Administrator Gina McCarthy
Remarks for Waters of the U.S. Media Call, as prepared
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Thank you for joining the call today.

The U.S. environmental protection agency—together with the U.S. Army Corps of Engineers—is taking a step toward clearer protections for clean water. The health of our rivers, lakes, bays, and coastal waters depends on the smaller interconnected streams and wetlands that feed them. Today, we’re jointly releasing a proposed rule that clarifies protections under the Clean Water Act for those interconnected waters.

These places are where we get our drinking water and where our families hunt, fish, swim, and play. Our farmers rely on these vital waters to grow the fuel, food, and fiber that feed our nation. Our businesses rely on abundant, usable water to manufacture everything from cars to computers.

Unfortunately—two complex Supreme Court decisions in 2001 and 2006 have made determining Clean Water Act protections for these streams and wetlands confusing over the last decade. That confusion is not good for anybody. It’s costs us time and money—and increases risks to our health and our economy.

That’s why members of Congress—from all parts of the political spectrum, as well as state and local leaders, industry officials, the agricultural community, environmental groups, and the public have all been clamoring for clarity. And that’s what this proposal is all about. Specifically, the proposed rule uses sound science to clarify that: Seasonal and rain-dependent streams are protected under the Clean Water Act and wetlands near rivers and streams are also protected.

The rule helps communities stay safe and healthy.

- Roughly 60 percent of stream miles in the U.S. only flow seasonally or after rain.
- And about one in three Americans—or 117 million people—get their drinking water from public systems that rely on these seasonal, rain-dependent streams and headwaters.
- Let’s not forget the other benefits—these areas also block floodwaters, recharge groundwater, filter pollution, and serve as lush habitat for fish and wildlife.

For other waters—whose influence in downstream water quality is not as clear cut—their protections are evaluated on a case-by-case basis. And to be considered “jurisdictional”—that is, covered by Clean Water Act protections—these other upstream waters must be shown to have a “significant nexus” to downstream water quality.

Let me put a finer point on this: if you’re a pond or wetland—it’s not enough to show that the connection simply exists. You have to show that the pond or wetland, either alone or in combination with similarly situated waters in the region, significantly affects the alteration of physical, biological or chemical integrity of other jurisdictional waters that the clean water act was intended to protect. That’s the direction established by the Supreme Court.

Although we’re glad the case-by-case method gives us a way to evaluate protection for these other waters that live in a gray area—we still acknowledge it would be more efficient and effective if we could reduce uncertainty even more. That’s why our proposal specifically asks for comments and input on new ways to
focus case-by-case reviews – ways like identifying specific subcategories of waters where the science may be strong enough to warrant protections or geographic areas beyond which aggregation of similarly situated waters may not be necessary or advisable to consider during case by case analysis.

I want to also mention how the rule helps states and tribes. According to a study by the environmental law institute, 36 states have legal limitations in their ability to fully protect waters that aren’t covered by the Clean Water Act. This proposal helps fill that gap.

And the proposed rule is good for businesses—because it cuts red tape, reduces costs, and streamlines the process of determining what’s covered by the law. That’s how the proposed rule supports the economy. Like I’ve said, from farming and manufacturing to outdoor recreation and energy production—you name it – these streams and wetlands support every sector of the U.S. economy and billions of dollars in productivity.

Let me take a moment to make clear what this rule does not do. It does not expand the Clean Water Act. I repeat, it does not protect any new types of waters that have not historically been covered under the Clean Water Act.

We know how vital water is to America’s farmers and ranchers. Some in the agricultural community think that a new rule might mean expansion of the Clean Water Act to all waters, but as I’ve explained—that’s simply not the case. For the past three years, EPA and the Army Corps have listened to the concerns and advice of states, local governments, the agricultural community, and more. I often say: America’s farmers and ranchers are our original conservationists. And EPA has worked arm in arm with the Department of Agriculture to make sure we’re addressing farmers’ concerns up front.

The rule will not regulate groundwater or tile drainage systems; and it will not increase regulation of ditches—whether they are irrigation or drainage. And to be clear, this rule keeps intact existing Clean Water Act exemptions for agricultural activities. But it does more for farmers than that—it actually expands those exemptions.

We worked with USDA’s Natural Resource Conservation Service and the Army Corps of Engineers to exempt 53 additional conservation practices. These practices will be familiar to farmers—they understand their benefits to business, the land, and the waters we rely on.

The bottom line is this: before the rule—producers needed to notify agencies and seek certain types of permits (for discharges of dredged or fill material). After the rule—if producers choose to partake in any of the 53 conservation practices detailed in the proposal—they will not need those particular permits or any pre-approval.

Backed by thorough, peer reviewed science—including an assessment by EPA—we’ve put a proposal on the table that presents a clearer path forward for clean water protection. We know there are a lot of other ideas and strategies out there—so we’re holding discussions around the country, gathering input to help shape the final rule.

The proposed rule will be open for public comment for 90 days after publication in the federal register. For more details, visit www.epa.gov/uswaters to learn more about the clean water act and our commitment protecting our precious water supplies and supporting a robust, healthy economy.