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U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Via email: OW-Docket@epa.gov

**Re: Comments on Revised Definition of “Waters of the United States
Docket ID No. EPA-HQ-OW-2018-0149**

To Whom it May Concern,

These comments on the proposed Definition of Waters of the United States Under the Clean Water Act are submitted by Waterkeepers Chesapeake and largely incorporate the comments of the Waterkeeper Alliance. Waterkeepers Chesapeake is a coalition of eighteen independent programs working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable. We amplify the voice of each Waterkeeper and mobilize our organizations to fight pollution and champion clean water.

Waterkeepers Chesapeake works in the bays, harbors, rivers and streams of the Chesapeake Bay region. Our members fight to stop pollution in the waters that flow into the Chesapeake Bay and Coastal Bays, working in five states (Delaware, Maryland, Pennsylvania, Virginia and West Virginia) and Washington, D.C. Each member of Waterkeepers Chesapeake fights to clean up one or more waterways within the 64,000 square mile Chesapeake Bay region, and together we all work to keep the waters of the entire region healthy and safe.

The waterways that flow into the Chesapeake and Coastal Bays are damaged by pollution and waste, and their degraded condition threatens the entire Chesapeake Bay region. According to the Chesapeake Bay Program, more than half the watershed’s freshwater streams are in poor condition, almost three-quarters of the Bay’s tidal waters are impaired by chemical contaminants and less than a third of Bay waters meet water-quality standards.

Polluted waterways harm local economies, including tourism and fishing industries, and they threaten public health and safe drinking water. Federal and state agencies have a history of lax enforcement of clean water laws, and polluting industries have been allowed to contaminate local waterways to the detriment of citizens’ rights to fishable, swimmable waters. Waterkeepers Chesapeake works to uphold clean water laws and hold polluters accountable.

Anacostia Riverkeeper
Assateague Coastkeeper
Baltimore Harbor Waterkeeper
Chester Riverkeeper
Choptank Riverkeeper
Gunpowder Riverkeeper

James Riverkeeper
Lower Susquehanna Riverkeeper
Middle Susquehanna Riverkeeper
Miles-Wye Riverkeeper
Potomac Riverkeeper
Sassafras Riverkeeper

Severn Riverkeeper
Shenandoah Riverkeeper
South Riverkeeper
Upper Potomac Riverkeeper
West Rhode Riverkeeper



We fight every day for businesses, families and communities that depend on clean water. And the Clean Water Act, and implementing regulations, is one of the most important tools we have to protect our waterways from pollution.

Waterkeepers Chesapeake opposes much of the Environmental Protection Agency's ("EPA") proposed re-definition, through the elimination of the "significant nexus" test and the abandonment of the overwhelming scientific findings that was the basis for the current rule. Waterkeepers Chesapeake is also very concerned about EPA's continued efforts to categorically exclude a large number of waters, often with little grounding in science and law. Waterkeepers Chesapeake believes categorical exclusions are not dictated by the statute or the case law and are likely to lead to waters being subject to pollution that should be protected. In particular, EPA's approach to groundwater is plainly not warranted by science as demonstrated by the many comments by individual members of EPA's Science Advisory Board (SAB). Finally, Waterkeepers Chesapeake objects to EPA continuing to allow mining and coal interests to use our precious water resources as dumping grounds for their wastes through the so-called "waste treatment" exclusion from waters protected by the Clean Water Act.

INTRODUCTION

The Federal Water Pollution Control Act ('the Clean Water Act' or 'CWA') is one of our nation's most important and prescient environmental laws. Congress enacted the protections in the Federal Water Pollution Control Act at a time when news reports of horrific pollution incidents highlighted the fact that our waters were in trouble and we could not continue to allow their use as dumping grounds for pollutants without wreaking havoc on entire ecosystems and jeopardizing our drinking water, food sources, commerce and recreation. To that end, Congress' stated purpose and intent was to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Congress did not say that only those waters navigable, in fact, or with a significant nexus, would receive those protections. Rather, it defined "navigable waters" as generally as "waters of the U.S." 33 U.S.C. § 1362. The Legislative History of the 1972 Federal Water Pollution Control Act further demonstrates that Congress intended broad application of the law and its jurisdictional reach in order to foster the critical protective and remedial purposes of the law. Statements from both House Members and Senators in policy and conference committees make clear that the term "navigable" as used in the Act was not intended to constrain the reach and jurisdiction of the Act to protect against and clean up pollution in all our nation's waters. Members pointedly stated that they were concerned that inclusion of the word navigable *not* be read as limiting the Act's application in any way. Rather, their stated intent was for the Federal Water Pollution Control Act to have as broad an application as possible to protect all waters of the U.S. In particular, members noted that the intent was to move away from the constrained notions of jurisdiction and in particular notions regarding navigation, in order to ensure that waters are protected in a full and comprehensive way. *See A Legislative History of the Water Pollution Control Amendments of 1972* (Cong. Res. Serv.), at 178-79, 250-51, 327, 818, 1495.

Further, the Act is plainly a water pollution act, not a law about navigation (in any sense.) The Army Corps of Engineers, ("COE") early in the life of the Federal Water Pollution Control Act, made an unsuccessful effort to impose strict navigation constraints on its obligations by

construing its jurisdiction very narrowly under the new laws to match its jurisdiction under navigational laws such as the Rivers and Harbors Act of 1899. In *Natural Resources Def. Council v. Callaway*, 392 F.Supp. 685 (D.D.C. 1975) the court soundly rejected the COE's attempt finding that the Federal Water Pollution Control Act dictated a wider sweep in order to address pollutants to the nation's waters.

While the Supreme Court has sought a more precise definition of waters of the U.S., the fact remains that the science and the intent and purpose of the Act support broad application of protections to our nation's waters. Prior to the *Rapanos* decision, the Supreme Court agreed that the Clean Water Act broadly protected all waters. *Intl. Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987); *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 136-37 (1985) . In *Rapanos v. EPA*, the Supreme Court failed to produce a majority opinion or applicable precedent dictating otherwise. While a plurality of the justices agreed in the result—a remand, there is no one theory of Clean Water Act jurisdiction that emerges from the case and in fact, all three of the opinions directly disagree with one another. Even applying the court's *Marks* doctrine (which is itself questionable) is ultimately not useful in that no single point, even a narrow one, is agreed to by a plurality of the justices. The various theories in the case cannot be reconciled around a single point. While EPA and a few circuit courts have coalesced around Justice Kennedy's opinion, this appears to be for convenience and an attempt to formulate some statement about jurisdiction from the case, but the fact remains that no other justice subscribed to that method of determining Clean Water Act jurisdiction and any attempt to claim the Kennedy approach controls is legally suspect. The *Rapanos* decision essentially provides no precedent on how to interpret the definition of waters of the U.S. in the Clean Water act, leaving the previous precedent regarding broad application as the only controlling precedent from the Supreme Court (with the exception of the application of the Migratory Bird Rule from *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*.)

As EPA research and reporting repeatedly shows year after year, we still have a long way to go in applying the Clean Water Act and meeting its directives. Toxics are still discharged into our waters; agricultural discharges are almost wholly unregulated, account for almost half of the pollution entering waterways, and account for a very significant portion of the waters that are currently failing to meet basic standards of cleanliness (including the hypoxia problem in the Gulf and toxic algae blooms in lakes throughout the Midwest). See, e.g., EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013) where EPA reports that well over 50% of the waters assessed exhibited *poor* conditions and only 20% were classified as "good." The results by region were even more disappointing with 62% of the waters in the east classified as poor and 58% in the plains states. See also, EPA summary of states' reported water quality data (http://ofmpub.epa.gov/waters10/attains_nation_cy.control), showing that states have a poor record of assessment, but of the waters assessed, 53% of assessed rivers and streams, 68% of assessed lakes, and 66% of assessed bays/estuaries are *failing* to meet one or more water quality standards. Discharges of pollutants into our nation's water have not been eliminated and in many respects are not even controlled. Lake Erie, once a ray of hope for positive change under the Act, has descended once again into a cesspool of algae blooms and dead fish due to unabated and increasing nutrient runoff from farms and development. See reporting regarding potentially harmful 700 square mile algae bloom occupying the western basin of Lake Erie, "Miles of Algae Covering Lake Erie", New York Times, Oct. 3, 2014.

Development and agriculture continue to decimate our wetlands---ecosystems critical to wildlife, but also critical as nature's water-cleaning and flood control mechanisms. In just the last decade, agencies reported that we had lost over 50% of our wetlands nationwide; but in parts of the Midwest and coastal areas the figure is as high as 90% or more with attendant disastrous results for clean water. See, e.g., EPA Wetland Status & Trends, water.ep.gov/type/wetlands/vital_status.cfm; Dahl T.E., *Status & Trends of Wetlands in the Coterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior, at 16 and 89-90 (2011). While the USFWS reports the *rate* of wetland loss has slowed, losses still outdistance gains as recently as 2009, the last year USFWS reported. *Id.* And even when wetland acres are not lost, they are often degraded, losing functions and values as wildlife habitat, natural flood control and natural water quality control. Development also continues to contribute to stormwater runoff and hugely-altered hydrographs and erosion by eliminating wetlands and natural riparian areas and covering the landscape with impervious surfaces. Plainly, the protections of the Federal Water Pollution Control Act are still needed and still on a broad scale as we are very far from reaching its goals and directives. The greatest and most sustainable Clean Water Act success stories are directly attributable to strict application of the Act's controls.

Because the Act's comprehensive protections are so critical to the well-being of the nation and its citizens, and obviously still sorely needed, Waterkeepers Chesapeake supports EPA's science-based efforts, within the law, to ensure that all waters that are or can be affected by pollution be protected consistent with the intent and purpose of Congress in passing the Act but urge EPA to strengthen the rule as set forth below and to abandon the ill-conceived and unsupported categorical exclusions portion of the rule.

COMMENTS

I. WATERKEEPERS CHESAPEAKE OPPOSES THE PROPOSED RE-DEFINITION OF 'WATERS OF THE UNITED STATES.'

A. Waters of the United States, Generally.

Waterkeepers Chesapeake believes that the proposed definition of "waters of the United States," constitutes an abandonment of the scientific and technical data that the Agencies collected in determining the existing definition and results in an arbitrary and capricious decision by the Agencies. While Waterkeepers Chesapeake agrees that crafting an appropriate definition of "Waters of the United States" requires a balancing of scientific, policy, and legal concerns, the proposed definition essentially kicks out two legs from a three-legged stool.

The Supreme Court has recognized that new administrations may reconsider the policies of their predecessors so long as they provide a reasonable basis for the change-in approach. *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1031, 1038, 1043 (D.C. Cir. 2012), *citing FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-15 (2009) (Rehnquist, J., concurring in part and dissenting in part). As stated by the Court, "[t]he question in each case is whether the agency's reasons for the change, when viewed in light of the data available to it, and when informed by

the experience and expertise of the agency, suffice to demonstrate that the new policy rests upon principles that are rational, neutral, and in accord with the agency's proper understanding of its authority." *Fox Television Stations, Inc.* at 535.

When the 2015 Clean Water Rule was promulgated, the EPA's Office of Research and Development prepared a Science Report, "a peer-reviewed compilation and analysis of published peer-reviewed scientific literature summarizing the current scientific understanding of the connectivity of and mechanisms by which streams and wetlands, singly or in combination, affect the chemical, physical, and biological integrity of downstream waters." Clean Water Rule, 80 Fed. Reg. 37054, 37061-62. Now, the proposed rule attempts to cast aside the volumes of scientific and technical data compiled in favor of "categorical bright lines" that will undoubtedly leave vulnerable water ways unprotected.

The Agencies have made more than 400,000 CWA jurisdictional determinations following the *Rapanos* ruling. Most of these fell within the "traditional navigable waters" definition. Still, more than 120,000 of those were case-specific significant nexus determinations that depended upon the agencies expertise and authority in the scientific and technical field. Clean Water Rule, Fed. Reg. 37054, 37063. By eliminating the case-by-case application of Justice Kennedy's significant nexus test, the agencies will be ignoring the CWA's objective to "restore and maintain the chemical, physical and biological integrity of the Nation's waters," 33 U.S.C. § 1251(a), in favor of bureaucratic expediency.

B. Tributaries

Waterkeepers Chesapeake opposes the Agencies decision to only include tributaries with perennial or intermittent streams in the definition of waters of the United States. There is no scientific or legal reason to exclude tributaries of any water that is identified as a water of the United States through this rule regardless of the frequency of the tributary's flow. Tributaries plainly affect downstream waters and if the downstream water is a water of the United States then its tributaries must be protected under the Clean Water Act.

The exclusion of any tributary that does not provide at least a perennial or intermittent flow to a traditional navigable water is another arbitrary and capricious decision that ignores volumes of scientific data. The EPA's own Connectivity Report concluded that "[a]ll tributary streams, including perennial, intermittent, and ephemeral streams, are physically, chemically, and biologically connected to downstream rivers via channels and associates alluvial deposits where water and other materials are concentrated, mixed, transformed, and transported." USEPA Office of Research and Development, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," External Review Draft (Sept. 2013) at 1-3.

Since the release of that report, the EPA has not produced any data or reports to show that "discoveries in science, advances in technology, or any of the other forces at work in a dynamic society," *Fox Television Stations, Inc.* at 535, have made it necessary for the agencies to exclude ephemeral streams from inclusion as jurisdictional tributaries.

C. Subsection (s)(6) – Adjacent Wetlands

Waterkeepers Chesapeake opposes the Agencies definition of adjacent wetlands to mean “wetlands that abut or have a direct hydrologic surface connection to other ‘waters of the United States’ in a typical year. SAB previously concluded that a more scientifically accurate definition of adjacency would include the outer extent of the flood plain and all riparian areas not simply be defined by the physical touching of wetlands to waters of the United States. “...the scientific literature unequivocally supports the finding that floodplains and waters and wetlands in floodplain and riparian setting support the physical, chemical and biological integrity of downstream waters” and “although distance can be one measure to help ascertain the degree of hydrological connectivity, biological and chemical connectivity should also be considered.” Member Comments on Proposed Rule of EPA’s SAB, Dr. Mazeika Sullivan at 82 & 86, 2015.

The Agencies state that “this proposed definition would end the current practice of conducting case-specific significant nexus evaluations for non-abutting wetlands to relatively permanent and non-relatively permanent waters.” This practice would leave several waters that currently fall under the CWA’s jurisdiction vulnerable. The EPA’s own data shows that at least 18% of streams and 51% of wetlands nationwide would be no longer protected under the CWA if this rule was finalized. Ariel Wittenberg and Kevin Bogardus, *EPA claims ‘no data’ on impact of weakening water rule. But the numbers exist.*, E&E News, Dec. 11, 2018. In the Chesapeake Bay Watershed alone, at least 34,000 acres of non-tidal wetlands and headwater streams would become non-jurisdictional. “Undermining Protections for Wetlands and Streams: What the Trump Administration’s Proposed Rollback of Wetlands Regulations Means for the Chesapeake Bay Region,” Environment Integrity Project, Dec. 12, 2018.

Waterkeepers Chesapeake urges EPA to incorporate a more full definition of adjacency that is defined by the outer extent of riparian and floodplain areas and to include surface connections and hydrology in a manner that conforms with the wealth of scientific and technical data that EPA has at its disposal.

II. WATERKEEPERS CHESAPEAKE OBJECTS TO EPA’S CONTINUED PROPOSAL TO CATEGORICALLY EXCLUDE CERTAIN WATERS FROM THE PROTECTIONS OF THE CLEAN WATER ACT.

Waterkeepers Chesapeake objects to EPA’s proposal to exclude whole categories of water from receiving Clean Water Act protections. Such a result is not dictated by Supreme Court case law nor the language of the Clean Water Act. While some members of the Supreme Court expressed concern over ensuring that certain waters, specifically wetlands, had a connection to waters of the U.S., at no time has the Court addressed wholesale exclusion of certain types of waters. While EPA may desire categorically excluding some waters for the sake of convenience, such a result is not driven by case law and is contrary to the intent and purpose of the Clean Water Act.

A. Groundwater Should Not Be Categorically Excluded.

Waterkeepers Chesapeake strongly objects to EPA’s categorical exclusion of groundwater from Clean Water Act protection. EPA’s proposal will leave important waters exposed to pollution.

The groundwater exclusions are not fully-supported from a scientific perspective and may lead to regulatory confusion. The better-supported approach would be to identify, as a subcategory of “other waters,” waters where the status will be determined on a case by case basis. In that fashion, EPA will ensure that the full purpose and intent of the Clean Water Act is realized and that it will not leave waters unprotected.

As noted by various individual members of the SAB, groundwater connections to surface water do not separate along ill-defined and fairly unscientific lines such as “shallow” or “deep.” Rather, connections occur as a result of topography, geology, geography, and temporally. In late summer and fall, many western rivers are almost entirely dependent upon groundwater. Sometimes connections through geographic features such as lava tubes or karst formations are very deep, but nonetheless very direct between groundwater and surface waters. See Member Comments Aldous at 3 (must definitely include shallow unconfined aquifers as providing connections between wetland types and open waters and pointing out that inclusion of groundwater in connectivity should not simply be a function of distance and questioning exclusion of shallow subsurface flows); Brooks at 17 (exclusion of groundwater “seems ill-advised because of the likely connectivity” through different features with a potential to contaminate drinking water and connections with surface water a reasonable distance away); Gooseff at 21 (strongly questioning exclusion of groundwater and giving examples of significant connectivity between surface and subsurface waters and problems with EPA’s definitions); Kolm at 31-32 (“regional ground water flows commonly interact with the surface environment at sinks and springs” giving examples in the Floridian aquifer), at 33 (“in general, the role of regional groundwater systems in neighboring systems is not addressed by this Rule and leaves the waters of the US vulnerable”), at 34 (“Care should be taken not to imply that bedrock is impermeable because ground water flows through bedrock are important flowpaths that connect hydrologic landscapes over long distances and often across watershed boundaries”), at 39 (“as indicated with the Karst references, deep groundwater should be included as well for connectivity and include not only Karst, but certainly sedimentary systems, fractured rock systems, and volcanic systems as well...the real issue is both temporal and spatial as the SAB has clearly and thoroughly discussed”), at 43 (pointing out that the role of regional groundwater is inappropriately ignored in the proposed rule), and at 46; and Sullivan at 87 (ensuring the mechanism of connectivity is protected—even if that is groundwater—is critical). Plainly, EPA’s categorical exclusion of groundwater from the protections of the Clean Water Act (or its general exclusion with the ill-defined “shallow subsurface connection” exception) is not supported by the science and the science advisors.

EPA should therefore revise the proposed rule to provide that groundwater shall be protected as a water of the U.S. where it is hydrologically connected to surface water in a way that is not insignificant. This approach makes sense given the decision in *Hawai’i Wildlife Fund v. County of Maui*, 24 F.Supp.3d 980 (D. Ha. 2014), where the court found “[t]here is nothing inherent about groundwater conveyances and surface water conveyances that requires distinguishing between these conduits under the Clean Water Act.” at * 13. The court found that where treated effluent was injected into groundwater and months later emerged from seeps into the ocean, the discharge was covered by the Clean Water Act and required a NPDES permit. Clearly, the court understood that under the significant nexus test being used by EPA here, the ocean is protected and discharge into groundwater that gets to the ocean must be addressed. However, it makes

more sense, consistent with the approach advocated by members of the SAB, that the groundwater itself, in that connected situation, be protected as a water of the U.S. The water is plainly hydrologically connected to and affects another water of the U.S. and should be protected in its own right both for human consumption and for the obvious ultimate impact to aquatic ecosystems. It is nonsensical to protect water in a stream, then not protect it if the water molecules change to a subsurface flow, and then protect it again when those molecules surface in the ocean or a spring-fed stream. While groundwater might not in every instance be a water of the U.S., it is contrary to science, common sense, and the law to categorically exclude groundwater from ever being considered a water of the U.S. EPA should revise the rule accordingly.

Waterkeepers Chesapeake urges EPA to conform the groundwater sections of the proposed rule to the existing law and science to ensure that waters of the U.S. are fully protected as intended under the Clean Water Act. EPA should revise the rule to remove groundwater as a categorical exclusion and either fully include it in the “other waters” analysis of subsection (s) or create a new subpart in subsection (s) to ensure that groundwater that is connected to surface water, regardless of its “depth,” is protected as waters of the U.S.

III. WASTE TREATMENT EXCLUSION

Waterkeepers Chesapeake strongly objects to the continuation of the “waste treatment exclusion” for waters of the U.S. that should receive full Clean Water Act protections, particularly given that EPA has never allowed for public notice and comment on the current version of this section of the rule.

In various parts of the country—mountainous regions of Appalachia, Iron Range states in the Great Lakes, mining areas of the west and in Alaska—the “waste treatment system” exclusion is routinely invoked by federal and state agencies to allow the impoundment of natural streams or wetlands or the filling or excavation of lakes and wetlands, to drain runoff from surface mines and/or to hold tailings or overburden from mining operations. Generally (almost always) the natural stream, lake, or wetland would be considered a water of the U.S. under the existing or proposed rules. Under current practice and the so-called “waste treatment system” exception, the now impounded/excavated/filled waterbody loses its status as a protected water under the Clean Water Act meaning that they do not have to meet basic water quality standards and the mining or coal or utility is free to dump pollutants into the stream or lake or wetland without the basic protections and requirements of a Clean Water Act NPDES permit. These waste treatment ponds are often filled with things like toxic coal ash, acid-leaching mine tailings or overburden from sulfide ore deposits that will also leach acid, selenium, and other toxic metals. The ponds are often filled with sediment that can decimate spawning areas and that can affect light and temperature. The impounded wastes typically cause serious water quality degradation downstream, even when discharges from the waste ponds are covered by permits. Usually water quality constituents such as hardness, chlorides, sulfates and pH are also adversely affected. This practice and result is utterly absurd and plainly contrary to law.

First, the continued existence in the rule of the so-called waste treatment exclusion of certain waters from protection under the Clean Water Act violates the Administrative Procedure Act.

The history of the current rule shows that this exclusion was not originally intended to allow the current practice of using the nation's waters as waste dumps. The 1980 regulatory definition of waters of the U.S. clearly provides that the waste treatment exclusion "applies only to manmade bodies of water which neither were originally created in waters of the United States (such as a disposal area in wetlands) nor resulted from the impoundment of water of the United States." Several months later, EPA published notice purporting to "suspend" the operation of this language, but not replacing it with anything else or further explanation. The omission of the language was never the subject of notice and comment public rulemaking process despite the fact that it plainly significantly alters the law with respect to application of the protections of the Clean Water Act. Whether to exclude natural bodies of water that are obviously waters of the U.S. under any definition, from protection from the dumping of mine overburden and wastes must be subject to public process. EPA's retention of this disastrous and unsupported exclusion must be suspended pending proper process.

Second, it is simply ludicrous that this brazen give-away to some of our most polluting industries is allowed. Providing this exclusion violates the very fundamentals of the Act to eliminate toxic discharges and to preserve and protect the physical, chemical and biological integrity of the nation's waters. As noted repeatedly by the SAB members, even small tributaries, including wetlands and lakes that are in headwaters of watersheds, provide critical function and value in protecting downstream waters. To allow them to be obliterated by polluting industrial activity and then polluted further with wastes because now they aren't protected as waters of the U.S. is completely contrary to every single comment regarding tributaries, wetlands, and waters of the U.S. submitted by the members of the SAB and the general conclusions of the Connectivity Report.

Waterkeepers Chesapeake presses EPA to eliminate this exclusion entirely. At a minimum, EPA must submit this issue to the SAB and must provide full opportunity for notice and comment rulemaking for this polluting and damaging practice.

CONCLUSION

Waterkeepers Chesapeake supports a broad, science-based definition of the waters of the U.S. and urges EPA to heed the advice and comments of the SAB to strengthen the rule to ensure full protection of the nation's waters. Further Waterkeepers Chesapeake requests that the EPA revise the rule to remove most of the categorical exclusions, most especially the exclusion of groundwater, from the definition of waters of the U.S., preserving the ability to more fully protect our nation's waters, again consistent with the advice and counsel of the SAB.

Sincerely,

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