacts on our enjoyment of our water bodies. For example, harmful algae blooms negatively affect human and marine life if not kept in check. When algae populations explode to unusually high numbers they can create harmful algae blooms (HABs), which can block sunlight that is vital for underwater bay grasses, impede filter-feeders from obtaining food, produce smelly surface scum, and consume dissolved oxygen when the algae die and decompose. In addition, certain algae can also produce harmful chemicals that are toxic to humans, wildlife, and aquatic life.⁷

HABs and other pollution of our water systems infringe on the ability of citizens to fully take advantage of their local waterways. Individuals expect their government to provide a reasonably safe and healthy resource from which to fish and in which to swim. Rolling back the standards set forward in the CWA would allow pollution from smaller water bodies to travel downstream to larger ones such as lakes and rivers. This is especially concerning because on the surface, individuals might think these larger bodies are protected from pollution. But because all water is connected, pollution in smaller, unprotected waterways is liable to move to protected water.

Clean Water Builds Strong Local Economies

Hand in hand with recreational opportunities, clean waterways provide economic livelihoods for individuals employed in water-related jobs, such as caretaking, environmental conservation officers, fisheries management specialists, and commercial fishermen.

In addition to recreation-related employment, clean waters are a powerful economic engine supporting millions of jobs across manufacturing and transportation sectors. Protected watersheds that provide clean drinking water and support abundant fish and wildlife are critical to the health of communities and local economies.

⁷ Chesapeake Bay Program, “The ABCs of HABs: How Harmful Algal Blooms Impact the Bay.” Available online: https://www.chesapeakebay.net/news/blog/the_abcs_of_habs_how_harmful_algal_blooms_impact_the_bay

Clean, healthy waters that are fully protected by the CWA are valuable to the United States economy. For example, farms rely heavily on clean water for irrigation; manufacturing companies utilize 9 trillion gallons of freshwater yearly; the beverage industry uses more than 12 billion gallons of water annually to generate products valued at \$58 billion; and around 40 million anglers spend \$45 billion annually to fish the nation's waters.⁸

Additionally, jobs that stem from environmental regulations concerning clean water are diverse, and include engineers, factory workers, truck drivers, and construction workers. These jobs require various skill sets, encompass a range of occupations, and are vital to supporting a strong middle class.

Beyond the employment possibilities and positive impacts on our economy brought by healthy waterways and strong protections, the impact of pollution on our streams can impose significant costs to our economy, slowing productivity and growth and harming human health. Clean water ensures safety and good health, resulting in fewer missed days and from work, as well as lower expenses for health care.⁹

Contaminated Source Water Leads to Downstream Costs

As previously stated, pollution does not respect the demarcation of types of water bodies, and water bodies do not respect state or territorial boundaries. Just as importantly, there is a clear relationship between upstream water quality and downstream utility operating and maintenance (O&M) costs. Cleaner source water leads to lower costs for utilities.

According to the EPA, by protecting healthy watersheds upstream, we lower drinking water treatment costs, avoid expensive restoration activities, reduce vulnerability and damage from natural disasters, and provide ecosystem services at a much lower cost for engineered services. Degradation of riparian ecosystems can have negative impacts economically far from the originally polluted site.¹⁰

Over the past decades, American water utilities have spent millions of dollars on protecting and improving their water sources as part of a multiple barrier approach to ensure the delivery of safe drinking water. The American Water Works Association found that a 1

⁸ "U.S. EPA, *Factsheet: The Clean Water Rule for: Communities*. Available online: https://19january2017snapshot.epa.gov/sites/production/files/2015-05/documents/fact_sheet_communities_final_0.pdf

⁹ U.S. EPA, "Battling Pollution Balances Health Disparities and Brings Economic Opportunity." March 31, 2014. Available online: <https://blog.epa.gov/2014/03/31/battling-pollution/>

¹⁰ U.S. EPA, *The Economic Benefits of Protecting Healthy Watersheds*. April 2012. Available online: https://www.epa.gov/sites/production/files/2015-10/documents/economic_benefits_factsheet3.pdf

percent increase in turbidity led to a 0.19 percent increase in operation and maintenance costs. This increase is significant and can have especially harmful effects on smaller water utilities.¹¹

It stands to reason that in many cases, protection of source waters can pay for itself through savings on water treatment. The Nature Conservancy found in its study of more than 4,000 cities that one in six of the cities could experience a positive return on investment in source water protection through reduced annual treatment costs alone.¹² And for half of the cities analyzed, activities such as forest protection, reforestation, and the use of cover crops could be implemented for about \$2 per person annually.¹³

The EPA states that a new water filtration plant can cost \$8-10 billion, whereas watershed conservation totals just \$1.5 billion.¹⁴ Additionally, according to the EPA, a study of 27 American water suppliers found that protecting drinking water watersheds could reduce capital, operational, and maintenance costs for treatment of drinking water. This study revealed that those watersheds that have higher percentages of protected forest correlate to fewer expenditures on water treatment down the line.¹⁵ Additionally, these upstream measures also minimize property damage and cleanup costs from storm events and floods. This is a crucial way to reduce unnecessary spending, as floods now cause an average of \$8 billion in damage each year in the United States.¹⁶

Additionally, the Urban Water Blueprint collected information on water treatment plant O&M costs from a sample of cities. Their data demonstrate that reducing sediment and nutrients by 10 percent leads on average to a 5 percent reduction in treatment costs down the line. The study also shows that if all possible conservation strategies are applied, water savings around the globe on treatment plant O&M would total \$890 million per year.¹⁷ Finally, a study by Trust for Public Lands and the American Water Works Association

¹¹ American Water Works Association and U.S. Endowment for Forestry and Communities, *Effect of Forest Cover on Drinking Water Treatment Costs*. Available online :<https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Effect%20of%20Forest%20Cover%20on%20Drinking%20Water%20Treatment%20Costs.pdf?ver=2018-12-13-010844-857>

¹² The Nature Conservancy, *A Natural Solution to Water Security: Report Analyzes 4,000 cities to demonstrate the health, climate and biodiversity benefits of source water protection*. January 2017. . Available online:<https://global.nature.org/content/beyond-the-source?src=r.global.beyondthesource>

¹³ The World Bank, *Protecting our water sources brings a wealth of benefits*. January 2017. Available online: <http://blogs.worldbank.org/water/protecting-our-water-sources-brings-wealth-benefits>.

¹⁴ U.S. EPA, *The Economic Benefits of Protecting Healthy Watersheds*. April 2012. Available online: https://www.epa.gov/sites/production/files/2015-10/documents/economic_benefits_factsheet3.pdf

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ WaterWorld, "Nature's Return: Investment in Watershed Conservation Yields Significant Cost-Savings for Water Utilities." August 1, 2015..Available online:<https://www.waterworld.com/articles/print/volume-31/issue-8/urban-water-management/nature-s-return-investment-in-watershed-conservation-yields-significant-cost-savings-for-water-utilities.html>.

discovered that a 10 percent increase in forest cover in a watershed ends up reducing treatment and chemical costs down the line by 20 percent.¹⁸

With source water protection in place, water utilities can use the dollars saved downstream to invest in other critical areas, like infrastructure and their workforce, while continuing to meet water quality standards. This is especially pertinent as states and communities struggle to keep up in the face of diminishing federal funds to address infrastructure upgrades.

President Obama's EPA Administrator Gina McCarthy crystalized this point in a statement explaining that, "[w]e need to begin with protecting our source waters because if we do not, the expense of treating those waters before they get to consumers as drinking water supply is simply going to escalate up and up and up.... Source water protection is one of the key reasons why the Clean Water Rule is so important."¹⁹

Clean Water Rule Protections Must Be Maintained and Enforced

The CWA and the Clean Water Rule provide the regulatory framework that allows individuals to fully enjoy their natural environment; that create significant and strong local economies; and that allow us to save money by treating water at the source, rather than downstream where it is much more costly.

It is common sense that a clean, safe environment—including our water—benefits our health, the economy, and downstream water quality. These waterways help avert floods, recharge groundwater supplies, remove harmful pollution, and provide a safe habitat for fish and wildlife. Streams and wetlands also serve as economic drivers throughout this country because of their roles in fishing, hunting, agriculture, recreation, energy, and manufacturing.

Rescinding these protections also endangers the health of all Americans, regardless of state since water does not respect state boundaries. Rolling back or weakening the vital protections laid out in the CWA and CWR would put hundreds of thousands of miles of ecosystems—and drinking water for 117 million Americans—at risk and would endanger our environment and our health. We have clear evidence that the CWA has reduced the

¹⁸ American Water Works Association and U.S. Endowment for Forestry and Communities, *Effect of Forest Cover on Drinking Water Treatment Costs*. Available online: <https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Effect%20of%20Forest%20Cover%20on%20Drinking%20Water%20Treatment%20Costs.pdf?ver=2018-12-13-010844-857>.

¹⁹ Greenwire, "McCarthy ties WOTUS to drinking water, predicts court win." December 7, 2016. Available online: <https://www.eenews.net/greenwire/2016/12/07/stories/1060046795>.

pollution of American waters.²⁰ Going back on these improvements is unwise and puts the health of our communities and the economy at risk.

We need to put the health of our residents and our economy first. The EPA should keep the Clean Water Rule in place to protect bodies of water that help drive our local economies and supply our children and families with clean, safe drinking water.

²⁰ National Academy of Sciences of the United States of America, “The low but uncertain measured benefits of U.S. water quality policy.” March 19, 2019. Available online: <https://www.pnas.org/content/116/12/5262>.