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TESTIMONY OF CAROL M. BROWNER
BEFORE A HEARING OF THE UNITED STATES SENATE
ENVIRONMENT AND PUBLIC WORKS COMMITTEE

“LEGISLATIVE HEARING ON S. 1870, THE CLEAN WATER RESTORATION ACT OF
2007”

April 9, 2008

Good morning, Madam Chairman, Senator Inhofe, and members of the Committee. I appreciate the opportunity to testify before you today about the urgent need for legislation to protect our nation’s waters in light of recent challenges to the Clean Water Act.

I speak to you as a former Administrator of the Environmental Protection Agency. During my time at EPA, I gave high priority to safeguarding our nation’s waters. I recognized, as did the administrators who preceded me, that Congress intended for the Clean Water Act to cover all of our nation’s interconnected water resources, including watersheds, tributaries, and wetlands. These waters are essential not only for safeguarding water quality, but also for our nation’s public health, economy, and ecosystems: they protect and purify water, shield our homes and businesses from flooding, and provide valuable habitat for a wide range of wildlife.

However, this congressional intent has been challenged in recent years by Supreme Court decisions such as *SWANCC v. United States*, and *Rapanos and Carabell v. United States*.

In the *Rapanos* case, I joined three of my fellow former EPA Administrators in supporting the government’s interpretation of which waters should be protected under the Clean Water Act. In enacting that law, Congress acknowledged that ALL of our nation’s waters are connected through hydrologic cycles and therefore must be given equal protection. Agencies and courts, in keeping with that legislative intent, must interpret the term “navigable waters” broadly as “waters of the United States,” in order for our waters to be adequately protected from pollution.

My fellow former Administrators and I – two of us Democrats, and two Republicans – argued that the misinterpretation of “navigable waters” suggested by the petitioners in the *Rapanos* case would, if accepted, do serious damage to enforcement of the Clean Water Act and protection of not just tributaries and wetlands, but all of the United States’ waters.

In light of the Supreme Court's contentious split decision in *Rapanos*, I am now concerned that wetlands and tributary protection may be in serious jeopardy.

As the federal agencies responsible for implementing the Clean Water Act, EPA and the Army Corps of Engineers worked for months on policy guidance in light of the *Rapanos* decision. Last June, after substantial review and revision by the White House and other agencies, in addition to concerted lobbying efforts on the part of developers and polluters, EPA and the Corps finally issued this guidance. Sadly, the guidance fails to clarify the Clean Water Act's protections for a large proportion of the nation's wetlands and streams, as it takes a very narrow interpretation of the *Rapanos* decision. Under the new guidance, as many as 20 million acres of wetlands and thousands of miles of seasonal streams will be vulnerable to pollution, filling, and destruction. And this will, of course, affect all of America's water resources.

The most effective solution to this problem would be legislation to restore protection to these waters. I wholly support passage of the Clean Water Restoration Act of 2007 because it leaves no doubt as to the scope of the Clean Water Act. Specifically, removing the phrase "navigable waters" from the Clean Water Act and giving broader definition to the phrase "waters of the United States" will restore the original intent of Congress, and ensure protection for ALL of our nation's waters from pollution.

Let me be clear: this legislation is not an expansion of the Clean Water Act's jurisdiction. It is merely an essential clarification of Congress's original intent for this landmark law, which we have relied upon to protect our waters for over thirty years.

Thank you for the opportunity to speak to you today. I would be pleased to answer any questions you may have.