September 10, 2024

The Honorable Sam Graves
Chairman
Committee on Transportation & Infrastructure

United States House of Representatives
1135 Longworth House Office Building
Washington, D.C. 20515

The Honorable Rick Larsen
Ranking Member
Committee on Transportation & Infrastructure

United States House of Representatives
2163 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David Rouzer
Chairman
Subcommittee on Water Resources & Environment

United States House of Representatives
2333 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Grace Napolitano
Ranking Member
Subcommittee on Water Resources & Environment

United States House of Representatives
1610 Longworth House Office Building
Washington, D.C. 20515

Re: Subcommittee Hearing Titled, "Waters of the United States Implementation Post-Sackett Decision: Experiences and Perspectives"

Chairman Graves, Ranking Member Larsen, Subcommittee Chairman Rouzer, and Subcommittee Ranking Member Napolitano,

The undersigned members and partners of the Clean Water for All Coalition are writing in response to the announced hearing to examine how the U.S. EPA ("EPA"), the U.S. Army Corps of Engineers ("USACE"), states, and other stakeholders are implementing the Supreme Court's decision in *Sackett v. EPA*. We write to share our concerns that the Supreme Court's decision makes it impossible for the country to achieve Congress's objective in passing the Clean Water Act: to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

Clean Water for All is a national coalition that brings together diverse organizations to advance equitable policies that promote and increase clean water protections, access, and affordability across the nation. Our members are from all across the country and include hunters and fishers, local waterkeepers, environmental justice advocates, and sustainable businesses.

The membership recognizes that clean and abundant water resources are important for public health, agriculture, transportation, flood control, climate resilience, energy production, recreation, fishing and shellfishing, municipal and commercial uses, indigenous cultural practices, and much more – because our waters are all intimately connected. For example, polluting or destroying a community's local wetlands or streams threatens its groundwater reserves and can worsen flood risks during intense storms. What happens to a community's streams and wetlands will also impact the quality of the water that their downstream neighbors have, which they often rely on for drinking water and other important uses.

Before the Clean Water Act, a patchwork of state requirements failed to prevent water bodies – from large, iconic rivers and lakes to neighborhood creeks and ponds – from harmful levels of pollution. A state-by-state

approach without a federal backstop of safeguards enabled a “race to the bottom,” where states with weaker protections became safe havens for polluters . It led to some of the worst environmental crises in our nation’s history:

- The Delaware River was so polluted it darkened the paint on passing ships.
- 26 million fish died in a single Florida lake in January 1969, triggered by food processing plants dumping waste into a creek upstream.
- An oil spill in 1969 near Santa Barbara spewed an estimated 3 million gallons of crude oil into the Pacific Ocean — killing thousands of birds, fish and sea mammals.
- Lake Erie was considered “functionally dead,” with pollution from factories, sewage and farms triggering algal outbreaks that smeared beaches and killed fish.
- The federal government dumped nearly 50,000 drums of low-level radioactive waste in the Pacific Ocean west of San Francisco between 1946 and 1970.
- General Electric discharged more than one million pounds of Polychlorinated Biphenyls (PCBs) in the Hudson River over a 30-year period. A 200-mile stretch of the river remains contaminated to this day.

In response, Congress passed the Clean Water Act – an ambitious law that aimed to make water bodies swimmable and fishable by 1983 and to eliminate pollutant discharges by 1985. The law’s various protections – including its broad applicability to waters of all types – drove towards these goals and were instrumental in waterways across the nation becoming far cleaner. Waters that were once effectively open sewers came back to life and became treasured destinations for recreation and commerce.

But the Clean Water Act did not fully achieve its objective, as two recent reports make clear. In March, the U.S. Fish & Wildlife Service released a report to Congress about wetland trends in the continental United States during the period from 2009–2019. That report revealed that the rate of wetlands loss in the country accelerated in recent years, and that the nation has lost approximately 670,000 acres of vegetated wetlands, mostly by conversion to much less ecologically valuable ponds. And just two weeks ago, EPA’s Office of Water released the National Lakes Assessment 2022 Report, evaluating the health of our nation’s lakes between 2017 and 2022. Half of the country’s lakes are in poor condition due to nutrient pollution, and both the number of lakes with good shallow water habitat and the number of lakes with good ratings for lakeshore disturbance decreased by nine percent. The detection of microcystins – toxins created by algae outbreaks -- increased by almost 30 percentage points, to 50%. These results reveal that the work of the Clean Water Act was far from done.

And then the Supreme Court made things far worse. In May 2023, the Court decided *Sackett v. EPA*, the worst judicial rollback of environmental protections ever. That ruling said that the federal Clean Water Act does not protect most types of wetlands, even though they are critically important by themselves and for the health of all kinds of other waterbodies. The Court also limited the law's ability to protect many other waters. The decision removed federal protections for millions of acres of wetlands and thousands of stream miles throughout the country. The decision has serious consequences across the country and has endangered the drinking water sources of tens of million people. The harm of the Court’s decision is difficult to overstate, and it will only get worse with time, as new activities destroy and pollute waters without the kinds of pollution controls and required mitigation the Clean Water Act would have required.

Yet polluters are not satisfied. They are attempting to remove even more protections across the country. For one, through litigation challenging the regulatory changes following *Sackett*, several parties are pushing for rulings that would further weaken the Clean Water Act and would make water bodies’ protections depend on novel and vague concepts – an approach completely at odds with their alleged interest in clarity and regulatory stability. In

addition, corporate polluters and developers have worked to weaken state-level clean water protections and oppose states' efforts to strengthen their safeguards to fill in the gap *Sackett* created, which is in substantial tension with rhetoric supporting states' ability to formulate their own policies on clean water.

After *Sackett*, countless water bodies will be vulnerable to pollution and destruction without Clean Water Act safeguards; these harms could be magnified if industry efforts succeed. Protections for wetlands and other waters left at risk vary significantly from state to state. And, as the enclosed report, "*Sackett v. EPA*: The State of Our Waters One Year Later" by Clean Water for All, reveals, enacting protections to fill the gaps the decision created is difficult – especially when some states have sought to weaken their programs to limit protections only to those waters that the Court allowed the federal law to cover.

Without intervention, the deregulation from *Sackett* will exacerbate these negative trends, endangering the wetlands and waterways we depend on for drinking water, flood resilience, thriving economies, and recreation and enjoyment. Everyone should have to play by the same set of rules, and whether your water is protected shouldn't depend on what zip code you happen to live in. Ultimately, leaders in Congress will need to repair the harm that the Supreme Court caused. In the meantime, however, because each day that passes with diminished protections will mean more wetlands and streams polluted and destroyed, we encourage Congress to support state efforts to strengthen their own laws.

Sincerely,

Alabama Rivers Alliance

American Rivers

American Rivers

Amigos Bravos

Bayou City Waterkeeper

Bright Neighborhood CDC

Center for Water Security and Cooperation

Clean Water Action

Committee on the Middle Fork Vermilion River

Concerned Citizen

Earthjustice

Environmental Law & Policy Center

Environmental Protection Network

For Love of Water (FLOW)

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Freshwater Future

Freshwater Future

Friends of the Rouge

GreenLatinos

Huron River Watershed Council

Idaho Rivers United

Illinois Division, Izaak Walton League of America

Indiana Sportsmens Roundtable

Iowa Environmental Council

Izaak Walton League of America

Just Transition Northwest Indiana

Kentucky Waterways Alliance

Kentucky Waterways Alliance

Lake Erie Advocates

Lake Superior Watershed Conservancy

Latino Farmers & Ranchers International, Inc.

League of Conservation Voters

Massachusetts Rivers Alliance

Massachusetts Rivers Alliance

Milwaukee Riverkeeper

Milwaukee Riverkeeper

National Wildlife Federation

Natural Heritage Institute

Natural Resources Defense Council

Ohio Environmental Council

Park Watershed

PennFuture

Personal

Potomac Riverkeeper Network

President Ohio Division of the Izaak Walton League of America

River Alliance of Wisconsin

River Network

Sierra Club

Socially Responsible Agriculture Project

SOH2O Save Our Water

Southern Environmental Law Center

Tip of the Mitt Watershed Council

Universal Access to Clean Water for Tribal Communities

Verde

Waterkeeper Alliance

Waterkeepers Chesapeake

Winyah Rivers Alliance

Young, GIfted & Green