



February 7, 2022

Environmental Protection Agency  
EPA Docket Center  
Docket No. EPA-HQ-OW-2021-0602  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

*Attention: ID No. EPA-HQ-OW-2021-0602*

Dear Administrator Regan and Assistant Secretary Connors,

On behalf of the Healing Our Waters – Great Lakes Coalition and **XX** of our member and partner organizations representing thousands of concerned citizens in the Great Lakes region, we write in support of the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”) proposed rule to revise the definition of “waters of the United States” (86 FR 69372) under the Clean Water Act (“CWA”).

Clean water is a basic need, and we need to do everything we can to ensure that every person has access to clean, safe, and affordable drinking water. With many of our cities and towns living with unsafe drinking water, we need more – not less – protection for clean water. Re-establishing strong clean water protections are essential for healthy people and healthy communities.

The weakening of clean water protections under the Trump Administration’s Navigable Waters Protection Rule (85 FR 22250), or NWPR, published last year, was a significant step backward for the health of our region’s waterways and the protection of our nation’s drinking water. This interpretation of the Clean Water Act ignored the overwhelming scientific evidence of the connectivity of waterways that we all rely on; discounted the negative impacts of unregulated pollution in ephemeral and intermittent streams; and placed our drinking water and the waters that drive our economy at great risk.

In August 2021, the US District Court in Arizona remanded and vacated the NWPR, recognizing the lack of scientific basis and potential to result in environmental harm. Though the court decision was a significant win for water protection, the resulting uncertainty necessitates clear action to clarify the interim regulatory regime. The Healing Our Waters-Great Lakes Coalition supports the agencies’ proposed rule to restore the more protective 1986 regulatory definition of “waters of the United States” and urge the agencies move quickly towards a second rulemaking to establish a new more protective, science-based, and robust permanent regulation.

Protecting and restoring wetlands and streams is critical to the restoration and protection of the Great Lakes. The science overwhelmingly concludes that upstream waters in tributaries

(intermittent, ephemeral, etc.) exert strong influence on the physical, biological, and chemical integrity of downstream waters. Pollution in tributaries and upstream waters feed into rivers and lakes, including the Great Lakes. In the Great Lakes region half of streams do not flow all year and, along with adjacent wetlands, are at great risk of increased pollution and destruction absent effective Clean Water Act protection.

Clean water is essential to the more than 30 million people -- over a third of the 85 million people that call Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New York home -- who are dependent on public drinking water systems that rely on intermittent, ephemeral, and headwater streams.<sup>1</sup> Many of these waters are at risk to pollution and harm without a robust science-based rule in place. According to the U.S. Fish and Wildlife Service, the rate of wetlands loss accelerated nationally by 140 percent from 2004 to 2009, the years immediately after Supreme Court rulings and subsequent agency action limited Clean Water Act protections.<sup>2</sup> The Great Lakes region has already lost over 66 percent of their historic wetlands, providing a clear need for repeal of the existing rule and the establishment of a clarifying rule that protects the wetlands and streams that feed drinking water supplies to stop this catastrophic loss.<sup>3</sup>

Protecting streams and wetlands is vital to the long-term restoration of the Great Lakes ecosystem and the long-term economic benefits for the region and the country. To date, the federal government has invested more than \$3.8 billion to restore and protect the Great Lakes. These investments are producing results in local communities across the region while also creating jobs. But serious threats remain. Robust funding needs to go hand-in-hand with effective policy solutions so that restoration efforts are as efficient and effective as possible. Weak and misguided standards that allow for the pollution of local waters, or their destruction, undermines current restoration efforts and puts the health of communities at risk.

Moreover, stronger protections are central to our region's ability to prioritize climate change action and to address environmental injustice. The ecosystem services headwaters, ephemeral, and intermittent streams provide to the health of the Great Lakes and lakes and rivers throughout our region —flood mitigation, carbon sequestration, water purification, groundwater recharge, wildlife habitat—are more critical every year as the climate crisis puts additional pressure on our natural resources and communities. As climate change drives more severe storms, the role of wetlands and intermittent streams in flood protection will become even more vital. And as climate change intensifies drought, our wetlands will serve as essential reservoirs of water and groundwater recharge.

Preserving and protecting streams and wetlands is also essential to protect the health of communities that are facing the impacts of environmental degradation, pollution, and flooding. Clean drinking water is a basic need, and we should be doing all we can to ensure that everyone

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<sup>1</sup> U.S. Environmental Protection Agency. 2009. "Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S."

<sup>2</sup> Dahl, T.E. 2011. "Status and trends of wetlands in the conterminous United States 2004 to 2009." U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 45.

<sup>3</sup> Dahl, T.E. 1990. "Wetlands Losses in the United States 1780's to 1980's." U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 6.

has access to clean, safe, and affordable drinking water. Re-establishing strong clean water protections is essential to achieving the goals of swimmable, fishable, and drinkable waters.

The Healing Our Waters-Great Lakes-Coalition urges the EPA and Corps to take quick action to restore the more protective 1986 guidance and to move ahead swiftly with a new proposed rule that strengthens clean water protections and rises to the intent of the Clean Water Act “to restore and maintain the chemical, physical and biological integrity of the nation’s waters.” With many of our cities and towns living with unsafe drinking water, we need more protections – not less. The current uncertainty weakens federal clean water protections, opening the door for increased environmental harm and the dismantling of clean water protections at the state level, which puts communities at-risk.

In fact, we’ve already seen Great Lakes states establish or begin considering, rollbacks to clean water protections. Indiana and Ohio responded to the NWPR in 2021 by rolling back and proposing reductions in wetland protections, respectively. Many Great Lakes states severely restrict the scope of state wetland protections, for example: class II wetlands are rarely protected in Indiana, only wetlands connected to traditionally navigable waters or over five acres are protected in Michigan, nonfederal wetlands are exempt in Ohio. No state responded to the NWPR by expanding state wetland protection, providing no evidence to support the idea that the states will step in to protect wetlands that lose federal protection.

The Clean Water Act turns 50 this year. What better way to honor this moment than ensuring future generations have the clean water they need for drinking, recreation, fishing, farming and more in our Great Lakes region and beyond. EPA must act quickly to finalize this rule and move forward with protections that deliver on the promise of the Clean Water Act. Given the extensive prior record on this subject, the widespread public opposition, criticism from EPA’s own science advisors, and the Court’s invalidation of the Trump-era rule, the agencies have all the justification and the tools necessary to withdraw and replace the rule. We urge the Biden Administration move ahead immediately to restore and implement the regulatory definition in effect prior to the NWPR and to begin the rulemaking process on its replacement by the end of the year, moving ahead with protections that deliver on the promise of the Clean Water Act.

Sincerely,