

August 28, 2017

Comments by Friends of Little Hunting Creek on Docket ID No. EPA-HQ-OW-2017-0203

Dear Administrator Pruitt and Deputy Assistant Secretary of the Army Lamont:

Your notice published in the Federal Register on July 27, 2017, solicits public comment on whether it is desirable and appropriate to rescind the Clean Water Rule that was codified in 2015 and to recodify the regulation in use prior to its adoption. This change would be an interim first step to review and revise the definition of the “waters of the United States” and make a new rule.

We oppose the step of rescinding the Clean Water Rule and recodifying the pre-2015 regulations for several reasons:

- 1.) The rulemaking that produced the 2015 Clean Water Rule was based on thorough review and consideration of the relevant science, and involved extensive public input from all sides of the issue, with hundreds of public meetings held. The proposal to rescind the 2015 rule and reinstate the old rule, by contrast, is not based on the review of any science, nor has there been even a single public hearing to seek stakeholders’ input. The agencies have conducted no review or evaluation of the current (2015) rule. This step is being taken with no consideration of the merits of the 2015 rule.
- 2.) We have no assurance that the proposed rulemaking will be objective and unbiased, or that it will take the relevant science into account, or that public input will be broadly sought and considered.
- 3.) There is every reason to believe that the outcome of the rulemaking is a foregone conclusion. The proposed rulemaking is in response to a Feb. 28, 2017, “Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule,” which further instructs the Environmental Protection Agency and the Corps of Engineers to consider a rule based on the opinion of Justice Antonin Scalia in *Rapanos v. United States*.
- 4.) In his opinion, Justice Scalia used a dictionary (Webster’s 2nd) to concoct his own tortured definition of “waters of the United States” in ignorance of relevant scientific research. His construct defies the plain common sense observations of any person living on a waterway such as Little Hunting Creek, and appears aimed at severely restricting the jurisdiction and undermining the effectiveness of the Clean Water Act.

Thus, we believe it is neither desirable nor appropriate to throw out the 2015 Clean Water Rule and reinstate the pre-2015 rule as an interim step to new rulemaking. At best, it would be a big waste of time, and at worst, it would destroy the law that has enabled such improvements in water quality in the United States.

We have seen the benefits of the Clean Water Act to Little Hunting Creek. It is a tidal, freshwater tributary that flows into the Potomac River just east of the Mount Vernon Estate. Its 11 square mile watershed is in Fairfax County, Virginia, in a suburban area that was developed before there was any provision for protecting streams from the effects of urban stormwater. We have seen the improvements in the quality and clarity of the water as Fairfax County and the Commonwealth of Virginia, under pressure from the Environmental Protection Agency, have stepped up their efforts to

stop the pollution flowing into our stream from urban runoff, sewage overflows, etc. We want to see progress continue, not undone by ill-considered efforts to undermine the law that has been the basis for improvements in water quality throughout the nation.

We offer these comments in response to “III. Public Comments” (p. 34903 of the Federal Register Notice). The first sentence of that paragraph also solicits comments as to “the best way to accomplish it.” If you mean to invite comment on the manner of recodification, we urge you to scrupulously follow the Administrative Procedures Act, and conduct the recodification in a fully public and transparent fashion, holding well-advertised public hearings and providing generous opportunity for public input to what would be an undertaking with major implications for the future scope and efficacy of the Clean Water Act.

The economic analysis in the docket for this Federal Register Notice also suggests that measurements of the benefits of wetlands protection and improvements in water quality are terribly inadequate, and do not support an assessment of the costs and benefits of expanding (or restricting) coverage of the Clean Water Act. We hope that you will place environmental policy on a firmer empirical footing by instituting measurements that would permit quantification of the benefits of water quality improvements.

Sincerely,

Elizabeth Martin

President, Friends of Little Hunting Creek