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September 27, 2017

The Honorable Scott Pruitt
Administrator
US Environmental Protection Agency

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
Department of the Army, Civil Works

Water Docket
Environmental Protection Agency
Mail Code 2822T1200
Pennsylvania Avenue
Washington, DC 20460

Email to: CWAwotus@epa.gov, USACE_CWA_Rule@usace.army.mil

Re: Docket ID No. EPA-HQ-OW-2017-0203-001: Comments on the Repeal and Replacement of the 2015 Definition of Waters of the United States

Dear Administrator Pruitt and Assistant Secretary Darcy:

The Surfrider Foundation and our 250,000 supporters, activists and members nationwide strongly oppose the Environmental Protection Agency's (EPA) and Army Corps of Engineers' (Corps) proposal to repeal the 2015 Clean Water Rule, and any subsequent effort to weaken federal protections for our waterways. These rollbacks would recklessly open waterways upon which we all rely on to degradation and pollution.

The Surfrider Foundation's domestic chapter network is made up of 84 Chapters operating along the Atlantic, Pacific, Great Lakes and Gulf coasts. As a grass roots organization dedicated to the protection and enjoyment of oceans, waves and beaches, we recognize that meaningful efforts to protect and improve water quality at the coast need to begin upstream.

Across the country, Surfrider volunteers have been engaging on the local level to identify coastal water pollution problems and to bring together local authorities and stakeholders to find the sources of pollution and implement solutions. The most effective solutions for beach pollution problems often need to be applied upstream, to restore the natural water cycle, and to prevent pollution from running off the land and into the sea.

The Surfrider Foundation fully supports the 2015 Clean Water Rule for the clear protections it restores to headwaters, intermittent and ephemeral streams, and to wetlands and other waters located near or within the floodplain of currently

protected waterways. We are absolutely against any effort to repeal or weaken this rule.

Basic clean water protections for headwater streams and wetlands have been in question for too long. This rulemaking process is absolutely necessary to clarify which streams, wetlands, and other waters are protected under the Clean Water Act. Since the Supreme Court's decisions in *SWANCC* in 2001¹ and *Rapanos* in 2006², application of the Clean Water Act has been confusing and costly. Circuit courts are split on what waters actually fall within the scope of the Act. Some argue Justice Kennedy's "significant nexus" test as articulated in *Rapanos* applies. This test is applied on a case-by-case basis, costing the government, industry, and the environmental community precious time and money. Other Circuit courts however have accepted Justice Scalia's plurality opinion that requires a continuous surface connection between wetlands and "Waters of the United States" for application. This approach diminishes protection for important waters that may appear isolated but in fact are part of a complex natural water cycle. The proposed rule clarifies that the "significant nexus" test may apply on case-by-case basis to "other waters" but also covers wetlands that are adjacent other "Waters of the United States". By defining "significant nexus" and declining to adopt Scalia's surface connection requirement, this rule provides some of the clarity environmental groups such as Surfrider have long sought following *SWANCC* and *Rapanos*.

Implementation of the 2015 Clean Water Rule is absolutely necessary to restore protections for the small streams and wetlands that perform invaluable ecosystem services of recharging our drinking water supplies, filtering out pollutants, and providing flood protection. In fact, the Clean Water Rule would restore federal protections to half the nation's streams, which help provide drinking water to one in every three Americans. The rule also protects millions of acres of wetlands that provide wildlife habitat and keep pollutants out of our nation's beaches and coastal waters. No wonder more than 800,000 Americans – including more than 1,000 business owners, local officials, farmers, and health professionals – urged EPA to adopt the Clean Water Rule.

Repealing the Clean Water Rule turns the mission of the EPA on its head: the agency charged with safeguarding our environment and public health is proposing to stop protecting the drinking water sources for 1 in 3 Americans. It defies common sense, sound science and the will of the American people.

Clean water is vital to our ecology, our health, our economy and our quality of life. Especially along the coasts, tourism industries that rely heavily on clean water at the beach generate over \$100 billion every year. This economic activity should be protected by doing more to protect clean water, not less.

Please stop the repeal process and get back to EPA's mission - protecting human health and the environment.

¹ *Solid Waste Agency of N. Cook Cnty. (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

² *Rapanos v. United States*, 547 U.S. 715 (2006).



Thank you for considering our concerns.

Sincerely,

Mara Dias
Water Quality Manager
Surfrider Foundation