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**BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON WATER RESOURCES & ENVIRONMENT**

SEPTEMBER 18, 2019

Good morning Chairman DeFazio, Chairwoman Napolitano, Ranking Member Graves, Ranking Member Westerman, and members of the Committee. I am David Ross, Assistant Administrator of the U.S. Environmental Protection Agency's Office of Water. Thank you for the opportunity to speak about the Administration's priorities and policy initiatives under the Clean Water Act. Given the frequent convergence of surface and drinking water quality issues, I am also happy to address questions related to our drinking water and other national water program areas.

I want to begin by thanking the dedicated professionals working within the EPA Office of Water for their service to this country and for their passion in delivering on the Agency's core mission of protecting public health and the environment every single day. America's drinking and surface water quality is much better today than at any point during the history of our Agency. The laws of Congress, as carried out by the Executive Branch, are working, and today the United States is a global leader in drinking water quality and draws millions of visitors from around the world each year to enjoy and play on our inland and coastal waters.

That said, historical issues remain and new challenges have emerged, from aging infrastructure to managing excess nutrients in surface water to addressing emerging contaminants in drinking

water. The EPA Office of Water has an extensive portfolio of responsibility, and I would like to highlight a few priority action areas for the Subcommittee. These include: modernizing and rebuilding America's water infrastructure; reusing water for beneficial purposes instead of treating it as waste; ensuring a sustainable workforce in the water sector; using innovative approaches to reduce excess nutrients in waterbodies; and addressing priority and emerging contaminants in drinking water. I also want to highlight two priority regulatory actions under the Clean Water Act which may be of interest to the Subcommittee.

Modernizing and rebuilding America's water infrastructure

One of the highest priorities of the EPA Office of Water and a personal priority of mine is to ensure the Agency implements our appropriated grant and loan programs as expeditiously and transparently as possible. The Water Infrastructure Finance and Innovation Act (WIFIA) program and the Clean Water and Drinking Water State Revolving Funds (SRFs), for example, are vital for supporting communities in meeting their clean water and drinking water goals.

The WIFIA program is complex and took some time to set up, but it is now operating at full capacity and is producing tremendous results. To date, the EPA has announced 11 WIFIA loans, totaling nearly \$3 billion in credit assistance to help finance over \$6.5 billion in water infrastructure projects and create more than 10,000 jobs. Additionally, three more projects are currently under review and likely to be announced soon, totaling approximately \$725 million in credit assistance. This past November, the EPA invited another 39 projects in 16 states and the District of Columbia to apply for WIFIA loans – projects that, when approved, could help finance more than \$10 billion in total water infrastructure investments and create up to 155,000

more jobs. In response to the EPA's third WIFIA Notice of Funding Availability, the Agency received 51 letters of interest, collectively requesting \$6.6 billion. This exceeds the \$6 billion that the EPA is offering, demonstrating the critical need for investment in our nation's water infrastructure and strong interest in the WIFIA program.

The EPA's Clean Water and Drinking Water SRFs continue to provide critical funding to states to improve wastewater and drinking water infrastructure and reduce water pollution and public health threats. Combined, the SRFs have provided more than \$170 billion in financial assistance to more than 39,900 water quality infrastructure projects and 14,500 drinking water projects across the country. The SRFs continue to be one of the most impactful EPA programs in protecting public health and the environment, and the Agency is working with our state partners to ensure their SRFs are operating as efficiently and effectively as possible.

Reusing water for beneficial purposes

Another priority for the EPA Office of Water is reusing water for beneficial purposes instead of treating it as waste. Forty of our state partners anticipate fresh water shortages in the next decade, at least in portions of their states. Although states, tribes, local governments and the water sector are actively working to diversify their water portfolios to meet anticipated demand, water reuse is an underutilized tool for meeting the needs of the Nation. The federal government is committed to working with our state and local communities to ensure that all Americans have access to reliable sources of clean and safe water. That is why last week at the WaterReuse Symposium in San Diego, California, the EPA and our federal partners released a Draft National Water Reuse Action Plan for public review and comment. There is innovative work happening

throughout the water sector to advance water reuse, and the draft Action Plan is intended to help accelerate adoption of water reuse as a critical component of an integrated water resources management approach that can support improved water resiliency, sustainability, and security.

Ensuring a sustainable workforce in the water sector

The EPA also recognizes the need to ensure a capable, knowledgeable, and diverse workforce of water professionals. The great work of these environmental heroes protects public health and the environment every single day. In addition to their critical role in providing clean and safe water to our communities, water utility workers are key in protecting the Nation's investments in water infrastructure. We know that roughly one third of water and wastewater operators will be eligible to retire in the next 10 years, and technology is outpacing training. While this is primarily a state and local community issue, I see an important role for federal leadership. That's why the EPA is working with our federal partners to support water workforce training and development. For example, we are working with the U.S. Department of Veterans Affairs to provide information on water careers to disabled veterans and with the U.S. Department of Labor to promote tools like their Water Workforce Competency Model, which can help utilities and others set up apprentice programs. The country relies on this workforce every day and the EPA can play a unique role in helping to support this sector.

Using innovative approaches to reduce excess nutrients in waterbodies

The EPA is also prioritizing using innovative approaches to reduce excess nutrients in surface waters. Excess nutrients in our waterways is a significant and ongoing water quality challenge that can trigger harmful algal blooms, a growing drinking water concern for many communities.

Excess nutrients come from a variety of sources, including urbanization, growing populations, wastewater discharges, septic systems, stormwater runoff, and agriculture. States, tribes, local governments, communities, the federal government, and a diverse network of engaged stakeholders have worked hard to reduce excess nutrients.

While much progress has been made, there is more work to do. At the federal level, the EPA will continue to use traditional regulatory and financial tools that are available to us. But to truly make a lasting difference, we need to think more holistically. That is why the EPA Office of Water has been so focused over the past year on thinking more creatively about the use of market-based mechanisms and how the power of innovative financing tools can help us create lasting and beneficial change in this area. For example, we believe water quality trading is an untapped opportunity to make significant gains in water quality improvement, particularly as applied to excess nutrients in surface waters. That is why we published a new water quality trading policy in February and currently have additional recommended policy enhancements out for public comment.

The Agency is also strengthening our partnership with the U.S. Department of Agriculture (USDA) and is working more closely with the utility and agricultural sectors. We are thankful for their engagement and collaboration, and we are grateful for farmers' expertise as long-standing conservation stewards of the land.

Addressing priority and emerging contaminants in drinking water

I would also like to highlight some important efforts the EPA Office of Water is undertaking to support safe drinking water. The EPA has established protective drinking water standards for more than 90 contaminants, including drinking water regulations issued since the 1996 amendments to the Safe Drinking Water Act that strengthen public health protection. Today, more than 92 percent of our population served by public drinking water systems is delivered water in full compliance with federal standards, and EPA is working aggressively with our state partners to push that number higher.

While these actions have improved drinking water across the country, we continue to look forward. For example, we are working on comprehensive revisions to update the Lead and Copper Rule (LCR) for the first time in nearly three decades, and we look forward to releasing the proposed rule for public comment. We are also continuing to work with primacy agencies to ensure that the current LCR is being properly implemented. We continue to coordinate with and provide support to the City of Flint and the State of Michigan in their efforts to ensure that all LCR requirements are being met, and the EPA has been and will continue to help the City of Newark and the State of New Jersey evaluate potential solutions to establish long term stability in controlling Newark's lead issues. Our goal in each of these cities is to protect public health, ensure public confidence in the public water system, and work collaboratively with the local and state experts to ensure federal requirements are met now and in the future.

The EPA is also focused on emerging contaminants such as per- and polyfluoroalkyl substances (PFAS) and continues to make progress outlined in our PFAS Action Plan. The Agency will

propose a regulatory determination for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) under the Safe Drinking Water Act by the end of this year and will propose nationwide drinking water monitoring for a suite of PFAS under the next Unregulated Contaminant Monitoring Rule cycle. The EPA recently concluded public comment on the draft Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS, another key commitment under the Action Plan, and is reviewing public comments. The regulatory development process to propose designating PFOA and PFOS as Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances is also well underway.

Priority rulemakings

The federal government has a poor track record in Supreme Court cases involving the Clean Water Act in which it was a party, including losing the last two cases (*SWANCC* and *Rapanos*) in which the scope of Clean Water Act jurisdiction was at issue. In fact, in the last three cases (*Sackett*, *Hawkes*, and *NAM*), federal positions failed to secure a single vote from any Supreme Court Justice. That is why under this Administration, the EPA Office of Water is focused on restoring the rule of law and providing regulatory certainty. Two priority regulatory actions to help accomplish these goals are the revision to the definition of “Waters of the United States” and revisions to regulations related to section 401 of the Clean Water Act.

Revising the definition of “Waters of the United States”

Under the President’s Executive Order 13778, the EPA and the Department of the Army are engaged in a two-step rulemaking to: (1) repeal the 2015 rule defining “Waters of the United States” (WOTUS); and (2) draft a new regulation to revise the definition of WOTUS.

On September 12, 2019, EPA Administrator Wheeler and Assistant Secretary of the Army for Civil Works James announced our final rule repealing the prior Administration’s 2015 Rule and reinstating the pre-existing regulations (referred to as Step 1). Step 1 provides regulatory certainty as to the definition of “Waters of the United States” following years of litigation surrounding the 2015 Rule. The two federal district courts that have reviewed the merits of the 2015 Rule found the rule legally deficient and issued orders remanding the rule back to the agencies. These and other courts have also enjoined the 2015 Rule from taking effect in a majority of the country, with a shifting patchwork of decisions adding to the regulatory uncertainty associated with the prior Administration’s WOTUS definition.

After an extensive rulemaking effort, the EPA and the Army have jointly concluded that multiple substantive and procedural errors warrant a repeal of the 2015 Rule. For example, the 2015 Rule:

- Did not implement the legal limits on the scope of the agencies’ authority under the Clean Water Act as intended by Congress and reflected in Supreme Court cases;
- Failed to adequately recognize, preserve, and protect the primary responsibilities and rights of states to manage their own land and water resources;
- Approached the limits of the agencies’ constitutional and statutory authority absent a clear statement from Congress; and

- Suffered from certain procedural errors and a lack of adequate record support as it relates to the 2015 rule's distance-based limitations.

With this final repeal, the agencies will implement the pre-2015 regulations that are currently in place in more than half of the states, informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice.

In December 2018, the agencies signed a proposed rule that would revise the definition of WOTUS informed by the guidance of that Executive Order. The agencies are in the process of reviewing more than 600,000 comments received on the proposed rule and plan to take final action by this winter.

Revising the regulations related to section 401 of the Clean Water Act

In April 2019, President Trump issued Executive Order 13868 on Promoting Energy Infrastructure and Economic Growth, and directed the Administration to take appropriate action to accelerate and promote the construction of pipelines and other important energy infrastructure. The President's Executive Order directs the EPA to consult with states and tribes on reviewing and updating guidance and regulations related to section 401 of the Clean Water Act.

Section 401 gives states and authorized tribes the authority to assess potential water quality impacts of discharges from federally permitted or licensed infrastructure projects that may affect navigable waters within their borders. The EPA's existing certification rules have not been

updated in nearly 50 years and are inconsistent with the text of Clean Water Act section 401, leading to confusion and unnecessary delays for infrastructure projects.

On August 8, 2019, Administrator Wheeler signed a proposed rule to modernize implementation of Clean Water Act section 401. Through this rulemaking, the EPA is seeking to increase the transparency and efficiency of the section 401 certification process and to promote the timely review of infrastructure projects while continuing to ensure that Americans have clean water for drinking and recreation. Additionally, by modernizing the regulations from 1971, we are aiming to provide greater clarity and regulatory certainty for the water quality certification process. The public comment period is currently open, and we will take final action after carefully reviewing the comments we receive.

In conclusion, the EPA Office of Water is busy administering our grant and loan programs, updating our drinking water regulations, modernizing our surface water programs, and conducting priority rulemakings to provide greater clarity and certainty for the regulated community. Chairman DeFazio, Chairwoman Napolitano, Ranking Member Graves, Ranking Member Westerman, and members of the Committee, thank you for the opportunity to discuss the Administration's priorities and policy initiatives for the National Water Program. I look forward to answering any questions you may have.