



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

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February 1, 2021

The Honorable Joseph R. Biden, Jr.
The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

Thank you for prioritizing the revocation of multiple Executive Orders of the Trump administration that were harmful to public health and the environment, and contrary both to the rule of law and science. In particular, we were heartened by your decision to revoke Executive Order 13778 related to the scope of waters and wetlands protected by the Clean Water Act on the first day your administration, as well as your commitment to review the deeply flawed *Navigable Waters Protection Rule*,¹ which is more appropriately called the Trump Dirty Water Rule.

We now urge you to direct the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to *immediately repeal* the Trump Dirty Water Rule before this unconscionable proposal causes lasting damage to the health of our families, our environment, and our vital water resources—especially now, during the COVID-19 pandemic, when the availability of clean and safe water is so critical to American families.

Americans depend on clean water for our health and for the health of our communities and our economy. We need clean water upstream to have healthy communities downstream. The health of rivers, lakes, bays, and coastal waters depend on the streams and wetlands where they begin. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife. People depend on clean water for their health and well-being because about 117 million Americans—one in three people—get drinking water from sources fed by streams that are especially vulnerable to pollution. Our cherished way of life depends on clean water and healthy ecosystems to provide wildlife habitat and places to fish, paddle, surf, and swim. And our economy depends on clean water with manufacturing, farming, tourism, recreation, energy production, and other economic sectors requiring clean water to function and flourish.

¹ 85 Fed. Reg. 22250 (Apr. 21, 2020).

Yet, the Trump administration consciously chose to ignore all of these clear and compelling benefits by implementing the Trump Dirty Water Rule—the single largest rollback in Federal Clean Water protection in our Nation’s history. In this one action, the Trump administration eliminated decades of bipartisan protections of our waters and wetlands that have been championed by Democratic and Republican administrations alike.

The magnitude of this rollback was documented by the Trump administration’s own EPA, which informally estimated that the Trump Dirty Water Rule would *eliminate Clean Water Act protections on between 18 to 71 percent of the Nation’s streams and over 50 percent of wetlands.*² Worse still, when a former Trump EPA official was given the opportunity to clarify the impacts of the Rule before our Committee,³ he refused to provide *any* information on the scope of rivers, streams, lakes, and wetlands that would lose protection or the adverse economic consequences that would result—leading us to conclude that the internal EPA estimates were accurate, or worse still, actually *underestimated* the real impacts of the Trump Dirty Water Rule.

This radical departure from decades-old water quality protections threatens the health and safety of American families, places our Nation’s drinking water supplies at risk, increases the cost to American taxpayers, and invites costly litigation.

The Trump Dirty Water Rule transfers the costs for protecting the health and safety of our communities from polluters onto working American families. It squanders our Nation’s precious natural resources—including our oceans, rivers, streams, and wetlands—to unfettered pollution and destruction. In crafting this Rule, the Trump administration willfully ignored the science, ignored the law, and made clear that they stand with special interests and polluters rather than the American people. The Trump Dirty Water rule even fails to accomplish the central pretext on why it was promulgated, because it provides no certainty on what waters remain protected, provides no clarity to stakeholders who must interact with the Clean Water Act, and fails to meet even a most basic economic justification. Finally, this Rule is based on a misinterpretation of the standards for asserting Clean Water Act jurisdiction announced by the U.S. Supreme Court and is almost exclusively premised on a legal theory that failed to ever achieve a majority vote in the Court.

In short, the Trump Dirty Water Rule is a fatally flawed proposal, with no basis in the law, no basis in the science, and a blatant giveaway to polluters. It must simply and immediately be repealed.

Decades ago, when rivers starting catching fire, this country recognized the value of our water-related resources, as well as the inability of the States or the private sector to independently protect our rivers, lakes, streams, and wetlands, or to always act in the best interests of the Nation. In response, Congress enacted the Federal Clean Water Act over the veto of former-President Nixon to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” In the almost 50 years since that time, including during your service both in the U.S. Senate

² See Letter from Transportation and Infrastructure Chairman Peter A. DeFazio, et. al, to EPA Administrator Wheeler and Assistant Secretary of the Army James (April 9, 2019) (Docket ID: [EPA-HQ-OW-2018-0149-4847](#)).

³ <https://transportation.house.gov/news/press-releases/chair-defazio-slams-trump-administration-over-continued-plans-to-roll-back-protections-for-nations-waters>.

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and as Vice President of the United States, the goal of protecting clean water was championed by Democratic and Republican administrations alike. All of that was reversed by the Trump Dirty Water Rule and we fear that leaving this proposal in place would hasten a return to days where rivers again could catch fire.

That is why we urge you to immediately initiate efforts to repeal the Trump Dirty Water Rule to correct this unconscionable rollback of one of our Nation's most effective environmental laws. Afterward, we would welcome the opportunity to work with you and with all stakeholders, including those from the environmental, agricultural, and business communities, and municipalities, to undertake a new rulemaking that is based on law and science, that provides the certainty and predictability that groups have been craving, and that is consistent with the goal of the Clean Water Act to protect the Nation's waters.

That is what the American people demand of us, and what is right and just for this generation and for generations of Americans yet to come.

Sincerely,



PETER A. DEFazio
Chair
Committee on Transportation and Infrastructure



GRACE F. NAPOLITANO
Chair
Subcommittee on Water Resources and
Environment

cc:

Ms. Jane Nishida, Acting EPA Administrator and Principal Deputy Assistant Administrator,
EPA's Office of International and Tribal Affairs

Ms. Radhika Fox, Principal Deputy Assistant Administrator, EPA's Office of Water

Mr. Vance F. Stewart, III, Acting Assistant Secretary of the Army (Civil Works)