



U.S. Environmental Protection Agency

**Public Hearing on Proposed Rule:
“Revised Definition of ‘Waters of the United States’”**

February 28, 2019

**Testimony of Philip Bein
Assistant Attorney General
Environmental Protection Bureau
Office of New York State Attorney General
Letitia James**

Testimony of Philip Bein on
EPA's Proposed Revised Definition of "Waters of the United States"

Good morning. I am Philip Bein, an Assistant Attorney General in the office of New York Attorney General Letitia James.

The subject of today's hearing is of great importance to public health and the environment. Limiting oral comments to three minutes stifles participation and ill-serves the rulemaking process.

Attorney General James strongly opposes the agencies' proposal, and is leading a coalition of states that also oppose this "Dirty Water" rule. Replacing the Clean Water Rule would reverse vital progress made in safeguarding our water by sharply reducing the number of water bodies protected by the federal Clean Water Act. While the agencies claim they cannot quantify reductions in covered waters, their own internal documents show that as much as 51 percent of wetlands across the country would be excluded, along with 18 percent of streams.

New York relies on the Clean Water Act. It receives water pollution and floodwaters from sources outside its borders over which it lacks jurisdiction. The Act prevents those sources from polluting the State's waters and eroding the health, safety, environmental and economic benefits of its waters.

This proposal flies in the face of the facts and is not consistent with the law. Robust scientific evidence shows the importance of wetlands, floodplains, riparian areas and tributaries both to protect water quality and to control flooding of larger downstream waters. In excluding so many of these waters, the agencies ignore their own previous scientific findings underlying the Clean Water Rule.

In that rule, the agencies applied those findings to the “significant nexus” standard of Justice Kennedy in *Rapanos v. United States*, 547 U.S. 715 (2006). Under this test, a water is within the Act’s reach if it has a significant nexus to water quality in a traditional navigable water; in other words if it serves the Act’s clean water objective. To our knowledge, every federal court that has considered the matter has held that if a water satisfies this test, it is to be protected. But, without scientific or legal justification, the proposal abandons this test by scaling back coverage in derogation of the Act’s sole objective “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters.”

In sum, Attorney General James strongly opposes this regressive, and scientifically and legally unsupported Dirty Water Rule. She urges the agencies to withdraw it.