Dear Administrator Pruitt and Mr. Lamont:

On behalf of our millions of our members and supporters, the undersigned hunting, fishing, and conservation groups as well as the outdoor recreation community and businesses write in opposition to the Environmental Protection Agency’s (EPA) and Army Corps of Engineers’ (Corps) proposal to repeal the 2015 Clean Water Rule—a popular, much-needed, and carefully-developed action taken to restore our nation’s small headwater streams and wetlands.

The Need for the Clean Water Rule

In 2011, The EPA and the Corps began the rulemaking process because the scope of the Clean Water Act—and which waters fell within its protection—had become unclear in the wake of two US Supreme Court decisions. This rulemaking process resulted in the 2015 Clean Water Rule. Stakeholders representing the regulated community, irrigators, local governments, Congress, the Chief Justice on the Supreme Court, and others had all urged the agencies to write a clarifying rule. The agencies ultimately provided over 200 days for public comment on the draft rule. Americans across the country responded, attending 400 stakeholder meetings with the agencies and submitting over 1.1 million comments, over 90% of which supporting the rule’s strong protections for our nation’s waters.

In order to ensure a strong scientific and technical foundation for the rulemaking, EPA’s Office of Research and Development issued the report *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*. In this report, EPA reviews more than 1,200 peer-reviewed publications and summarizes the current scientific understanding about the connectivity and mechanisms by which streams and wetlands, singly or in aggregate, affect the physical, chemical, and biological integrity of downstream waters. This report underwent an external review by EPA’s Science Advisory Board consisting of 27 topic experts representing independent experts in their field providing a range of expertise required to...
assess the scientific and technical aspects of connectivity. The EPA *Connectivity* report represents the state-of-the-science on the connectivity and isolation of waters in the United States. Hunters and anglers strongly supported the report given its technical and scientific nature.

After this comprehensive public, scientific and technical review process, the agencies issued a rule that clarifies protection of small streams and wetlands flowing into rivers, lakes and estuaries because of their aggregate and significant contributions to the physical, chemical and biological integrity of those downstream waters. Further, to balance the need to protect our nation’s waters with the interests of those whose activities affect water quality, the rule explicitly excludes some waters, like puddles and most roadside ditches, from regulation. The agencies also preserved existing exemptions from Clean Water Act regulation for categories of activities like normal farming and ranching practices.

Hunters and anglers broadly celebrated the Clean Water Rule because it would help clarify federal jurisdiction over “waters of the United States” and conserve the roughly 60% of streams and 20 million acres of wetlands (and thereby the downstream waters into which they flow) at risk of being polluted or destroyed because of the jurisdictional confusion. These waters contribute to the drinking water supplies of 117 million Americans, protect communities from flooding, and provide essential fish and wildlife habitat that supports a robust outdoor recreation economy worth $887 billion.

Every year, over 47 million Americans head into the field to hunt or fish. The hunting and fishing industries in the United States directly employ 483,000 Americans and adds billions of dollars in additional spending. The economic benefits of hunting and fishing – which total $200 billion a year – are especially pronounced in rural areas, where money brought in during fishing and hunting seasons can be enough to keep small businesses operational for the entire year. However, hunting and fishing do not merely provide economic and conservation benefits. They are a heritage that we cherish and want to pass along to our children. If the nation loses streams to nutrient and other pollution and wetlands are drained, it loses fish, wildlife, and sporting access along with them.

**Flawed Rationale for Clean Water Rule Repeal**

While the EPA and the Corps currently argue in the July 27, 2017, proposed rule that “re-codifying the regulations that existed before the 2015 Clean Water Rule will provide continuity and certainty for regulated entities, the States, agency staff, and the public,” in fact, we believe repealing the 2015 rule will lead to greater uncertainty, especially for States, agency staff, regulated entities and communities. As noted above, numerous parties asked the agencies to undertake a rulemaking that would simplify and improve the process for deciding which waters and wetlands the Clean Water Act protected. The agencies, the regulated community, the States, and clean water advocates all suffer under the current “status quo” – a 1980s vintage rule that two court opinions call into question, which is thus propped up with an un-vetted guidance document issued on June 6, 2007, and revised in 2008, that was never intended to substitute for a duly promulgated new rule. The confusion of this “status quo” has stymied the efforts of sportsmen and others to protect water resources; it has contributed to permit delays; and it has
left federal and state water quality personnel spending large amounts of time evaluating jurisdiction, yet struggling to apply the law consistently.

The status quo has not only led to uncertainty for stakeholders and federal and state personnel attempting to carry out the permitting process, but it has also led to legal confusion. Numerous district and circuit court opinions have been written about the status quo – many of which contradict each other. Chief Justice Roberts anticipated that the *Rapanos* court case would lead to such legal turmoil and counseled the agencies to adopt a new rule. These events lead to the development of the 2015 Clean Water Rule.

The agencies now propose to abandon the 2015 Rule in favor of extending the current “status quo” situation for an unknown period of time. The Corps will continue to make permitting decisions on a case-by-case basis, restoring not clarity, but tremendous uncertainty for the decision-making process and burdening state and local water quality personnel and their respective budgets. We oppose the agencies’ proposal, both on the merits and also because of the process. It makes no sense to repeal without a replacement. And, providing only 30 days in mid-summer to comment on a major change of direction is entirely inadequate to ensure meaningful public input into the process.

To support their proposed action, we believe the agencies also rely on a seriously flawed economic analysis. The agencies have not done additional work to justify the new analysis and instead rely on the analysis completed for the 2015 Rule, with one significant change. To arrive at a net benefit justifying repeal of the 2015 Rule, the agencies remove the estimated $313 million in annual benefits that would result from the 2015 Rule protecting wetlands.

The agencies make two arguments to support this dramatic shift. First, the agencies indicate the studies EPA and the Corps utilized in the 2014 economic analysis are too uncertain because the public’s value for wetlands may have changed since the latest of those studies was completed in 2000, and valuation methodologies have improved. However, there is no evidence to support this new assessment that the public’s support for the value of wetlands has waned. Polling consistently shows Americans value clean water above all other environmental indicators. While there may be better ways to calculate the value of wetlands protections, we do not believe the agencies should be able to pick and choose the pieces of the most recent analysis that they desire to utilize for this new assessment but instead must continue to look at the cost-benefit analysis in its entirety. Either the agencies calculate an alternative using existing quantifiable data, perform a new analysis, or use all of the 2014 one. The existing analysis, of course, demonstrates that the appropriate course of action is to retain the 2015 Rule, which has a substantial net benefit to the country.

The agencies also justify their decision not to include the huge benefits of wetlands protection based on the unsupported claim that, without the 2015 Clean Water Rule, states would step in to protect wetlands through state regulatory programs. This assertion is without support or merit. The Clean Water Act passed in 1972. Congress recognized the need for the federal government to step in to provide technical and financial assistance to states, and that while states could manage permitting programs, the federal government would oversee them if states failed to act. Over the last 45 years, while 46 states have sought – and obtained – delegation of the § 402 point...
source discharge program, only two states have delegated § 404 permit programs. It has been 17 years since the US Supreme Court issued its SWANCC decision and over a decade since the Rapanos decision, yet states have not been asking for delegation of the § 404 permit program since that time. Mostly, it is just too expensive for states to assume responsibility for the § 404 program, as a 2015 Montana study demonstrated. States are not likely to start regulating wetlands, meaning the wetlands that sportsmen and women love will once again be at risk.

**Conclusion**

Thank you for the opportunity to comment on EPA-HQ-OW-2017-0203. We oppose this attempt to repeal the 2015 Clean Water Rule. We urge the Administration to withdraw its proposal immediately and either reaffirm the 2015 Clean Water Rule, or propose and carefully consider a revised rule that is as scientifically, legally, and ecologically sound as the 2015 rule. American sportsmen will settle for nothing less than a Clean Water Act that protects the Nation’s wetlands and streams.

Respectfully Submitted,

**National Organizations**

American Fisheries Society  
American Fly Fishing Trade Association  
Backcountry Hunters & Anglers  
Fly Fishers International  
Guy Harvey Ocean Foundation  
Izaak Walton League of America  
National Deer Alliance  
National Wildlife Federation  
Outdoor Industry Association  
Theodore Roosevelt Conservation Partnership  
Trout Unlimited

**State and Local Organizations**

Anthony Wayne Chapter of the Izaak Walton League  
Argos Chapter of the Izaak Walton League  
Arkansas Wildlife Federation  
Austin Chapter 10 of the Izaak Walton League  
Beadle County Chapter of the Izaak Walton League  
Bill Cook Chapter of the Izaak Walton League  
Brown County Chapter of the Izaak Walton League  
Buckeye All-State Chapter of the Izaak Walton League  
California Division of the Izaak Walton League  
Calumet Region Chapter of the Izaak Walton League  
Cass County Chapter of the Izaak Walton League  
Central New York Chapter of the Izaak Walton League
Mountaineer Chapter of the Izaak Walton League
Nebraska Division of the Izaak Walton League
New York Division of the Izaak Walton League
Norfolk/Chesapeake Chapter of the Izaak Walton League
North Carolina Wildlife Federation
Ohio Division of the Izaak Walton League
Oil City Chapter of the Izaak Walton League
Orange Chapter of the Izaak Walton League
Oregon Division of the Izaak Walton League
Panora Conservation Chapter of the Izaak Walton League
Pennsylvania Division of the Izaak Walton League
Pierre Chapter of the Izaak Walton League
Porter County Chapter of the Izaak Walton League
Prairie Woods Chapter of the Izaak Walton League
Rapid City Chapter of the Izaak Walton League
Rochester Chapter of the Izaak Walton League
Rockville Chapter of the Izaak Walton League
San Pedro Chapter of the Izaak Walton League
Sioux Falls Chapter of the Izaak Walton League
South Dakota Division of the Izaak Walton League
Southwestern Wisconsin Chapter of the Izaak Walton League
Spring Lake Chapter of the Izaak Walton League
St. Joseph County Chapter of the Izaak Walton League
Suffolk-Nansemond Chapter of the Izaak Walton League
Sunshine Chapter of the Izaak Walton League
Terre Haute Chapter of the Izaak Walton League
Tiffin-Seneca County Chapter of the Izaak Walton League
W.J. McCabe Chapter of the Izaak Walton League
Walter J. Breckenridge Chapter of the Izaak Walton League
Wapashaw Chapter of the Izaak Walton League
Warren County Chapter of the Izaak Walton League
Wes Libbey Northern Lakes Chapter of the Izaak Walton League
West Virginia Division of the Izaak Walton League
Western Reserve Chapter of the Izaak Walton League
White Oak River Chapter of the Izaak Walton League
Wildlife Achievement Chapter of the Izaak Walton League
Wisconsin Division of the Izaak Walton League