April 17, 2018

RE: 40+ Groups Oppose Attacks on Vital Clean Water Act safeguard

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of our millions of members and supporters and in light of the hearing today entitled, "The Appropriate Role of States and Federal Government in Protecting Groundwater," the undersigned groups urge the Environment and Public Works Committee to strongly consider the harmful impacts that weakening the Clean Water Act's application to discharges to groundwater via a hydrological connection could have on human health and water quality of our nation's vital rivers, lakes, and bays.

The Clean Water Act was passed into law with bipartisan support because Congress recognized the need to ensure fishable, swimmable, and drinkable water for all people across the country. For decades, the law has been understood to require National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act for pollution discharged into groundwater that flows into surface waters. The plain language of the Act bans unpermitted discharges and contains no exclusions for pollution traveling through groundwater to reach a protected river, lake, bay, or other waterway. Any attempt by EPA to exempt pollution traveling through groundwater with a hydrological connection would be nothing more than a loophole by EPA to weaken vital safeguards for the benefit of polluters.

Contrary to the claims in the notice for public comment circulated by EPA, this position has been overwhelmingly supported for decades by federal court decisions, including a recent unanimous decision by the Ninth Circuit Court of Appeals that was just reaffirmed. For decades, the county of Maui has injected three to five million gallons of treated sewage into groundwater each day that could be traced to the Pacific Ocean, where the sewage was linked to harmful algal blooms that smothered coral reefs and caused serious harm to the marine ecosystem. As the panel stated, "At bottom, this case is about preventing the County from doing indirectly that which it cannot do directly." The panel further stated that, "The County could not under the CWA build an ocean outfall to dispose of pollutants directly into the Pacific Ocean without an NPDES permit. It cannot do so indirectly either to avoid CWA liability. To hold otherwise would make a mockery of the CWA's prohibitions."[1]

In another case in Tennessee, a United States District Court in 2017 found that the Tennessee Valley Authority (TVA) has for years violated the Clean Water Act at its Gallatin coal-fired plant by polluting the Cumberland River with coal ash and heavy metals that flow into the river with groundwater through sinkholes, seeps, and leaks in its coal ash lagoons on the river's banks.[2]

The recent notice is clearly nothing more than another attempt by Scott Pruitt's EPA to further undercut bedrock protections for our rivers, lakes, and bays for the benefit of polluting industries. Across the country, too many communities are forced to deal with polluted water sources from leaking coal ash impoundments, bursting pipelines, unpermitted flows of harmful contaminants, large-scale industrial animal waste, and other polluting facilities. Instead of addressing these

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[1] *Hawai'i Wildlife Fund v. County of Maui,* 881 F.3d 754, *order and amended opinion,* No. 15-17447 (9th Cir. 2018)

[2] *Tenn. Clean Water Network v. Tenn. Valley Auth.*, 273 F. Supp. 3d 775 (M.D. Tenn. 2017), *appeal docketed*, No. 17-6155 (6th Cir. Oct. 3, 2017).

pressing issues, EPA rolled out a request for comments with very little outreach and no scheduled stakeholder meetings. The timing and motivation behind this request, given the decisions from the courts requiring accountability from polluters, is questionable, and the lack of serious outreach and stakeholder involvement from the agency on what would potentially be a significant reinterpretation of the Clean Water Act, is very concerning.

People across the country rely on the Clean Water Act to guard their communities and drinking water sources from harmful pollution and count on the EPA to hold polluters accountable. As Congress stated, the goal of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." An exclusion for pollution being dumped via a hydrological connection would create a glaring loophole in the Clean Water Act, would undercut EPA's mission to protect public health and the environment, and would expose waters to unchecked pollution.

We urge the committee to consider these important factors in its hearing today.

Sincerely,

National Groups
Alaska Wilderness League
American Rivers
Center for Biological Diversity
Clean Water Action
Earthjustice
Endangered Species Coalition
Environment America
Green For All
GreenLatinos
Hip Hop Caucus
League of Conservation Voters
National Latino Farmers & Ranchers Trade Association
National Wildlife Federation
Natural Resources Defense Council
PolicyLink
River Network
Rural Coalition
Save EPA
Sierra Club
Waterkeeper Alliance

Regional & State/Local Groups
Environmental Law & Policy Center, *Great Lakes*
Gulf Restoration Network, *Gulf region*
Southern Environmental Law Center, *Southeast*
Alabama Rivers Alliance, *Alabama*
Cahaba River Society, Birmingham, *Alabama*
Arkansas Citizens First Congress, *Arkansas*

Endangered Habitats League, *Southern California*
Natural Heritage Institute, *California*
Idaho Rivers United, *Boise*, *Idaho*
Illinois Council of Trout Unlimited, *Illinois*
Prairie Rivers Network, *Illinois*
Iowa Environmental Council, *Iowa*
Northeastern Minnesotans for Wilderness, *Minnesota*
Save The River / Upper St. Lawrence Riverkeeper, *Clayton*, *New* York
Winyah Rivers Foundation, Inc., *North and South Carolina*
Ohio Environmental Council, *Ohio*
Oregon Environmental Council, *Oregon*
Virginia League of Conservation Voters, *Virginia*
OVEC-Ohio Valley Environmental Coalition, *West Virginia*
Okanogan Highlands Alliance, *Washington*
Puget Soundkeeper Alliance, *Puget Sound region*, *Washington*
Midwest Environmental Advocates, *Wisconsin*