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Chairwoman Nancy Sutley  
Council on Environmental Quality  
1600 Pennsylvania Ave NW  
Washington, D.C. 20500-004

December 22, 2010

Dear Chairwoman Sutley:

We are writing to ask the Administration to develop a strong rule to end the confusion over which waters are protected by the Clean Water Act and help reaffirm the broad scope of the Clean Water Act that existed for more than three decades.

For the past several years, our organizations have worked tirelessly to urge Congress to pass legislation that would restore protections to water bodies now vulnerable to polluters and developers in the wake of two controversial Supreme Court decisions. Following the *SWANCC* decision in 2001 and the *Rapanos* decision in 2006, over 20 million acres of wetlands and tens of thousands of miles of streams are at risk of losing protections under the landmark 1972 Clean Water Act. As this Congressional session winds down, we find that Congress has failed yet again to pass critical legislation to solve this problem. With each passing day that Congress has failed to act, more wetlands, lakes and streams are losing Clean Water Act protections, leaving them vulnerable to pollution and destruction.

While only legislation would completely fix this problem, a strong rule consistent with the best available science and law would go a long way to restore critical Clean Water Act protections to waters that continue to be lost, or could be lost, to pollution and development. Any further delay in establishing criteria for protecting these waters means additional lost or polluted water bodies.

These at-risk waters provide critical environmental, economic, public health, and other benefits:

- According to EPA, more than 117 million Americans receive their drinking water from public systems fed in whole or in part by intermittent, headwater, and ephemeral streams.
- Prairie potholes in the upper Midwest provide essential breeding, feeding and nesting habitat for an estimated 50 to 75 percent of the North American duck population. Many of these potholes have lost protection.
- Wetlands and intermittently flowing streams naturally absorb flood waters, moderating peak flood stages and reducing flood damage. According to the National Oceanic and Atmospheric Administration (NOAA), floods caused an average of \$15 billion in damage annually between 2003 and 2008.

The Obama Administration is on record saying that it is "essential that the Clean Water Act provide broad protection of the Nation's Waters." Now is the time for the Administration to take a strong leadership role by repairing the Clean Water Act regulations defining "waters of the United States." Members of the Supreme Court have called for a rulemaking, and even the regulated community has



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acknowledged that the status quo is unacceptable. Since the passage of the Clean Water Act in 1972, we have made great progress cleaning up our nation's waters and we cannot afford to let the current rollbacks and legal confusion erase three decades of water quality improvement and return us to the days of dirty water.

The Administration must act swiftly. We urge the Administration to craft a strong rule to protect our nation's waters.

Sincerely,

Natalie Roy  
Executive Director  
Clean Water Network

Alabama  
Cindy Lowry  
Executive Director  
Alabama Rivers Alliance

Michael William Mullen  
Executive Director & Riverkeeper  
Choctawhatchee Riverkeeper

Lebaron Byrd  
Executive Director  
MOWA Band of Choctaw Indians

Tricia Sheets  
Director of Administration  
Cahaba River Society

Charles Scribner  
Executive Director  
Black Warrior Riverkeeper

Myra Crawford, Ph.D.  
Executive Director & Riverkeeper  
Cahaba Riverkeeper

Arkansas  
Debbie Doss  
Conservation Chairman  
Arkansas Canoe Club

California  
Florence LaRiviere  
Chairperson  
Citizens Committee to Complete the Refuge

Larry Hanson  
Manager  
Northern California River Watch

Melanie Winter  
Director  
The River Project

Felix E. Smith  
Board Member  
Save the American River Association

Ruth Gravanis  
Director  
Treasure Island Wetlands Project

Joan Clayburgh  
Executive Director  
Sierra Nevada Alliance



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Gabriel Solmer  
Interim Executive Director  
San Diego Coastkeeper

Gordon R. Hensley  
San Luis Obispo Coastkeeper  
Environment in the Public Interest

Miriam Gordon  
California Director  
Clean Water Action

Marcia Hanscom  
Director  
Wetlands Defense Project

Robert Roy van de Hoek  
Co-Director  
Ballona Institute

James A. Peugh  
Conservation Chair  
San Diego Audubon Society

Colorado  
Jeff Crane  
Executive Director  
Colorado Watershed Assembly

Steve Glazer  
Water Program Director  
High County Citizens' Alliance

Brady Robinson  
Executive Director  
Access Fund

Mike Van Abel  
Executive Director  
International Mountain Bicycling Association

Gary Wockner  
Colorado Program Advisor  
Clean Water Action

Connecticut  
Margaret Miner  
Executive Director  
Rivers Alliance of Connecticut

Eileen Fielding  
Executive Director  
Farmington River Watershed Association

Cindy Luppi  
Connecticut Director  
Clean Water Action

Thomas R. Baptist  
Executive Director & Vice President  
Audubon Connecticut

District of Columbia  
Jon Devine  
Senior Attorney, Water Program  
Natural Resources Defense Council

Katherine Baer  
Senior Director, Clean Water Program  
American Rivers

Paul Schwartz  
National Policy Coordinator  
Clean Water Action

Martha Noble  
Senior Policy Associate  
National Sustainable Agricultural Coalition

Jan Goldman-Carter  
Wetlands and Water Resources Counsel  
National Wildlife Federation





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Anna Aurilio  
Director, Washington, DC Office  
Environment America

Tiernan Sittenfeld  
Senior Vice President of Government Affairs  
League of Conservation Voters

Barbara Elkus  
Board Member  
Friends of Rock Creek's Environment

Rabbi David Saperstein  
Director and Counsel  
Religious Action Center of Reform Judaism

The Rev. Séamus P. Finn, OMI  
Director  
Oblates of Mary Immaculate, Justice,  
Peace/Integrity of Creation

Norris McDonald  
President  
Center for Environment, Commerce & Energy  
African American Environmentalist Association

Adam B. Cramer  
General Counsel and Policy Architect  
Outdoor Alliance

Florida  
Marian B. Hilliard  
Government-Agency Liaison  
Florida Federation of Garden Clubs, Inc.  
Government Action Education Committee Chair  
National Garden Clubs, Inc.

Francine Ishmael  
Executive Director  
Citizens Against Toxic Exposure, Inc.

Jennifer Hecker  
Director of Natural Resource Policy  
Conservancy of Southwest Florida

Ed Tichenor  
Director  
Palm Beach County Reef Rescue

Kathy Aterno  
Florida State Director  
Clean Water Action

Georgia  
David Kyler  
Executive Director  
Center for a Sustainable Coast

Laura Hartt  
Water Policy Director  
Upper Chattahoochee Riverkeeper

Idaho  
Mark Menlove  
Executive Director  
Winter Wildlands Alliance

Kevin Lewis  
Conservation Program Director  
Idaho Rivers United

Illinois  
Glynnis Collins  
Executive Director  
Prairie Rivers Network

Kathy Andria  
President  
American Bottom Conservancy

Judy Johnston  
President  
Lake Michigan League of Women Voters



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Fran Caffee  
Volunteer Coordinator  
Valley of the Fox Group/Sierra Club

Lyman C. Welch  
Water Quality Program Manager  
Alliance for the Great Lakes

**Indiana**

Nicole Kamins  
Executive Director  
Save the Dunes

Abigail King  
Master Naturalist, Watershed Expert &  
Founder,  
Save Maumee Grassroots Organization

Tanya Lodics, Ph.D.  
Communications Coordinator  
Friends of Big Pine Creek

**Iowa**

Marian Riggs Gelb  
Executive Director  
Iowa Environmental Council

**Kansas**

Steven G. Sorensen  
Conservation Vice President  
Kansas Wildlife Federation

**Kentucky**

Judith Petersen  
Executive Director  
Kentucky Waterways Alliance

**Louisiana**

Cynthia Sarthou  
Executive Director  
Gulf Restoration Network

Haywood Martin  
Chair  
Sierra Club Delta Chapter

Dean Wilson  
Executive Director & Basinkeeper  
Atchafalaya Basinkeeper

**Maine**

Vivian Newman  
Board of Directors  
Georges River Tidewater Association

Landis Hudson  
Executive Director  
Maine Rivers

**Maryland**

Andrew Fellows  
Chesapeake Regional Director  
Clean Water Action

Amy Woolam Echeverria  
Director  
Columban Center for Advocacy Outreach  
Missionary Society of St. Columban

Jim Chambers  
Founder/Owner  
Prime Seafood, LLC

Greg Miller  
Executive Director  
American Hiking Society

Paulette Hammond  
President  
Maryland Conservation Council, Inc.



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**Massachusetts**

Ken Kipen  
Director  
Hilltown Anti-Herbicide Coalition

Robert Thompson  
Chairman, Westfield River Wild and Scenic  
Advisory Committee  
Director, Westfield River Environmental Center  
Westfield State University

Paul D. Robillard, Ph.D.  
Executive Director  
World Water Watch

Ian Cooke  
Executive Director  
Neponset River Watershed Association

Karen Patterson Greene  
Swimmable Charles Coordinator  
Charles River Conservancy

Becky Smith  
Water Project Coordinator  
Clean Water Action Alliance of MA

**Michigan**

Michael Martin  
Professor Emeritus  
University of Michigan

Laura Rubin  
Executive Director  
Huron River Watershed Council

Gary Noble  
Executive Director  
Muskegon River Watershed Assembly

Jennifer McKay  
Policy Specialist  
Tipp of the Mitt Watershed Council

Cyndi Roper  
Michigan Director  
Clean Water Action

Gary Wager  
Executive Director  
Kalamazoo River Cleanup Coalition

**Minnesota**

Samantha Chadwick  
Preservation Advocate  
Environment Minnesota

Brad Redlin  
Director, Agricultural Program  
Izaak Walton League of America

Jill Crafton  
Chair, Great Lakes Committee  
Izaak Walton League of America

Curt Leitz  
President, Minnesota Division  
Izaak Walton League of America

Deanna White  
Director  
Minnesota Clean Water Action Alliance

**Mississippi**

Rose Johnson  
Founder  
North Gulfport Community Land Trust

**Missouri**

Eric Karch  
Chair  
River des Peres Watershed Coalition



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**Nebraska**

Duane Hovorka  
Executive Director  
Nebraska Wildlife Federation

Buffalo Bruce  
Staff Ecologist  
Western Nebraska Resources Council

**New Jersey**

Captain Bill Sheehan  
Riverkeeper & Executive Director  
Hackensack Riverkeeper

Ella F. Filippone  
Executive Director  
Passaic River Coalition

Amy Goldsmith  
Director  
New Jersey Environmental Federation

Christopher Len  
Staff Attorney  
New York/New Jersey Baykeeper

**New Mexico**

Brian Shields  
Executive Director  
Amigos Bravos

Marian Naranjo  
Director  
Honor Our Pueblo Existence (H.O.P.E.)

Sanders Moore  
Environmental Advocate  
Environment New Mexico

Felicity Broennan  
Executive Director  
Santa Fe Watershed Association

**New York**

Marian H. Rose  
Treasurer  
Croton Watershed Clean Water Coalition, Inc.

Robyn McKie-Holzworth  
Co-Chair  
Sierra Club - Rochester Regional Group – Great  
Lakes Committee

Kate Kremer  
Co-Chair  
Sierra Club – Rochester Regional Group – Great  
Lakes Committee

Samuel H. Sage  
President  
Atlantic States Legal Foundation

Joel R. Kupferman  
Executive Director  
New York Environmental Law and Justice  
Project

Stephen O. Wilson  
Executive Director, Emeritus  
The Hudson River Environmental Society

**North Carolina**

Mark Singleton  
Executive Director  
American Whitewater

George Santucci  
Executive Director  
National Committee for the New River





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**North Dakota**

Robert Backman  
Executive Director  
River Keepers

**Ohio**

Keith Dimoff  
Executive Director  
Ohio Environmental Council

Janet Reeves  
Registered Nurse & Member  
Ohio Environmental Council

Elaine Marsh  
Conservation Director  
Friends of the Crooked River

Anne Ginn  
President  
Shaker Lakes Garden Club

Ray Stewart  
President & Director of Communications  
Friends of Wetlands

Sandy Bihn  
Executive Director  
Western Lake Erie Waterkeeper Association

Kathryn Hanratty  
Owner  
Enviroscapes Landscape Design

Nathan Holscher  
Program Director  
Rivers Unlimited

**Oklahoma**

Ed Brocksmith  
Secretary-Treasurer  
Save the Illinois River

**Oregon**

Todd Amba  
President  
River Network

Nina Bell, J.D.  
Executive Director  
Northwest Environmental Advocates

**Pennsylvania**

Melinda Hughes-Wert  
President  
Nature Abounds

Tom Fuhrman  
Executive Director  
Lake Erie Region Conservancy

Franklin Hoffman  
President  
Federation of Sportsmen's Clubs

Ted Onufrak  
President  
Pennsylvania Federation of Sportsmen's Club

James Moses  
President  
Somerset County Conservancy

Maria Payan  
Director  
Peach Bottom Concerned Citizens Group

Myron Arnowitt  
Pennsylvania Director  
Clean Water Action





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**Puerto Rico**

Mary Ann Lucking  
Director  
CORALations

**Rhode Island**

Eugenia Marks  
Senior Director of Policy  
Audubon Society of Rhode Island

Sheila Dormody  
Rhode Island Director  
Clean Water Action

**Tennessee**

Renée Victoria Hoyos  
Executive Director  
Tennessee Clean Water Network

**Texas**

David Foster  
Texas Program Director  
Clean Water Action

**Vermont**

David L. Deen  
River Steward  
Connecticut River Watershed Council

**Virginia**

Wade Blackwood  
Executive Director  
American Canoe Association

**Washington**

Rick Eichstaedt  
Program Director & Riverkeeper  
Spokane Riverkeeper

David Kliegman  
Executive Director  
Okanogan Highlands Alliance

**West Virginia**

Helen Gibbins  
Natural Resources Director  
League of Women Voters of West Virginia

**Shanda Minney**

Executive Director  
West Virginia Rivers Coalition

**Wisconsin**

Becky Abel  
Executive Director  
Wisconsin Wetlands Association

Karen M. Schapiro  
Executive Director  
Milwaukee Riverkeeper

**Wyoming**

Jonathan Ratner  
Director, Wyoming Office  
Western Watersheds Project

Cc: EPA Administrator, Lisa Jackson  
Assistant Secretary of the Army, Jo-  
Ellen Darcy  
Secretary of Agriculture, Tom Vilsack  
OMB Director, Jacob Lew



February 25, 2011

The Honorable Jack Reed  
Chairman, Subcommittee on Interior,  
Environment and Related Agencies  
728 Hart Building  
United States Senate  
Washington, DC 20510

Dear Chairman Reed:

As hunters, anglers, and Americans who actively utilize our nation's incredible wetlands, streams and other water resources, we strongly oppose a provision (Section 1747) in HR 1 that would bar the Environmental Protection Agency (EPA) from taking steps in an open, public process to restore critical Clean Water Act protections for some of these waters. As you and your colleagues negotiate a continuing resolution with the House, we urge you to oppose this provision or any other that would limit the authority of the EPA or any other federal agency to restore these vital protections.

Our organizations seek to be engaged with Congress and the Administration to restore these protections, and to provide clarity to landowners, conservationists, and the regulated community, through statute and/or regulation changes. Restoring these lost protections will not only protect healthy habitat and water quality, it will also safeguard and support the sporting traditions that we and tens of millions of Americans enjoy. Section 1747 precludes the open and transparent public debate and comment necessary to achieve this important end.

We know you understand the value of prairie pothole wetlands, headwater streams, mountain lakes, and other waters to fish, wildlife, and waterfowl, and that the success of hunters and anglers in the field depends on high-quality habitat. Over the past 40 years, thanks in large part to the Clean Water Act, the rate of wetland loss has been dramatically reduced and water quality has significantly improved nationwide. These improvements directly benefit people, fish and wildlife, and outdoor recreation, including hunting, fishing, and boating. The economic benefits to the nation from these habitats are staggering: according to the U.S. Fish and Wildlife Service, wildlife-dependent recreation in the U.S. generates \$22 billion in hunting expenditures and \$42 billion in fishing expenditures annually.

However, the gains we've made and the protections provided by the Clean Water Act are increasingly at risk. Decisions by the U.S. Supreme Court in *SWANCC* and *Rapanos* and subsequent agency guidance have not only inserted tremendous confusion into the administration of the Act, they directly jeopardize critical water resources and habitat. Taken together, they have removed protections for at least 20 million acres of wetlands, especially prairie potholes and other seasonal wetlands that are essential to waterfowl populations throughout the country. Furthermore, these decisions put intermittent and headwater streams at risk. According to EPA, more than 117 million Americans receive their drinking water from public systems that are supplied in whole or in part by these streams.

Hunters, anglers, and conservationists across the country have actively supported legislation in recent Congresses to restore historic Clean Water Act protections. We applaud you for co-sponsoring the Clean Water Restoration Act in the past. While we continue to back legislative



action, we also support steps the Army Corps of Engineers and Environmental Protection Agency can take to ensure that certain waters remain protected while respecting the Supreme Court's decisions. Action by these agencies is necessary and appropriate. In fact, several Supreme Court justices, including Chief Justice Roberts, specifically pointed out that EPA should initiate a rulemaking to clearly define specific waters protected by the Act.

Section 1747 of HR 1 would prohibit EPA from taking any steps through the end of fiscal year 2011 to address growing threats to quality fish and wildlife habitat, hunting and angling, and drinking water. If this provision becomes law, the repercussions will be real and immediate. As you may know, the Office of Management and Budget (OMB) is currently conducting an interagency review of Clean Water Act guidance developed by EPA. Interested stakeholders, including our organizations and groups representing agriculture, homebuilders, and other industries, have been able to meet with OMB staff to discuss the draft guidance. Moreover, EPA has committed to solicit public comments on the proposed guidance following OMB review. The agency is not required to take this step; however, this demonstrates its commitment to transparency and public participation. Section 1747 would short-circuit this public process and prohibit any administration action that could help to safeguard some of our nation's most at-risk waters.

There is widespread agreement that a rulemaking is needed to clarify the jurisdictional reach of the Clean Water Act. Members of our organizations, who include farmers, ranchers, landowners as well as conservationists, seek pragmatic, common sense solutions to restore protections for the nation's wetlands, streams, and other waters that existed prior to the *SWANCC* decision. We also recognize the need to maintain existing exemptions that have been in the Clean Water Act since 1977, including those for standard agricultural and silvicultural practices.

We commend you for your leadership on this and many other conservation issues. We ask you once again to oppose any provision in short- or long-term continuing resolutions that would limit the administrative authority of federal agencies to restore essential Clean Water Act protections. We look forward to working with you in the months ahead to safeguard our waters, habitat, and the hunting and angling traditions that are important to so many Americans.

Sincerely,

Dale Hall  
Chief Executive Officer  
Ducks Unlimited

David Hoskins  
Executive Director  
Izaak Walton League of America

Larry Schweiger  
President and CEO  
National Wildlife Federation

Whit Fosburgh  
President and CEO  
Theodore Roosevelt Conservation Partnership

Chris Wood  
President and CEO  
Trout Unlimited

cc:

The Honorable Daniel Inouye, Chairman, Senate Appropriations Committee  
The Honorable Harry Reid, Majority Leader, United States Senate  
The Honorable Lisa Murkowski, Ranking Member, Interior Appropriations Subcommittee