

**Testimony of William W. Buzbee  
Professor of Law  
Georgetown University Law Center  
600 New Jersey Avenue, N.W. Washington D.C. 20001  
email: [wwb11@law.georgetown.edu](mailto:wwb11@law.georgetown.edu)  
office phone: 202 661 6536**

**Before the United States Senate  
Subcommittee on Fisheries, Water, and Wildlife  
Of the  
Committee on Environment and Public Works  
Hearing on “Erosion of Expectations and Expansion of Federal Control—  
Implementation of the Definition of Waters of the United States”  
May 24, 2016, 2:30 p.m.  
Room 406, Dirksen Senate Office Building**

My name is William Buzbee. I am a Professor of Law at Georgetown University Law Center. I am also a member-scholar of the not-for-profit regulatory policy think-tank the Center for Progressive Reform.

I am pleased to accept this Committee's invitation to testify regarding your hearing subject, entitled "Erosion of Exemptions and Expansion of Federal Control—Implementation of the Definition of Waters of the United States." I will focus in my testimony on the finalized "waters of the United States" regulations (hereinafter the "Clean Water Rule") published in the Federal Register by the Army Corps of Engineers (the Army Corps) and the United States Environmental Protection Agency (EPA) in the Federal Register on June 29, 2015, at 80 Federal Register 37,054.

As a professor asked to testify due to my expertise, not as a partisan or representative of any organization, I will seek to provide context leading to these regulations, comment on the choices made by EPA and the Army Corps, and assess the legality and logic of the Rule. Given the hearing's title and my review of some recent related past hearings and claims about the legality and substance of this rule, I will especially focus upon claims of regulatory overreach and expansion. As I state below in more detail, I believe that these claims are legally and factually erroneous, misunderstanding the regulatory background and Supreme Court decisions, omitting key elements of the actual Clean Water Rule, and mistakenly claiming limitless regulatory overreach under a statute and regulation that actually now protects less and provides more clarity than under the law as it stood during the term of President Ronald Reagan.

*My background and past involvement with the "waters of the United States" question:*

This is not my first involvement with the question of what are protected as "waters of the United States" under the CWA. I have been involved in past related Supreme Court litigation and legislative hearings.

As a result of my work on environmental law and federalism, I served as co-counsel for an unusual bipartisan amicus brief filed in the *Rapanos* case. This brief was filed on behalf of a bipartisan group of four former Administrators of the United States Environmental Protection

Agency (EPA). Those former US EPA Administrators had served under Presidents Nixon, Ford, Carter, the first President Bush, and President Clinton. Despite their different party backgrounds and years of service, all four agreed on the importance of retaining longstanding regulations protecting America's waters. This bipartisan EPA Administrators' brief was also aligned in *Rapanos* with the George W. Bush Administration's arguments before the Supreme Court, several dozen states, many local governments, and an array of environmental groups as well as hunting and fishing interests.

This substantial, bipartisan coalition, including the Bush Administration, all asked the Supreme Court to uphold longstanding regulatory and statutory interpretations regarding what is protected as "waters of the United States," emphasizing the centrality of the "waters" determination to all of the Clean Water Act. After all, although this question of what are protected "waters" is often discussed with a focus on wetlands and tributaries and especially dredging and filling restrictions long set by Section 404 of the Clean Water Act, the "waters" issue is the key jurisdictional hook for virtually all of the Clean Water Act. This includes, among other things, direct pollution industrial discharges under Section 402 of the Clean Water Act and its National Pollutant Discharge Elimination System (NPDES) program, as well as oil spill and water quality components of the Act.

Since the Court's splintered and confusing ruling in *Rapanos*, I testified in House and Senate hearings on implications, potential fixes, and regulatory responses in 2006, 2007, 2008, 2014 and 2015. I have continued to follow developments regarding this rule and body of law.

Earlier in my legal career, I counseled industry, municipalities, governmental authorities, states and environmental groups about environmental law, pollution control, and land use issues under all of the major federal environmental laws, as well as state and local laws. As a scholar, I have written extensively about related issues, with a special focus in recent years on regulatory federalism, especially environmental laws and their frequent reliance on overlapping federal, state and local environmental roles. I have published books with Cornell and Cambridge University Presses, and Wolters Kluwer/Aspen. My publications have appeared in *Stanford Law Review*, *Cornell Law Review*, *NYU Law Review*, *Michigan Law Review*, *University of Pennsylvania Law Review*, *Harvard Environmental Law Review*, and in an array of other journals and books. In addition to teaching at Georgetown, I previously taught at Emory

University and have been a visiting professor at Columbia, Cornell, Georgetown and Illinois Law Schools and taught and lectured in Europe and Asia.

*My testimony, in brief:*

The Clean Water Rule and the massive accompanying science report referenced and summarized in the Federal Register and now generally known as the “Connectivity Report” are an attempt to reduce uncertainties created by three Supreme Court decisions bearing on what sorts of “waters” can be federally protected under the Clean Water Act. Furthermore, the Clean Water Rule and Connectivity Report are directly responsive to the pleas and rulings of a majority of US Supreme Court justices. Far from being illegal, they are directly responsive to Supreme Court law and well grounded in peer-reviewed science and the long enduring Clean Water Act.

I will make six main points in this testimony:

First, I will explain very briefly how the question of what “waters” are protected matters not just for wetlands and tributary protections, but for industrial discharges of pollution. Furthermore, the various types of waters protected perform many functions of importance to businesses and governments at all levels. Business, health, recreational, and environmental interests are all at stake. And America’s fisheries—a focus of this Committee---are hugely dependent on protection of rivers, tributaries, wetlands, and the sorts of waters and related ecological and economic functions addressed by the final Clean Water Rule. Business interests are undoubtedly on both sides of this issue, but hunting, fishing, boating, recreation, and tourism-linked businesses are especially dependent on protection of America’s waters. And because pollution and filling of America’s waters threaten low cost but high value wetlands functions and waters used for agricultural purposes and for drinking water, and also water quality in drought prone areas, the despoiling or filling of America’s waters would be immensely costly in terms of resulting harms. In addition, state and local governments are also on both sides of this issue. Degraded water quality can lead to costly obligations for state and local governments.

Of great importance, legislators and other critics make both a scientific and legal error when they assume that periodically dry areas cannot be worth protecting as a water of the United States. No majority of the Supreme Court has ever so held, and the science contradicts this view. After all, much of the United States is often dry if not suffering from drought; when waters do flow, those

channeling and connecting geographic features are of critical importance and require protection against pollutant discharges that will degrade precious and scarce water.

Second, I will show how the regulatory choices reflected in the Clean Water Rule are responsive to Supreme Court law and also the views of a majority of the Supreme Court that regulations on this issue are needed and appropriate. EPA and the Army Corps provided lengthy and well-grounded legal explanations for the Clean Water Rule at every stage of the regulatory process.

Third, the Clean Water Rule and massive regulatory preamble in the Federal Register and accompanying documentation reveal that EPA and Army Corps engaged in extensive outreach and responded to criticisms of supposed limitless claims of federal power by retaining and solidifying exemptions.

Fourth, in attacks on the Clean Water Rule, critics seem consistently to fail to note and credit a major change that removes the most expansive and least water-linked historic grounds for federal claims of jurisdiction. The Clean Water Rule deleted longstanding federal power to regulate "other waters" based on showing that the harming activity or uses of the waters were linked to industry or commerce. This was, in effect, a commerce-linked sweep up provision. Instead, the Clean Water Rule, as now amended, links Clean Water Act jurisdiction to what the best peer-reviewed science indicates deserves protection. This science-based effort should be applauded, even in a time of partisan acrimony.

Fifth, the Clean Water Rule is directly linked to and tailored in light of the Connectivity Report, a massive survey of peer-reviewed science regarding waters' functions. This approach answers criticism that the federal government is going too far and protecting areas of no value relevant to the Clean Water Act. If critics had found flaws in the science or proposed regulatory categories, they surely were required to participate in the notice and comment process and support their contrary views with hard science and firm data, not conclusory tales.

Sixth, past hearings and public comments about this rule at times reveal a fundamental confusion. For liability and permit obligations to arise under CWA in connection with farming and other typical land and water uses, a discharge of pollutants must be involved. Basically, neither ordinary farming activities nor basic uses of lands, wetlands, and other covered waters are prohibited. It is the act of discharging pollutants subject to Section 402 or Section 404

permits that typically creates permitting obligations. (Oil spill prevention obligations are subject to their own separate measures that are not relevant here.) Hence, many activities are non-events under the CWA, and most actions that are covered are subject to permits that typically constrain but allow activities. To be subject to liability, there generally must be a discharge of pollutants into or filling of a protected water without a required permit or in violation of a permit.

*Point I : The extent of federally protected waters matters to far more than just wetlands regulation and explains the longstanding protective federal bipartisan consensus*

The question of what “waters” are federally protected is not a matter that only concerns allegedly marginal waters that, as often presented by critics of the longstanding protective consensus, look more like land or involve the outermost reaches of wetlands protection. The question of what are protected “waters of the United States” concerns the very linchpin of federal Clean Water Act jurisdiction. It does indeed supply the hook for Section 404 “dredge and fill” coverage that, in accordance with the Clean Water Act, protects wetlands. It also provides the jurisdictional prerequisite for Section 402’s requirement of permits for industrial pollution discharges under the National Pollution Discharge Elimination System (or NPDES). These provisions support efforts to protect water quality, protect drinking water, provide habitat, and buffer against storm surges and flooding. Furthermore, since the 1970s and still today on the Supreme Court, the longstanding consensus has been that the Clean Water Act protects far more than just waters used in the literal sense for shipping-linked navigation. That is simply not the law.

It is critical to remember that the Clean Water Act has been one of America’s great success stories, helping to restore many of America’s rivers from highly polluted conditions to water that often now is clean enough for fishing, recreation, and even drinking water. The Act also greatly reduced the pre-Clean Water Act tendency to see wetlands as worthless and appropriate for filling.

Many of the countries we compete with for talent and business vitality suffer from a hugely degraded environment. Our cleaner environment is a major comparative advantage in the increasingly globalized economy. After-the-fact efforts to clean polluted waters are costly, and harms to health, business, governmental, and recreation interests when a water is polluted can be vast. Especially in states and regions with a fisheries industry and large hunting and fishing

constituencies and linked businesses, the rivers, tributaries, and wetlands that are at the heart of the protections of the Clean Water Rule provide vast value.

Despite the great progress in improving United States water quality, many parts of the country still suffer from degraded water quality, and threats to wetlands and tributaries still arise. Everyone shares a common interest in protecting water quality and wetlands' hugely valuable functioning. Nevertheless, individuals may see business advantage in being able to pollute with impunity or convert for private gain a tributary or wetland into land for development or other commercial use, even if others downstream are economic losers. Hence, despite a broad consensus that America's rivers, tributaries and wetlands should be protected, clashes over particular applications of the law are a near constant. All environmental protection laws, by their very nature, ask for a degree of restraint, forbearance, and attention to shared interests and resources. Congress, and under the Clean Water Act EPA and the Army Corps, play a critical role in protecting our critically important and shared water resources. That the Clean Water Act is one of America's great success stories, and a success with bipartisan roots, should not be forgotten.

*Point II: The new "waters of the United States" regulation is an appropriate response to the Supreme Court's recent cases*

Protecting jurisdictional waters was an area of bipartisan consensus and regulatory consistency right through the recent Bush Administration. Until the 2001 Supreme Court *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*) decision, the law and underlying regulations reflected a stable bipartisan consensus of almost thirty years that protection of America's waters was good policy. A unanimous Court deferred to agency line-drawing about what sorts of waters deserved protection in *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985). However, *SWANCC* and then *United States v. Rapanos*, 547 U.S.715 (2006) (*Rapanos*) unsettled that longstanding bipartisan consensus, breeding legal uncertainty that the new Army Corps and EPA regulations seek to address.

Greater regulatory clarity and explicit reference to the relevant best science together reduce regulatory uncertainty, both protecting waters that matter and reducing regulatory uncertainty and costs that benefit no one.

That EPA and the Army Corps could or should issue new clarifying regulations on “waters” was explicitly embraced by a majority of Supreme Court justices in *Rapanos* and is consistent with forty years of CWA understandings. The act of rulemaking is in no way illegitimate. A six justice majority in *Rapanos* embraced the role of expert regulation to clarify the appropriate line between land and water. This included Chief Justice Roberts, who bemoaned the lack of responsive clarifying regulations post-*SWANCC*, and Justice Kennedy, who penned a swing vote opinion that is widely viewed as the most authoritative *Rapanos* opinion. Justice Kennedy fleshed out how a “significant nexus” needs to be shown to federally protect some waters whose linkages to navigable waters and functioning makes them of possibly marginal importance; “alone or in combination,” the relationship with navigable waters must be more than “speculative or insubstantial.” *Rapanos*, 547 U.S. at 780. Justice Kennedy explicitly recognized that many questions about what sorts of waters deserve protection could be addressed via categories set forth by regulation. The four dissenters, all of whom joined an opinion by Justice Stevens, would have affirmed the regulators’ judgments attacked in *Rapanos*; they emphasized the importance of judicial deference to expert regulatory judgments about what waters should be protected. They also agreed that both the sorts of waters that would be protected under Justice Kennedy’s opinion and under Justice Scalia’s plurality opinion fall within the reach of the Clean Water Act.

Thus, six justices embraced an ongoing role for regulation to bring clarity to the law. In addition, an earlier unanimous Supreme Court in *Riverside Bayview Homes* embraced deference to regulatory judgments about where to draw the line between land and water. There undoubtedly remains legitimate room for regulations to bring greater clarity to this body of law.

The *SWANCC* decision did not constitutionally toss away the heart of the Clean Water Act. It merely addressed a regulatory interpretation that it viewed as outside the permissible bounds of the statute, stating that protection of isolated waters due to their use by migratory birds went beyond the bounds of statute’s language. It explicitly did not state some new constitutional boundary, but read the statute to avoid having to engage such a question.

The Clean Water Rule responds directly and reasonably to these Supreme Court calls. It protects some waters by category, basing that judgment on a comprehensive review of peer-reviewed science about the linkages, value and functions of such categories of waters. Some other types of

waters are identified as possibly falling under federal jurisdiction, but the jurisdictional determination has to follow a water site-specific review to see if a “significant nexus” exists adequate to justify federal protection. The Rule and the Federal Register preamble discussion offer additional guidance about what “significant nexus” analysis should consider, building on Justice Kennedy’s *Rapanos* language and providing additional guidance for what regulators and those seeking a jurisdictional determination should consider.

Hence, by protecting some waters by category and others on a case-by-case basis if satisfying “significant nexus” analysis, and by linking the rule’s approach to the Connectivity Report, a comprehensive survey of peer-reviewed science, the Army Corps and EPA respected Supreme Court edicts and signals. Furthermore, the Clean Water Rule is consistent with the Clean Water Act’s explicit textually stated goal of protecting the “chemical, physical, and biological integrity” of America’s waters by reducing pollution discharges and requiring permits before discharging any pollutants into such waters, whether in the form of industrial pollution or fill.

When reviewing recent hearings and statement about the Waters Rule, I noted occasional claims that EPA and the Army Corps somehow failed to provide legal analysis to explain their understanding of the law and legal basis for the rule. I don’t know the source of this erroneous view, but ever since the Supreme Court in the 1980s embraced what is known as judicial “hard look review” of high stakes regulations, agencies have been careful to provide in-depth legal explanations for their actions and also responses to salient criticisms. If anything, when proposing and then finalizing the Clean Water Rule, EPA and the Army Corps provided unusually lengthy and numerous legal analyses to justify their actions. When the agencies proposed the rule, the proposal published in the Federal Register contained a lengthy appendix entitled “Legal Analysis.”<sup>1</sup> Similarly, when they finalized the rule, the agencies published an enormous response to comment document. In addition to responding to legal claims throughout that document, there is an entire chapter dedicated to Legal Analysis.<sup>2</sup> Moreover, the Technical Support Document published with the final rule has a large section entitled “Statute, Regulations

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<sup>1</sup> See analysis starting at p. 22,252 of <https://www.gpo.gov/fdsys/pkg/FR-2014-04-21/pdf/2014-07142.pdf>.

<sup>2</sup> See [https://www.epa.gov/sites/production/files/2015-06/documents/cwr\\_response\\_to\\_comments\\_10\\_legal.pdf](https://www.epa.gov/sites/production/files/2015-06/documents/cwr_response_to_comments_10_legal.pdf).

and Caselaw: Legal Issues.” This provides yet more lengthy and detailed legal analysis.<sup>3</sup> Whatever one’s views about the Clean Water Rule, it did not emerge out of nowhere and the agencies certainly provided a massive body of explanatory legal material.

*Point III: The Clean Water Rule makes newly explicit several categories of activities or waters not subject to federal jurisdiction*

A persistent refrain regarding the Clean Water Rule and in litigation over the Clean Water Act is that federal jurisdiction being claimed borders on the limitless. Based on this Senate hearing’s title, I expect that the Committee will again state or hear similar concerns. I believe that claims that the Clean Water Rule expands on federal jurisdiction are incorrect. Based on my review of the Rule and preceding law, it protects fewer water than provided under the law as it stood during the Reagan Administration. The Rule partly restores to protection some waters that were in regulatory limbo since the *SWANCC* decision, mainly due to regulatory forbearance and avoidance of litigation over disputed jurisdictional determinations. This claim of limitless federal power is most evidently erroneous in light of the Rule’s creation of categorically protected waters, others that must be assessed on a case-by-case basis, and explicit distance-based exclusions from federal jurisdiction.

However, the error of claims of limitless jurisdiction and overreach is also readily apparent when we examine new regulatory sections and definitions that, as now amended, make explicit that several types of otherwise potentially debatable waters are not “waters of the United States.” These include (with additional more precise language not quoted in full here): wastewater structures of several types; prior converted cropland; several sorts of ditches that are upland or do not contribute flow to otherwise regulated waters; and several types of “features” such as artificially irrigated areas that would revert to upland without irrigation water, artificial lakes, ponds, pools and ornamental waters, puddles, construction-linked water-filled depressions, groundwater, and gullies, rills and non-wetland swales. Several of these exemptions appear to be in direct answer to criticisms in court briefs and congressional testimony that federal

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<sup>3</sup> See [https://www.epa.gov/sites/production/files/2015-05/documents/technical\\_support\\_document\\_for\\_the\\_clean\\_water\\_rule\\_1.pdf](https://www.epa.gov/sites/production/files/2015-05/documents/technical_support_document_for_the_clean_water_rule_1.pdf).

jurisdiction has bordered on the limitless. Of huge importance, elimination of the commerce-based sweep up grounds for jurisdiction shifts federal power from a potential focus just on the presence of commercial activity to a focus on peer-reviewed science about the functions of America's waters. I turn to that provision now.

*Point IV: The Army Corps and EPA in the Clean Water Rule deleted the longstanding "other waters" commerce-linked sweep-up provision, instead basing federal jurisdiction on science and thereby limiting federal power*

Critics of the Clean Water Rule have virtually ignored a vast legal change that I would have expected to garner applause from critics of broad federal jurisdiction. EPA and the Army Corps deleted the longstanding additional commerce-based sweep-up grounds for federal jurisdiction. This provision, the former Section 328.3(a)(3) "other waters" paragraphs, provided federal jurisdiction to protect over a dozen sorts of waters upon a showing that their "use, degradation or destruction . . . could affect interstate or foreign commerce" or be used by "interstate or foreign travelers" for "recreational or other purposes," for fishing-linked commerce, or for "industrial purposes by industries in interstate commerce." This provision basically identified types of waters but made them protectable based just on their commerce-linked uses or values. This regulation was consistent with longstanding understandings of the 1972 Clean Water Act amendments and the congressionally intended reach of federal power. It was clearly crafted to mesh Clean Water Act jurisdiction with the reach of federal power under the Commerce Clause of the U.S. Constitution. However, both the *SWANCC* and *Rapanos* decisions raised questions about whether Clean Water Act jurisdiction could focus on a water's commercial or industrial uses or the impacts of a water's degradation without regard to the water's functions or links to navigable waters. In the Clean Water Rule, EPA and the Army Corps opted to avoid dispute, deleting this longstanding grounds for jurisdiction and relying instead on peer-reviewed science about how and why waters should be protected.

I will not here opine on whether this section's deletion was legally necessary or prudent. I will, however, note that the Corps and EPA answered critics and eliminated uncertainty by deleting this section in favor of linking jurisdictional "waters of the United States" determinations to what the science shows, as applied to the particular sites and activities at issue. Since most pollution and filling activity is undoubtedly commercial and industrial in nature, and little today is not

linked to interstate commerce, this regulatory deletion is a significant concession and reduction in federal power. Again, the final Clean Water Rule instead links federal jurisdiction to peer-reviewed science, cutting back on a provision in place for decades that provided the broadest possible grounds for jurisdiction.

*Point V. The Clean Water Rule links to a massive survey of peer-reviewed science about waters' connectivity, values and function and thereby responds to the most prevalent criticism of "waters" federal jurisdiction and puts all on notice*

Over the past decade, a common claim of critics of federal jurisdiction has been that waters—or sometimes lands—can and are claimed to be protected for no reason relevant to the Clean Water Act's purposes. And on this issue and in other battles over regulation, critics in Congress, in the courts, and in the academy have called for “sound science” and “peer-reviewed” science to underpin regulatory judgments. The Army Corps and EPA took this to heart, for the first time pulling together a massive survey of peer-reviewed publications about the connectivity, values, and functions of various types of waters. This report was released in draft form, reviewed by the Science Advisory Board, and made public for review and comment. On January 15, 2015, EPA announced in the Federal Register release of a final version of this report. In addition, the Corps and EPA in the Clean Water Rule Federal Register preamble explain how they interpret this report and the science in deciding what types of waters are categorically protected, subject to case-by-case “significant nexus” analysis, or not protected.

This sort of notice and comment process and public vetting of the accompanying science report, with the overt linkages to the “waters of the United States” rule, provided an exemplary science-based, open, transparent, and judicially challengeable process. I'm unaware of any powerful criticisms against the Connectivity Report; considering its massive survey of all peer-reviewed science, criticism would certainly be difficult.

*Point VI: Because an unpermitted discharge of a pollutant is a central prerequisite for Clean Water Act liability, not ordinary uses of lands and waters, surprise liability should be rare*

Both in past legislative hearings and in many statements about this rule, critics have asserted that virtually everything farmers and others do in lands near waters and around or in supposed waters

will now create indeterminate liability or trigger legal prohibitions. These claims seem to be rooted in a misunderstanding of the CWA. Apart from some provisions applicable to oil spill planning that require preventive planning, permitting obligations and linked liabilities under the CWA only arise when a person will be discharging pollutants from a point source into a jurisdictional water. Section 402 industrial discharges and Section 404 “dredge and fill” permits are most relevant here.

Most ordinary agricultural activities and other uses of lands and waters simply do not constitute covered discharges. First, as mentioned above, there are explicit statutory as well as regulatory carveouts, especially for categories of agricultural activity. In addition, assorted “nationwide” or “general” permits create presumptive permission for many categories of activities often undertaken around waters. And not everything is a point source; many sorts of pollutant flows, especially connected to agriculture or flowing across lands or roads, are nonpoint sources and not reached by the CWA. It is when someone decides to dump pollutants or destroy a water, yet without a permit, that legal liability arises. (Again, oil spill prevention is subject to different additional obligations.) But often such discharges will be subject to permitting and hence escape liability.

Thus, it is important to keep in mind that it is the *unpermitted discharge of pollutants from a point source into a jurisdictional water* that gives rise to concerns. Furthermore, it is extraordinarily rare that unintentional or even clearly illegal intended conduct gives rise to liability; citizens seeking to enforce the law have to give notice so there is an opportunity for cure, and government enforcers also typically try to head off trouble by telling potential law violators of their concerns. When a question arises about whether a water is jurisdictional, the Army Corps has long had a non-mandatory process for providing regulatory guidance, further reducing risks of surprise regulatory liability. Basically, liability does not come out of the blue, but requires several stages of intentional conduct and often something approaching willful disregard of the law.

## *Conclusion*

The legal uncertainty of recent years about what are protected federal waters has benefitted no one. For those concerned about protection of America's waters, regulatory uncertainty has led to regulatory forbearance, problematic or erroneous regulatory and judicial decisions, and increased regulatory costs. By now linking the "waters of the United States" question to peer-reviewed science and clarifying which waters are subject to categorical or case-by-case protection and revealing the reasons for such judgments, the Corps and EPA have moved the law in the direction of certainty and clarity. This is an area calling for difficult, expert regulatory judgments. There was a reason for the thirty years of bipartisan consensus in favor of broadly protecting America's waters. The new Clean Water Rule should bring clarity and stability to the law, while also respecting Supreme Court precedent and the protective mandates of the Clean Water Act. Little is bipartisan these days, but protection of America's waters is surely valued on both sides of the aisle and embraced broadly at the federal, state, and local level. Businesses and citizens depend on protection of America's waters. Our abundant and protected waters, especially high quality waters, offer a major economic advantage for the United States; many of our international competitors are despoiling their air and waters or suffer from chronic water shortages exacerbated by pollution. I hope that this Committee and others will avoid criticisms rooted in misunderstandings about the law and content of the new Clean Water Rule. It deserves support and will bring new clarity to the law.