

United States Senate

WASHINGTON, DC 20510

April 3, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

The Clean Water Rule (80 FR 37053) clarified the scope of waters protected under the 1972 Clean Water Act, the primary federal law governing water pollution. The final rule was based not only on legal precedent, but decades of peer-reviewed science, agency expertise, and experience implementing the Clean Water Act nationwide.¹

Section 3 of Executive Order 13778 directs EPA and the Army Corps of Engineers to consider weakening the rules significantly, based on one opinion in *Rapanos v. United States*, 547 U.S. 715 (2006).² A majority of the Supreme Court rejected that opinion, and it does not reflect the body of precedent implementing the Clean Water Act. Therefore, we are concerned of the threat that Executive Order 13778 poses to critical wetlands and to streams, including streams that feed into the drinking water supplies of 117 million Americans.³

We respectfully request a response that addresses the following:

- In complying with Executive Order 13778, will you guarantee that drinking water quality will not be worse for the 117 million Americans who receive drinking water from public water systems that draw supply from seasonal, rain-dependent, or headwater streams?
- Under any potential revision of the rule, protections for critical streams may be lifted, erasing safeguards to prevent chronic contamination. Such a scenario could require the addition of expensive water purification technologies to ensure drinking water supplied by these waters would be safe. What would be the financial burden to municipalities supplying water? Has EPA analyzed how residential and commercial water might be impacted?
- Furthermore, chronic contamination of streams may require communities to explore alternative drinking water sources. Please provide specific case estimates of potential incurred costs for adopting alternative water sources for these communities. Please list communities that do not have reasonable alternative water sources.

¹ Federal Register. Clean Water Rule: Definition of “Waters of the United States.” EPA–HQ–OW–2011–0880; FRL–9927–20–OW.

² Federal Register. Executive Order 13778 of February 28, 2017. Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule.

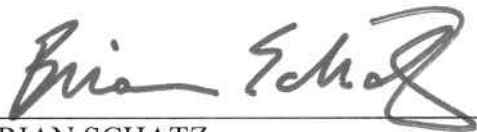
³ U.S. Environmental Protection Agency. Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral, and Headwater Streams in the U.S. <https://www.epa.gov/cwa-404/geographic-information-systems-analysis-surface-drinking-water-provided-intermittent>

- Can you guarantee that no American's health will be harmed by the reevaluation and reconsideration of the Clean Water Rule, compared to the protections that would be in place should the original rule be implemented as written? Please provide the scientific documentation that informs your response to this question.
- Does EPA have studies establishing that contaminating or destroying upstream water bodies will not impact the condition of downstream waters?
- Under the Clean Water Act, states must develop a list of impaired and threatened water bodies and every pollutant criteria that is exceeded. Total maximum daily loads (TMDLs) are then determined, representing the total amount of contaminants (chemical contaminants, fecal bacteria, heavy metals, etc.) the impaired/threatened waters can receive and still remain in compliance with existing water quality criteria. In reconsidering the Clean Water Rule, has EPA studied the expected effect on identified impaired waters in terms of water quality exceedances? Please provide any information the agency possesses about whether any waters are expected to be listed as impaired/threatened due to any repeal or weakening of the rule.

Subject to the Administrative Procedure Act, the Clean Water Rule was carefully evaluated over many years and nearly 90% of the more than 1 million public commenters supported the proposal.⁴ Moreover, we are concerned that revising or revoking this rule will only increase uncertainty amongst farmers, developers, and other stakeholders that want clarity about what water bodies the law protects from pollution.

We urge you to continue EPA's mission of making the protection of human and environmental health your highest priority, and we appreciate your prompt attention to this matter.

Sincerely,



BRIAN SCHATZ
U.S. Senator



BENJAMIN L. CARDIN
U.S. Senator



CHRIS VAN HOLLEN
U.S. Senator



SHELDON WHITEHOUSE
U.S. Senator

⁴ U.S. Environmental Protection Agency. Clean Water Rule Response to Comments – Mass Mailing Campaigns. https://www.epa.gov/sites/production/files/201506/documents/cwr_response_to_comments_mass_mailing_campaigns.pdf



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