



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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September 10, 2021

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

Mr. Jaime Pinkham
Acting Assistant Secretary of the Army for
Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Dear Administrator Regan and Acting Assistant Secretary Pinkham:

Thank you for the June 9, 2021, announcement by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) of the agencies' intent to revise the definition of "waters of the United States" (WOTUS) under the Clean Water Act.¹ We appreciate the Biden administration's commitment to establish a lasting and legally defensible definition of "waters of the United States."

Additionally, we applaud the agencies' decision to halt implementation of the deeply flawed Navigable Waters Protection Rule (NWPR),² more appropriately called the Trump Dirty Water Rule, in light of the order of the District Court for the District of Arizona to vacate and remand the Rule.³ As the Court noted, this illegal rule results in "serious environmental harm" every day it remains in effect as countless waterways are irrevocably degraded, destroyed, or otherwise lost.⁴

Americans depend on clean water. We need clean water upstream to have healthy communities downstream. The health of rivers, lakes, bays, and coastal waters depends on the streams and wetlands where they begin. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife. About 117 million Americans—one in three people—get drinking water from sources fed by streams that are especially vulnerable to pollution. Our cherished

¹ Environmental Protection Agency, EPA Press Office. (2021, June 9). *EPA, Army Announce Intent to Revise Definition of WOTUS* [Press release]. Retrieved from <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus>

² 85 Fed. Reg. 22250 (Apr. 21, 2020).

³ *Pascua Yaqui Tribe, et. al. v. U.S. Environmental Protection Agency*, No. CV-20-00266-TUC-RM (D. Arizona Aug. 30, 2021).

⁴ See id. at 9.

way of life depends on clean water and healthy ecosystems to provide wildlife habitat and places to fish, paddle, surf, and swim. Our economy depends on clean water for manufacturing, farming, tourism, recreation, energy production, and other economic sectors to function and flourish.

The Trump Dirty Water Rule transferred the costs for protecting the health and safety of our communities from polluters onto working American families. It squandered our nation's precious natural resources—including our oceans, rivers, streams, and wetlands—to unfettered pollution and destruction. In crafting this rule, the Trump administration willfully ignored the science, ignored the law, and made clear that they stood with special interests and polluters rather than the American people. The Trump Dirty Water Rule even failed to accomplish the central pretext on which it was promulgated, because it provided no certainty on what waters remain protected, provided no clarity to stakeholders who must interact with the Clean Water Act, and failed to meet even a most basic economic justification. Finally, this rule was based on a misinterpretation of the standards for asserting Clean Water Act jurisdiction announced by the U.S. Supreme Court and was almost exclusively premised on a legal theory that failed to ever achieve a majority vote.

In striking down the Trump Dirty Water Rule, the District Court, in *Pascua Yaqui Tribe*, highlighted the magnitude of the adverse impacts of this illegal Rule, noting that in just 11 months, “the Corps made approved jurisdictional determinations under the NWPR of 40,211 aquatic resources or water features, and found that approximately 76% were non-jurisdictional.”⁵ Similarly, the District Court highlighted how the EPA and the Corps documented 333 projects that would have required a federal permit prior to the Trump Dirty Water Rule but no longer do.⁶ In arid states, such as New Mexico and Arizona, the District Court noted that nearly every one of the 1,500 streams assessed under the Dirty Water Rule were “found to be non-jurisdictional—a significant shift from the status of streams under both the Clean Water Rule and the pre-2015 regulatory regime.”⁷

In short, the District Court has confirmed what we suspected—that the Trump Dirty Water Rule is a fatally flawed proposal, with no basis in the law and no basis in the science. Now that the Court has thrown out this blatant giveaway to polluters, we call upon you to take immediate action to protect our nation's waterways for future generations.

First, we are pleased that the agencies are working to expeditiously replace the Trump Dirty Water Rule and are glad to see that the agencies will no longer be implementing it. However, as you know, the rulemaking process can be a lengthy one, and rightfully so, to ensure fruitful stakeholder engagement and thoughtful deliberations. Even if the administration expedites a replacement rule, it will take two or three years before a new rule is in place. In the meantime, countless waters and wetlands remain vulnerable to pollution, degradation, and destruction, and American families will pay the cost of this destruction through more polluted waters, less protected drinking water sources, greater flood risk, and a degraded environment. Therefore, we call upon you to ensure that any interim guidelines for asserting federal clean water protections maximize your authorities under the law and existing regulations, as guided by relevant court decisions, and consistent with the science.

⁵ *Pascua Yaqui Tribe, et. al. v. U.S. Environmental Protection Agency*, No. CV-20-00266-TUC-RM (D. Arizona) at 9.

⁶ See *id.*

⁷ See *id.*

Second, we call upon you to expeditiously put in place an enduring, scientifically based, and protective standard for ensuring the protection of our critical waters and wetlands. Decades ago, when rivers started catching fire, this country recognized the value of our water-related resources, as well as the inability of the states or the private sector to independently protect our rivers, lakes, streams, and wetlands, or to always act in the best interests of the nation. In response, Congress enacted the Federal Clean Water Act over the veto of former President Nixon to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”—a standard for protecting clean water that was championed by Democratic and Republican administrations alike until the Trump administration.

The American people demand action to protect clean water. We urge you to take the necessary steps both to ensure, today, that our nation’s waters and wetlands remain protected to the maximum extent allowed under the law, and to move quickly to put in place a permanent, legally-and-scientifically defensible, and protective definition of “waters of the United States” which will put us back on the bipartisan path of protecting our nation’s waterways for future generations.

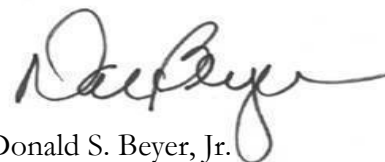
Sincerely,



Peter A. DeFazio
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Grace F. Napolitano
Chair
Subcommittee on Water
Resources and
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Administrator Regan; Acting Assistant Secretary Pinkham

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