Sample Letter - "Waters of the United States" and the Mississippi River

To: U.S. Environmental Protection Agency/ U.S. Army Corps of Engineers

Regarding: "Waters of the United States"

I am writing in response to proposed changes in the "Waters of the United States" definition under the Clean Water Act. The Clean Water Act is America's premier law for protection of our rivers, streams, lakes and coastal waters, and the "Waters of the U.S." designation has long defined federal jurisdiction in the regulation of these systems.

The Mississippi River is an important example of why we need the Act to address the downstream impacts of upstream actions. The input of pollutants further up the system can have significant impacts downstream, as the problem of the Gulf of Mexico Hypoxic Zone fueled by nutrient loading upriver illustrates.

These proposed changes in the "Waters of the U.S." Rule are of particular concern:

- The removal of Interstate Waters and Wetlands as a category of federal jurisdiction - The Clean Water Act has recognized Interstate Waters as jurisdictional since its 1948 predecessor, the Federal Water Pollution Control Act. The Mississippi River and many of its tributaries flow through numerous states, serve as state boundaries, and clearly fall outside the legal or regulatory authority of any one state.

- The removal of ephemeral or intermittent streams and wetlands as a category of federal jurisdiction – These smaller and seasonal water bodies nonetheless play an important role contributing to drinking water quality and supplies, as well as the potential to convey pollution downstream to larger waterways. These waters are not only important in the more arid parts of the Mississippi and Missouri River Basins, but also as onsite factors in the many thousands of development permits that come before the Corps, EPA, and state agencies each day.

- The refusal to acknowledge the 2015 Rule's actual provisions – Revoking the 2015 Rule is a key motivating factor behind the current proposed changes. The 2015 Rule retained the Clean Water Act's long-standing exemption for normal farming, forestry, and silviculture – and did not add permitting requirements for these activities.
  Opponents of the 2015 Rule and the administration have repeatedly ignored its actual text to promote the goal of reducing the federal role in water policy.

- The reduction of the central role of science - The 2015 version of the "Waters" rule relied on over 1,200 peer-reviewed studies to clarify the interactions of connected water bodies and systems. The 2018 proposed rule takes a different approach, which would reduce and in some cases remove a role for science in decisions about which waters are jurisdictional under the Clean Water Act.

- The use of incomplete assessments of costs and benefits of federal regulation – The proposed rule emphasizes the savings to agencies and permit recipients of reduced jurisdiction for waters and wetlands, but fails to adequately factor in the public costs of this policy. One of the most important benefits of the Clean Water Act – ensuring safe drinking water – depends on regulating upstream activities that have downstream impacts in a systemic way.

These are among the issues that lead us to conclude that the proposed rule change will not work as effective policy for the Clean Water Act, or for ensuring a healthy Mississippi River system.

Sincerely,

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