



April 15, 2019

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington D.C. 20460

R.D. James, Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington DC 20310-0108

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Ave NW
Washington DC 20460
OW-Docket@epa.gov

Re: Revised Definition of “Waters of the United States,” Docket ID No. EPA-HW-OW-2018-0149

Administrator Wheeler and Assistant Secretary James:

On behalf of the Mystic River Watershed Association we write to you to express our opposition to the proposed new definition of “Waters of the United States” (WOTUS) proposed by U.S. EPA and the Army Corps of Engineers (the “agencies”).

The Mystic River Watershed Association (MyRWA) is dedicated to the preservation and enhancement of the Mystic River Watershed, which represents the interests of thousands of residents of eastern Massachusetts. The mission of MyRWA is to protect and restore the Mystic River, its tributaries, and watershed lands for the benefit of present and future generations and to celebrate the value, importance, and great beauty of these natural resources. This includes working to improve the ecology, water quality, public access and recreation, and wildlife habitat, for the benefit of the 22 cities and towns, 600,000 residents, and many businesses in the 72-square-mile watershed.

This proposal disregards the progress and the experience gained from implementation of the 1972 Clean Water Act (CWA). It ignores the scientific evidence, interagency review, and extensive public comment that supported the 2015 WOTUS Rule, and it threatens to leave many critical waters unprotected. We urge the Agencies to withdraw this proposal, which is expected to eliminate Clean Water Act protections for more than half of the nation’s wetlands and thousands of miles of streams, including sources of drinking water.

Much is at stake for the health of our Nation's waters. The proposed rule represents a drastic rollback in Federal protections under a long list of important Clean Water Act programs. It removes from protection many intermittent (seasonal) streams, all ephemeral (rain-dependent) waters, and many wetlands with important connections to nearby rivers, lakes and streams. The proposal relies on vague or undefined terms (such as "typical year") that would have major implications for CWA coverage.

The proposed rule would remove from CWA protections approximately 51% of the wetland areas remaining in the continental U.S. It would also remove protection from at least 18% of all streams (those that are classified as ephemeral) and potentially many more stream miles – some of the 52% streams that are classified as intermittent. Only the 30% of all stream miles that are perennial are assured of being protected under this proposal.

In Massachusetts, the proposed rule would likely reduce Federal protection of vernal pools, isolated vegetated wetlands, ephemeral streams and many intermittent streams. Even where these waters would retain protection under the state's Wetlands Protection Act and the state Clean Water Act, the proposed rule would disrupt many years of effort to coordinate and streamline implementation of federal and state permitting requirements for such waters. Massachusetts's waters also receive flow from New Hampshire and Vermont, and contribute flow to Rhode Island, Connecticut and ultimately to Long Island Sound. Eliminating consistent protection of interstate waters could negatively impact the health of these interconnected waterways.

In our region and others across America, this reckless rollback would allow uncontrolled pollution of critical water resources vital to our ecology, health, and quality of life, commercial fishing, and navigation. It could also harm the competitiveness of our regional economy by forcing us to spend more to clean up the pollution of deregulated waters. We should address these threats by strengthening the Clean Water Act and its applicability, not weakening them.

The Mystic River Watershed as an example

The EPA's remarkable progress in cleaning up our own Mystic River and its tributaries is a real-world demonstration that the Clean Water Rule should be retained and strengthened, not weakened. Environmental protection and economic growth in the Mystic watershed have gone hand-in-hand, with smart development, more productive land use, and rising land values emerging as water quality and ecology have improved. The EPA's Waters of the U.S. Prepublication Notice states, "[i]t is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution."

By cleaning up pollution sources in tributary streams, wetlands and wastewater treatment systems that drain into the Mystic River, the EPA, working with Massachusetts and local partners, has achieved dramatic improvements in less than a decade: the Mystic River has improved from a water quality grade of D in 2007, to a grade of A-minus in 2016, and is now suitable for boating, fishing and recreational use most of the time. As the river has become cleaner, safer and more attractive for humans and wildlife, the land corridor along its banks, once

degraded by pollution and underutilized, has attracted extraordinary investment and transformed into one of the fastest-growing residential, commercial, and innovation districts in southern New England, with new housing, businesses and jobs as well as new parks and recreation sites. The Clean Water Rule, which clarified protection of smaller tributary streams and of wastewater systems under the Clean Water Act, was essential for this progress. Principles defined in the Clean Water Rule, including recognizing upstream tributaries as part of the ecosystem that contributes to downstream water quality, and including wastewater management in protections, were in practice within the Mystic Watershed during its transformation, and offer compelling evidence that the approach defined in the Rule works to protect human health and the environment.

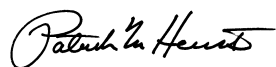
In our watershed, and communities across America, a rollback of the Clean Water Rule would turn back the clock, gut essential protections, and allow degradation of our waters, which so many citizens and businesses depend on, from upstream pollution sources. We call on EPA and the Corps to reconsider this reckless repeal, which undermines Clean Water Act protection and the public health and environment of the American people. Clean water is essential to life, and the people of our states and the nation deserve the strong federal baseline established by the Rule to ensure that the benefits of clean water are shared equally.

The goal of the 1972 Clean Water Act is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” Since the law was passed, we have made significant progress in cleaning up many of our most treasured rivers. The proposed rule threatens to reverse that progress, in service of controversial legal interpretations. The proposed WOTUS definition does not reflect watershed science – which was extensively considered in developing the 2015 rule. The proposal is also not supported by full analysis of the affected waters or the likely public health, environmental and economic impacts. The importance of this rule and the substantial risks posed to our waters of a flawed definition demand a responsible, deliberate, and science-based policy process.

We urge the agencies to withdraw the proposed rule and maintain the 2015 WOTUS rule while they take a more measured and scientific approach to evaluating whether additional changes are needed.

Thank you for your consideration.

Sincerely,



Patrick Herron
Executive Director

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