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 * SOUTHERN CALIFORNIA WATERSHED ALLIANCE * SURFRIDER FOUNDATION *
 * TUOLUMNE RIVER TRUST * UNITARIAN UNIVERSALIST SERVICE COMMITTEE *
 * WEST DELTA CHAPTER, CALIFORNIA STRIPED BASS ASSOCIATION *

July 22, 2011

Water Docket
 U.S. Environmental Protection Agency
 1200 Pennsylvania Ave. NW
 Washington DC 20460

Comments on EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act

Docket ID No. EPA-HQ-OW-2011-0409

The undersigned organizations located throughout the state of California appreciate the opportunity to comment on the Environmental Protection Agency (EPA) and Army Corps of Engineers (ACE) *Guidance Regarding Identification of Waters Protected by the Clean Water Act*.

We urge the Agencies to finalize the Guidance and to undertake a formal rulemaking process in order to resolve the present confusion over which waters of the United States are protected under the Clean Water Act.

Guidance currently in place has caused unnecessary confusion and delay in the implementation of the Clean Water Act's important programs, has interfered with effective enforcement activity, has removed many wetlands and streams from federal protections under the Clean Water Act and has put drinking water sources for at least 117 million people at risk. The proposed Guidance is a good first step in fixing this problem.

Since the Supreme Court decisions in *SWANCC* and *Rapanos* and ensuing EPA Guidance documents issued in 2003 and 2008, water bodies which Congress intended to protect when it passed the Clean Water Act in 1972 have been put at risk. Congress enacted the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." However, existing Guidance has resulted in the Army Corps of

Engineers disclaiming federal jurisdiction over wetlands, streams and other water bodies that play a critical role in overall health of the nation's watersheds and drinking water sources.

It is estimated that over 20 million acres of wetlands and 59% of our nation's stream miles are at risk as a result of the Corps' reluctance to assert jurisdiction over many of these waters as a result of the existing flawed Guidance. The newly released Guidance will correct many of these flaws. A formal rulemaking process should follow as soon as possible in order to further improve federal protection for all of the nation's water resources including geographically isolated wetlands such as prairie potholes, playa lakes, and vernal pools.

We support the science-based approach articulated in the Guidance to insure appropriate protection as intended by Congress and understood by decades of administrative activity pursuant to implementation of the Clean Water Act. Science and implementation processes have long recognized the critical role that all the nation's water resources play in preventing floods, filtering pollution and contributing to overall healthy watersheds. The approach outlined in the draft Guidance is a critical first step for protecting public health and ensuring the integrity of precious water resources.

In California, we had an eye-opening demonstration of the need for this guidance in 2008 when the Army Corps of Engineers determined that only four miles of the Los Angeles River qualified as a navigable waterway under the Bush administration guidance. The resulting outcry caused the EPA to review and rescind that decision, but thousands of rivers, streams and wetlands remain vulnerable and lack the support that saved the LA River from being stripped of Clean Water Act protections.

We urge the Agency to finalize Guidance and proceed rapidly to a formal rulemaking process in order to remedy the current situation.

Sincerely,

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