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**Before the United States House of Representatives  
Subcommittee on Water, Power, and Oceans  
of the Committee on Natural Resources**

**Hearing on “Empowering States and Western Water Users  
Through Regulatory and Administrative Reforms”**

**April 13, 2016**

Chairman Fleming, Ranking Member Huffman, and members of the Subcommittee, thank you for the opportunity to testify before you today and for your attention to our Nation’s important water resources challenges. I am Jan Goldman-Carter, Counsel and Director of Wetlands and Water Resources for The National Wildlife Federation. The National Wildlife Federation represents over 6 million conservation-minded hunters, anglers, and outdoor enthusiasts nationwide. Conserving our Nation’s wetlands, streams, and rivers for fish, wildlife, and communities is at the core of our mission. We have been active in advocating for Clean Water Act protections since the Act was passed in 1972. As an attorney and as a wetlands resource manager, I have more than 35 years of experience with the Clean Water Act section 404 dredge and fill program. For the last 15 years, I have been actively engaged in the effort to clarify the definition of “Waters of the United States” that underpins the 1972 Clean Water Act in the wake of the controversial and disruptive *SWANCC* and *Rapanos* U.S. Supreme Court decisions issued in 2001 and 2006 respectively.

As I document in my testimony below, the final Environmental Protection Agency (“EPA”) and the Army Corps of Engineers (“Corps”) Clean Water Rule:

- Responds to – and is consistent with – the U.S. Supreme Court’s direction in *SWANCC* and *Rapanos*;
- Clarifies and limits – *but does not expand* – the historic scope of Clean Water Act jurisdiction;
- Includes new clarifications and exemptions that expressly exclude some waterbodies previously deemed “waters of the U.S.”;



- Strengthens the Clean Water Act’s Federal-State cooperative federalism framework and empowers states to better protect state waters within this framework;
- Addresses many of the concerns raised by state, agricultural, and western water stakeholders during the extended and rigorous rulemaking process;
- Fosters a strong economy and millions of jobs that depend upon clean and abundant waters and healthy wetlands and waterways; and
- Enjoys widespread and bi-partisan public support.

The 1972 Clean Water Act has been successful at improving water quality and stemming the tide of wetlands loss in every state. However, Clean Water Act safeguards for streams, lakes and wetlands have been eroding for over a decade following two controversial Supreme Court decisions which cast doubt on more than 30 years of effective Clean Water Act implementation. Recent water pollution threats to drinking water from Ohio, West Virginia and Michigan to Iowa and Montana remind us of the high value of clean water, and crystallize the need to improve the Clean Water Act, not weaken it.

For more than a decade now, 60 percent of stream miles in the United States, which provide drinking water for more than 117 million Americans, have been at increased risk of pollution and destruction. Wetlands that provide essential water quality, flood protection, and fish and wildlife habitat are at risk as well. In fact, the rate of wetlands loss increased by 140 percent during the 2004-2009 period – the years immediately following the Supreme Court decisions. This is the first documented acceleration of wetland loss since the Clean Water Act was enacted more than 40 years ago during the Nixon administration.

When wetlands are drained and filled and streams are polluted, fish and wildlife suffer and we lose the ability to pursue our outdoor passions and pass these treasured traditions on to our children. Moreover, pollution and destruction of headwater streams and wetlands threaten America’s hunting and fishing economy – which accounts for over \$200 billion in economic activity each year and 1.5 million jobs, supporting rural communities in particular.

It is for these reasons that the National Wildlife Federation and our 6 million members and supporters across the country steadfastly support the final Clean Water Rule.

**1. The Clean Water Rule Responds to – and Is Consistent With – the Supreme Court’s Direction in *SWANCC* and *Rapanos*.**

The Clean Water Rule revises the longstanding definition of “waters of the United States” subject to the Clean Water Act in response to the Supreme Court’s decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (“*SWANCC*”),<sup>1</sup> and *Rapanos v. United States*.<sup>2</sup> The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) took on this historic rulemaking because at least two of the Supreme Court Justices clearly called for it in their *Rapanos* concurring opinions: Chief Justice Roberts<sup>3</sup> and

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<sup>1</sup> 531 U.S.159 (2001).

<sup>2</sup> 126 S. Ct. 2208 (2006).

<sup>3</sup> 547 U.S. at 757-58.

Justice Breyer,<sup>4</sup> and a majority in *Rapanos* embraced the role of expert agency regulations to clarify which waters are – and are not – “waters of the United States.”

The 2001 *SWANCC* decision was narrow. It simply precluded the Corps from asserting jurisdiction over certain ponds based solely on their use by migratory birds. It did not overturn any aspect of the existing waters of the U.S. regulatory definition, including the broad (a)(3) “other waters” provision. In 2006, in *Rapanos*, the Supreme Court issued a fractured (4-1-4) decision involving wetlands adjacent to non-navigable tributaries of traditional navigable waters. Importantly, the Court issued five opinions, none of which garnered a majority. In the ensuing litigation over which of the Court’s opinions to apply, Justice Kennedy’s opinion establishing the “significant nexus” test for Clean Water Act jurisdiction has been widely accepted by the U.S. Courts of Appeals. Justice Kennedy’s “significant nexus” test requires a showing – through regulation or case-by-case – that the ecological linkages between smaller or more remote waterbodies and navigable waters, “alone or in combination,” must be more than “speculative or insubstantial.”

The Clean Water Rule closely tracks Kennedy’s pivotal significant nexus test, grounding its definition of which waters are jurisdictional in science-based findings of significant nexus to traditionally navigable and interstate waters. The Federal Register preambles to the proposed and final rules include an extensive legal analysis documenting the rule’s allegiance to the Kennedy significant nexus test. As a binding rule, promulgated through a rigorous, transparent, and extended rulemaking process, the rule’s revised definition of “waters of the United States” will provide greater certainty and consistency in jurisdictional determinations for landowners, federal and state agency field staff, and the courts. It will also ensure that longstanding clean water protections continue to safeguard millions of wetland acres and stream miles that have been in legal limbo for more than a decade.

## **2. The Final Clean Water Rule Clarifies and Limits -- But Does Not Expand -- the Historic Scope of Clean Water Act Jurisdiction.**

The final rule clarifies and definitively restores Clean Water Act protection to two major categories of waters, while drawing clarifying and limiting boundaries:

**1. Tributaries to waters already covered by the Clean Water Act** – For example, intermittently-flowing headwater streams that have a defined bed and bank and ordinary high water mark, and flow to a traditionally navigable or interstate water body already covered by the Clean Water Act; and

**2. Wetlands, lakes, and other water bodies located adjacent to these tributaries** (i.e., within the 100-yr floodplain up to a maximum distance of 1,500 ft.).

Based on the best wetland science, the final rule also bolsters protections of specified wetlands located beyond river floodplains: prairie potholes in the Dakotas, western vernal pools in California, Carolina and Delmarva bays and pocosins along the Atlantic coastal plain, and Texas

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<sup>4</sup> 547 U.S. at 812.

coastal prairie wetlands along the Gulf of Mexico. Each of these types of wetlands function together — i.e., are “similarly situated” — to provide fish and wildlife habitat, important flood storage and drought resistance, and critical pollution filtration, and therefore warrant Clean Water Act protection.

While these clarifications remove uncertainty, and better protect many wetlands and streams that have been at risk for the last decade, the fact is that the final Clean Water Rule actually *narrows* the historic scope of Clean Water Act jurisdiction, excluding protections for some wetlands and other waters protected for almost 30 years prior to 2001.

**First and foremost, the rule deletes the pre-existing and longstanding “other waters” provision that provided Clean Water Act jurisdiction over many types of waters based on their potential effect on interstate commerce.** Given the breadth of the federal commerce clause power, and the Clean Water Act legislative intent to regulate to the full extent of that power, this provision provided for Clean Water Act jurisdiction over millions of wetland acres protected for almost 30 years prior to 2001. In response to the Court’s questioning of this commerce link to jurisdiction without regard to the water’s ecological links to navigable waters, EPA and the Corps deleted this section and instead expressly linked all jurisdictional “waters of the U.S.” determinations to science-based findings of significant nexus to navigable waters. As a result, many of the intrastate, non-navigable, geographically “isolated” wetlands, lakes, and ponds previously covered by the Clean Water Act will no longer be covered under the final Clean Water Rule.

**Second, the definition of “waters of the U.S.” includes – for the first time -- a clear definition of “tributary” that both clarifies and limits Clean Water Act jurisdiction over streams, ditches, and other tributaries.** To be found a jurisdictional tributary, a waterway must have a bed, bank, and ordinary high water mark. To further clarify what is *not* a jurisdictional tributary, the final rule expressly excludes – again for the first time – several types of ditches, as well as gullies, rills, non-wetland swales, and lawfully constructed grassed waterways.

In further response to concerns from agricultural and water treatment and delivery sectors, and in addition to existing exemptions for prior converted cropland and waste treatment systems, **the final rule also explicitly excludes from the definition of waters of the U.S. other water features, including artificially irrigated areas, stormwater control features, and wastewater recycling systems.**

In addition, the final rule adds physical and measurable limits to adjacent and nearby waters, further narrowing jurisdiction and excluding wetlands and other waterbodies previously covered by the Clean Water Act. See the attached Clean Water Rule infogram.

And, of course, the final rule reiterates the Clean Water Act exemptions for the following activities that are important for farming, forestry and mining from applicable permitting requirements:

- Most common farming and ranching practices, including “**plowing, cultivating, seeding, minor drainage, harvesting** for the production of food, fiber, and forest products;”

- “Construction or maintenance of **farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;**”
  - “**Agricultural stormwater discharges and return flows from irrigated agriculture;**”
  - “Construction of **temporary sediment basins** on a construction site;” and
  - “Construction or maintenance of **farm or forest roads or temporary roads for moving mining equipment.**”
3. **The Clean Water Rule Strengthens the Clean Water Act’s Federal-State Cooperative Federalism Framework and Empowers States to Better Protect State Waters within this Framework.**

In 2006, more than 30 state attorneys general filed an amicus brief in *Rapanos* recognizing the essential Federal-State cooperative federalism framework for protecting the Nation’s waters and supporting the Bush Administration’s broad view of Clean Water Act jurisdiction to meet the goals of the Clean Water Act. In 2014, the States of New York, Connecticut, Delaware, Illinois, Maryland, Rhode Island, and Washington, and the District of Columbia reiterated the importance of broad Clean Water Act jurisdiction to protecting the waters of their states and the health and welfare of their citizens. In 2015, the States of New York, Connecticut, Hawaii, Massachusetts, Oregon, Vermont, and Washington, and the District of Columbia, reiterated these views when they moved to intervene in court in support of the Clean Water Rule.

The state attorneys general explained their interest in the Clean Water Rule as follows:

“*First*.... The health and integrity of watersheds, with their networks of tributaries and wetlands that feed downstream waters, depend upon protecting the quality of upstream headwaters and adjacent wetlands. Moreover, watersheds frequently do not obey state boundaries, with all of the lower forty-eight states having waters that are downstream of the waters of other states. Thus, coverage under the Act of ecologically connected waters secured by the Rule is essential to achieve the water quality protection purpose of the Act, and to protect Proposed Intervenor States from upstream pollution occurring outside their borders.

“*Second*, by clarifying the scope of “waters of the United States,” the rule promotes predictability and consistency in the application of the law, and in turn helps clear up the confusing body of case law that has emerged in the wake of the Supreme Court’s *Rapanos* decision. The Rule accomplishes this by reducing the need for case-by-case jurisdictional determinations and, where such determinations are needed, by clarifying the standards for conducting them. Each of the Proposed Intervenor States implements programs under the Act. Thus, the rule is of direct benefit to movants because it helps alleviate administrative burdens and inefficiencies in carrying out those programs. In addition, the rule would help the States in administering the federal dredge-and-fill program if they choose to do so. *See* 33 U.S.C. §1344 (allowing States to implement a permitting program for dredge and fill material).

“*Third*, the rule advances the Act’s goal of securing a strong federal “floor” for water pollution control, thereby protecting the economic interests of Proposed Intervenor States

and other downstream states. The Rule allows movants to avoid having to impose costly, disproportionate, and economically harmful limits on in-state pollution sources to waters within their borders, in order to offset upstream discharges that would otherwise go unregulated if the upstream waters are deemed to fall outside the Act's jurisdiction and are not otherwise regulated by upstream states. The Rule protects the economies of Proposed Intervenor States because it serves to "prevent the 'Tragedy of the Commons' that might result if jurisdictions can compete industry and development by providing more liberal limitations than their neighboring states." *NRDC*, 568 F.2d at 1378 (quoting *Train*, 510 F.2d at 709)."<sup>5</sup>

On a practical level, the 2008 Guidance has resulted in delays, confusion and uncertainty for applicants seeking permits along with increased workloads for Corps and EPA officials. EPA's costs to enforce CWA 402, 404, and 311 have increased significantly due to the incremental resources required to assert jurisdiction post *SWANCC* and *Rapanos*.<sup>6</sup> Because it can be difficult to establish where the CWA applies after the Supreme Court's decisions in *SWANCC* and *Rapanos*, enforcement efforts have shifted away from small streams high in the watershed where jurisdiction is a potential issue. Post-*Rapanos* uncertainty and added time and expense is undermining Clean Water Act enforcement and the overall effectiveness of the Clean Water Act in maintaining and restoring the nation's waters.

A key attribute of the Clean Water Rule is its additional clarity, relieving federal and state agencies and landowners alike of the confusing and burdensome case-by-case jurisdictional determinations required under the guidance for plans to discharge pollutants into most wetlands and streams. Ironically, the Clean Water Rule litigation and the current stay of the final rule not only extend but actually contribute to confusion and delay by precluding EPA and Corps efforts to provide field level training, workshops, supplemental clarification, and transparency in the implementation of the rule.

#### **4. The Final Clean Water Rule Addresses Many of the Concerns Raised by State, Agricultural, and Western Water Stakeholders during the Extended and Rigorous Rulemaking Process.**

Representatives of the National Water Resources Association have testified at previous hearings on this subject and have stressed the water resources challenges of the western states and the needs for "creativity and innovation" to improve water recycling and water delivery infrastructure and to increase their efficiency. We appreciate these concerns and understand that EPA is participating in federal, state, public, and private partnerships toward these ends. We also note that EPA apparently took this testimony to heart in the final Clean Water Rule, expressly excluding the artificial irrigation systems and water recycling systems of concern to the Association and its members.

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<sup>5</sup> NY et al Motion to Intervene (6<sup>th</sup> Cir. August 28, 2015).

<sup>6</sup> See 2014 EPA Economic Analysis at 30-31, at: [http://www2.epa.gov/sites/production/files/2014-03/documents/wus\\_proposed\\_rule\\_economic\\_analysis.pdf](http://www2.epa.gov/sites/production/files/2014-03/documents/wus_proposed_rule_economic_analysis.pdf).

The final Clean Water Rule is the product of four years of rigorous and transparent scientific and public policy deliberation. See the attached Timeline 2001-2016. In 2011, in the face of congressional inaction, EPA and the Corps formally launched an administrative effort to clarify the “waters of the U.S.” The 2011 Proposed Guidance was the subject of extensive interagency review, economic analysis, and public notice and comment. Approximately 250,000 comments were submitted on the guidance, and these overwhelmingly supported the revised guidance.

In 2011-2012, on a parallel track, the EPA Office of Research and Development compiled a draft science report, *[The Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence](#)* (Connectivity Report).<sup>7</sup> This scientific report, based on peer-reviewed literature and an additional review by independent scientists, was prepared to inform the Administration’s proposed rule clarifying which waters are protected under the Clean Water Act. In July 2013, the EPA Science Advisory Board (SAB) launched an SAB Expert Scientific Peer Review of the Connectivity Report.<sup>8</sup> In September 2013, the agencies released the Draft Connectivity of Streams and Wetlands Science Report for public comment. Also in September 2013, after holding up action on the Clean Water guidance in the Office of Management (OMB) for almost two years, the Administration sent its draft proposed Clean Water Rule to OMB for interagency review.

In March 25, 2014, after months of interagency review, the EPA and the Army Corps of Engineers jointly proposed the formal rule clarifying and partially restoring the historic scope of waters protected under the Clean Water Act. The 2-page proposed rule text in the federal register was thoroughly explained and supported by a lengthy preamble, including both scientific and legal appendices, the publicly available Connectivity Science Report, and a thorough Economic Analysis. **The 200-day public comment period ended November 14, 2014.<sup>9</sup> Americans submitted over 1 million comments on the proposed rulemaking, and these comments were overwhelmingly in support of the rulemaking.**

In late September-early October 2014, the SAB issued reports affirming the scientific basis for the proposed rule (SAB Rule Letter)<sup>10</sup> and affirming – with recommendations for enhancing –

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<sup>7</sup> See

<https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414&CFID=56176401&CFTOKEN=47329782>

<sup>8</sup> See SAB Peer Review process at:

[http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr\\_activites/Watershed%20Connectivity%20Report!OpenDocument&TableRow=2.1#2](http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Watershed%20Connectivity%20Report!OpenDocument&TableRow=2.1#2).

<sup>9</sup> See EPA Waters of the U.S. rulemaking process materials at: <http://www2.epa.gov/uswaters>.

<sup>10</sup> EPA SAB letter to Administrator McCarthy, *Science Advisory Board (SAB) Consideration of the Adequacy of the Scientific and Technical Basis of the EPA’s Proposed Rule titled “Definition of Waters of the United States under the Clean Water Act”* (September 30, 2014) (SAB Rule Letter) at:

[http://yosemite.epa.gov/sab/sabproduct.nsf/518D4909D94CB6E585257D6300767DD6/\\$File/EP A-SAB-14-007+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/518D4909D94CB6E585257D6300767DD6/$File/EP A-SAB-14-007+unsigned.pdf)

the scientific accuracy of the Connectivity Report (SAB Connectivity Peer Review Letter).<sup>11</sup> The Connectivity Report was revised and strengthened in accordance with the SAB recommendations and was released in final form in January 2015.<sup>12</sup> **Both the SAB report and the Final Connectivity Report inform the agencies' final "waters of the U.S." rule.**

Throughout 2014, EPA held hundreds of stakeholder meetings, including repeated meetings with agricultural and municipal and other stakeholders seeking improved clarity in the rulemaking. This rigorous and transparent rulemaking process offers the best opportunity in a generation to clarify which waters are – and are not – waters of the U.S. subject to the Clean Water Act in a manner that provides more clarity than ever before.

##### **5. The Clean Water Rule Fosters Strong Local Economies and Millions of Jobs that Depend upon Clean and Abundant Water and Healthy Wetlands and Waterways.**

Healthy wetlands and streams are economic engines for local recreation-based economies. Every year 47 million Americans head to the field to hunt or fish. For example, the American Sportfishing Association reports that **anglers generated more than \$201 billion in total economic activity in 2011, supporting more than 1.5 million jobs.**<sup>13</sup> The U.S Fish and Wildlife Service estimated that duck hunting in 2006 had a positive economic impact of more than \$2.3 billion, supporting more than 27,000 private sector jobs.<sup>14</sup>

In some rural, mountain communities, river recreation and related activities generate the largest share of the local economy. Indeed, throughout the headwaters states, river recreation, including boating, fishing and wildlife watching, represent billions of dollars in commerce.<sup>15</sup> In the Colorado River Basin portion of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, 2.26 million people participated in water sports in 2011, spending \$1.7 billion that generated \$2.5 billion in total economic output.<sup>16</sup>

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<sup>11</sup> EPA SAB letter to Administrator McCarthy, *SAB Review of the Draft EPA Report Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* (October 17, 2014) (SAB Connectivity Peer Review Letter) at: [http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr\\_activites/AF1A28537854F8AB85257D74005003D2/\\$File/EPA-SAB-15-001+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/AF1A28537854F8AB85257D74005003D2/$File/EPA-SAB-15-001+unsigned.pdf)

<sup>12</sup> *Final EPA Report: Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* (January 2015) at: <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=296414#Download>

<sup>13</sup> American Sportfishing Association, *Sportfishing in America* (January 2013).

<sup>14</sup> Economic Impact of Waterfowl Hunting in the United States, Addendum to the 2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, November 2008. US Fish and Wildlife Service.

<sup>15</sup> Western Resource Advocates 2014 Rule Comments.

<sup>16</sup> SOUTHWICK ASSOC., ECONOMIC CONTRIBUTIONS OF OUTDOOR RECREATION ON THE COLORADO RIVER & ITS TRIBUTARIES (May 3, 2012) (Table E-3), *available at* [http://protectflows.com/wp-content/uploads/2013/09/Colorado-River-Recreational-Economic-Impacts-Southwick-Associates-5-3-12\\_2.pdf](http://protectflows.com/wp-content/uploads/2013/09/Colorado-River-Recreational-Economic-Impacts-Southwick-Associates-5-3-12_2.pdf).



The U.S. Fish and Wildlife Service reports that in 2011, \$7.5 billion was spent on wildlife recreation in California alone, including \$2.3 billion on fishing, and more than 7.8 million people participated in these recreational activities in California. California's thriving brewing industry also relies on clean water. Small California breweries contribute almost \$4.5 billion to the state economy every year and support more than 44,000 jobs.

Another indication of the economic implications of protecting the Nation's water resources is revealed in the example of the actions taken by New York City to initiate a \$250 million program to acquire and protect up to 350,000 acres of wetlands and riparian lands in the Catskill Mountains to protect the quality of its water supply rather than constructing water treatment plants which could cost as much as \$6-8 billion. (Dailey et al. 1999). In South Carolina, a study showed that without the wetland services provided by the Congaree Swamp, a \$5 million wastewater treatment plant would be required (<http://water.epa.gov/type/wetlands/people.cfm>).

The algal blooms that cause health problems also come at high economic costs. For example, Dodds et al (2009) estimated that the total annual cost of the eutrophication of U.S. freshwaters was \$2.2 billion. This estimate included recreational and angling costs, property values, drinking water treatment costs, and a conservative estimate of the costs of the loss of biodiversity. Polasky and Ren (2010) cited research that estimated that if two lakes (Big Sandy and Leech) in Minnesota had an increase in water clarity of three feet, lakefront property owners would realize a benefit of between \$50 and \$100 million.

By any measure, clarifying and restoring clean water protections for America's waters is a good investment for healthy communities and a healthy economy.

#### **6. The Clean Water Rule, like the Clean Water Act, Enjoys Widespread, Bi-Partisan Support.**

Poll after poll shows broad public support for clean water, the Clean Water Act, and the Clean Water Rule. In 2015, the bi-partisan team of Public Opinion Strategies and Greenberg Quinlan Rosner Research found that **83% of hunters and anglers supported using the Clean Water Act to protect small streams and wetlands.**<sup>17</sup> Forty-nine percent (49%) of the sportsmen polled identified with the Tea Party. Support for this policy was strong across the political spectrum with 77 percent of Republicans, 79 percent of Independents and 97 percent of Democrats in favor. **Fully 89 percent said that the Clean Water Act has been "more of a good thing" for the country, with majorities of every single demographic sub-group echoing this sentiment.** It comes as no surprise, then, that the Clean Water Rule enjoyed overwhelming public support through the extended rulemaking process.

Clean water and the Clean Water Act have traditionally received strong bipartisan support. EPA Administrators serving Republican Presidents, from Russell Train (1973-1977) to William Reilly (1989-1993), have strongly supported broad protections for wetlands and streams. Republican leader Senator Howard Baker of Tennessee echoed these words of support when the Clean Water

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<sup>17</sup> [http://www.nwf.org/~media/PDFs/Water/2015/2015-Sportsmen-Poll/National\\_NWF-Sportsmen-Water-Survey\\_2015.pdf](http://www.nwf.org/~media/PDFs/Water/2015/2015-Sportsmen-Poll/National_NWF-Sportsmen-Water-Survey_2015.pdf)

Act was amended in 1977: “[t]he once seemingly separate types of aquatic systems are, we now know, interrelated and interdependent. We cannot expect to preserve the remaining qualities of our water resources without providing appropriate protection for the *entire resource*.”<sup>18</sup> In 1986, the Reagan administration developed the broad definition of waters of the United States<sup>19</sup> and President George H.W. Bush confirmed “no net loss” of wetlands as his administration policy in January, 1989.

In 2003, in the face of strong opposition, the Bush Administration’s EPA was forced to withdraw an advanced notice of proposed rulemaking to potentially remove from Clean Water Act jurisdiction many non-navigable, intrastate wetlands, streams and other waters. That spring, 39 state agencies and hundreds of thousands of individuals and organizations submitted comments urging the EPA and the Corps not to reduce the historic scope of waters protected under the Clean Water Act. Later that year, over 200 members of Congress from both parties (including Rep. Paul Ryan among others) wrote a letter to President Bush urging him “not to pursue any policy or regulatory changes that would reduce the scope of waters protected under the Clean Water Act.”

The Clean Water Rule, like the Clean Water Act, enjoys widespread, bi-partisan public support.

## CONCLUSION

The National Wildlife Federation strongly supports this historic “waters of the United States” rulemaking as necessary and the best chance in a generation to clarify which waters are – and are not – “waters of the United States” protected by the 1972 Clean Water Act. The final Clean Water Rule, once affirmed by the Courts, will provide greater long-term certainty for landowners, better protect important streams and wetlands and the fish, wildlife, and communities that depend on them, and advance our collective efforts to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

## ATTACHMENTS:

**Clean Water Rule Infogram**  
**Clean Water Rule Timeline 2001-2016**

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<sup>18</sup> 123 Cong. Rec. 26,718 (Aug. 4, 1977) (emphasis added).

<sup>19</sup> See <http://www2.epa.gov/sites/production/files/2015-06/documents/epa-hq-ow-2011-0880-20862.pdf> at 37056.