Waterkeepers Florida
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Via email to ow-docket@epa.gov and online submission to www.regulations.gov

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Revised Definition of Waters of the United States: Docket ID No. EPA-HQ-OW-2018-0149

Dear Acting Administrator Wheeler and Assistant Secretary James,

On behalf of the 12 Waterkeepers in the State of Florida, we respectfully submit the following comments opposing the Environmental Protection Agency (EPA) and Army Corps of Engineers' (Corps) proposed *Revised Definition of "Waters of the United States*" (Docket ID: EPA-HQ-OW-2018-0149-0003). Each signatory below is an independent organization and member of Waterkeeper Alliance, a global movement of on-the-water advocates who patrol and protect over 100,000 miles of rivers, streams, and coastlines. More than 300 Waterkeeper Organizations worldwide combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law.

The United States Congress passed the Clean Water Act in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." For decades, the Clean Water Act has safeguarded Florida's rivers, streams, lakes, and wetlands against industrial pollution and waste. The proposed revision of the Clean Water Act would dramatically weaken federal pollution protections for broad categories of waters. Under the revised definition of "Waters of the United States," crucial waterways would lose guaranteed protection under the Clean Water Act's pollution control, prevention, and clean-up programs. This proposal strips Clean Water Act protections from critical waterways that feed our drinking water supplies, support our clean water economy, and provide numerous ecosystem services and resiliency dividends. The Everglades ecosystem alone is an irreplaceable driver of Florida's tourism, commercial and recreational fishing industries, outdoor recreation, biodiversity, and a source of drinking water for nearly 8 million Floridians.

In light of Florida's rapidly growing population and increasing development pressure throughout the state, it is essential that these waters are afforded the utmost oversight and protection to ensure that the resources on which we depend are adequately protected. Our state has been plagued with numerous pollution threats to our waterways including devastating blue-green algae blooms and

red tide. Our waterways are at tipping point ecologically, and simply cannot withstand additional threats from loosened regulations like the Clean Water Act.

Legal Contradictions

This proposal contradicts the law and science that is the foundation for Clean Water Act success over the past half a century. Limiting Clean Water Act protections to only waters with a permanent or consistent flow or with a direct surface hydrological connection to other waters, has previously been rejected by a majority of Supreme Court Justices, by the George W. Bush administration, and by courts interpreting the Act.

Additionally, for the first time in the history of the Clean Water Act, the Agencies are proposing to end protections for ephemeral streams. Though ephemeral streams may only flow after a rain fall, they provide water for larger streams and rivers, filter pollutants and capture nutrients, and provide critical habitat for wildlife. Upstream tributaries and adjacent wetlands and lakes are critically important for the Everglades, which is located downstream at the southern tip of Florida. Categorically excluding all ephemeral streams from protections is a dramatic departure from decades of regulatory practice rooted in science and common sense to protect our nation's water resources.

The Agencies further invite comment on even more severe rollbacks, such as whether or not the rules should exclude all streams that don't flow year-round. The exclusion of small, seasonal, and rain-dependent streams would represent a radical departure from decades of clean water policy; it would wipe out protections for over half of the streams across the country, including an estimated 12% of streams in Florida. There is no scientific basis for excluding these streams from protection. All streams, regardless of size or frequency of flow, should be safeguarded from pollution or destruction, because the science demonstrates their critical functions in protecting clean water and reducing flood damage for downstream communities.

Impacts on South Florida

Previously, the mainland coast of southern Florida was predominantly coastal wetlands. Changes in land use and modifications to natural drainage patterns have radically reduced the amount of wetlands in the region. Today, three National Park System units (Biscayne, Big Cypress, and Everglades) contain some of the last wetland areas in South Florida. Wetlands are an important component of the marine ecosystem along the coast of the mainland and the fringes of our barrier islands.

Of note in Miami Dade County is Virginia Key, an approximately 1,000-acre barrier island located in Biscayne Bay, approximately 3 miles from mainland Miami. Virginia Key has an isolated freshwater wetland located behind the Dade Marine Institute, Gladstone Campus. The island contains a variety of upland and wetland plant communities, including seagrass beds and inter-tidal sand/mud flats, mangrove wetlands, beach dune communities and coastal maritime hammock.

This proposal would directly limit protections for this important ecosystem, just a stone's throw away from the urban core of the City of Miami. The proposal fails to account for the interconnection between Virginia Key's shoreline, mangroves, freshwater wetland, tropical marine hammock, coastal strand, and seagrass communities. These plant communities provide valuable

habitat areas for wildlife, including several threatened and endangered species. Several marine and estuarine natural communities can be found within the Biscayne Bay Aquatic Preserve, including seagrass beds, mangrove swamps, and salt marshes. The rich fauna found in Biscayne Bay results from the diverse habitats found in the bay. Scientists have documented more than 500 species of fish and 800 species of invertebrates, including the federally protected species.

The shoreline surrounding the Bill Sadowski Critical Wildlife Area and the wetlands adjacent to it contain more than 300 acres of predominately mangrove forests – the dominant vegetative community on Virginia Key. This coastal mangrove community is a combination of buttonwood and red, white, and black mangroves, providing important nursery areas for many marine species. The mangrove forests offer vital protection for a host of species, protect the shoreline from waves and boat wakes, and provide roosting and nesting sites for birds – including herons, egrets, and songbirds – as well as habitat for the endangered American crocodile. Further, this wetland area is extremely important as it represents the only open source of freshwater on the island to birds and other species. Because the proposal leaves "isolated" wetlands particularly vulnerable to losing Clean Water Act protections, it ignores the undeniable prominence of these wetlands.

Historically, Biscayne Bay received freshwater from various sources, although the channelization of natural tributaries and creation of canals severely altered the location, timing and delivery of freshwater to the Bay. Natural sources of freshwater include, but are not limited to, Snake Creek, Oleta River, Arch Creek, Little River, the Miami River and Black Creek. They provide natural filtration of waters as they enter the Bay, provide habitat for a variety of species, and form the base of the aquatic food chain for South Florida. These freshwater streams and waterways still exist, although almost none continue to flow naturally. Moreover, it is antithetical to the mission of the EPA to rely on the consequences of man-made interventions as a justification for further pollution and degradation.

Similarly, the Lake Worth Lagoon - in Palm Beach County - was once a freshwater lake with a combination subsurface and surface wetland connection to the Everglades ecosystem. As the area was developed this connection was replaced by canals, but remnants of the original connection remains. These pockets of backyard wetlands are scattered throughout Palm Beach County, and will lose protection with the proposed rule change. This will affect 1.7 million people who live within the Lake Worth Lagoon's watershed. Among these people would be the agriculture industry that dominates the western half of our county, whose sales totaled $1.4 billion dollars last year, making our county the leader in agriculture sales east of the Mississippi, and top ten in the nation. Based in the Lagoon is a marine industry worth $2 billion. Real estate is another massive economy of ours, along the shores of our Lagoon you can find Mar-a-Lago, it is just one example of the type of real estate would be affected by this rule change. And then there's tourism, an over $7 billion a year industry in our watershed, people come here from all over the world to fish, dive, or enjoy lazy beach days. Keep in mind our Lagoon is only 21 miles long and a mile wide at most.

Under the proposal, streams that are considered ditches or canals will face the risk of losing Clean Water Act safeguards; the proposal threatens the jurisdictional status of these streams, notwithstanding the important interaction between the streams and the wetlands. Moreover, the proposal fails to protect wetlands that are separated from tributaries by land, dikes or other features. In addition, the vast wetlands associated with these streams are subject to lose protection if they do not directly connect to surface waters – a contradiction to the fundamental purpose of the Act.

We firmly believe that the EPA should be working to secure greater protections for these streams and wetlands, rather than revising the definition of the Clean Water Act to put these important ecosystems at risk.

Statewide Impacts

The state of Florida relies on a clean water economy. Everglades National Park alone generates more than $100 million annually in tourism revenue. Our outdoor recreation industry generates $58.6 billion annually and our state is widely recognized as the Sport Fishing Capital of the World. Our waterways support billions of dollars in commerce each year and create tens of thousands of jobs for Floridians. These waters are as unique as our Florida springs and as beautiful as our scenic rivers. Any risk posed to these waterways is a direct risk to our economy and our livelihoods.

Under this proposal, the Florida Department of Environmental Protection has estimated that more than 800,000 acres of wetlands in the Panhandle region would lose Clean Water Act Protection. Almost half of Florida's 52,000 miles of rivers and streams (considered ditches or canals) could also lose their protection. Half of Florida's nearly 12 million acres of wetland habitat are directly at risk. Florida has already suffered a loss of half of its historic wetland acreage and the federal government is actively working to restore some of that loss. It seems counterintuitive to restore these ecosystems, and subsequently strip them of protections under the law.

The importance of aquifer protection cannot be understated. In some parts of north Florida there are no other sources of clean drinking water. Rather than removing protection, consider declaring the Floridan Aquifer a Sole Source Aquifer (SSA) with extra protections. As a 1999 USGS report[1] says, the Floridan Aquifer "is the sole source of water supply for Valdosta, Georgia, and much of the surrounding area." The surrounding area which uses groundwater as its sole source of water supply, for drinking, industry, and agriculture, most if not all of the Suwannee River Basin in Georgia and Florida, and much if not all of the Floridan Aquifer.

A weakening of Clean Water Act protections exposes our economy, our environment, and our way of life to unnecessary risk. On behalf of our respective organizations, our hundreds of members, and more than 45,000 square miles of watersheds – we urge the Agencies to withdraw this proposal. Any new rule should strengthen the Clean Water Act with additional protections for all streams, wetlands, and other waterways in the state of Florida and beyond.

Thank you for the opportunity to be comment. We may be reached with additional questions through our Waterkeepers Florida President, Lisa Rinaman – St. Johns Riverkeeper.

Sincerely,
Waterkeepers Florida

Apalachicola Riverkeeper
Georgia Ackerman

[1] In Sustainability of Ground-water Resources, by William M. Alley Thomas E. Reilly O. Lehn Franke, 1 January 1999, U.S. Department of the Interior, U.S. Geological Survey – Publisher, http://pubs.usgs.gov/circ/circ1186/. In Box E on Page 63 , *The Connection Between Surface-Water Quality and Ground-Water Quality in a Karst Aquifer*

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