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TESTIMONY OF CAROL M. BROWNER
BEFORE A HEARING OF THE U.S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

"THE STATUS OF THE NATION'S WATER, INCLUDING WETLANDS, UNDER THE JURISDICTION OF THE FEDERAL WATER POLLUTION CONTROL ACT"

July 19, 2007

Thank you, Mr. Chairman and members of the Committee, for the opportunity to testify to you today about the status of our nation's wetlands.

I speak to you today as a former Administrator of the Environmental Protection Agency. There is no denying the importance of wetlands for our nation's public health, our economy, and our ecosystems: they protect and purify water, shield our homes and businesses from flooding, and provide valuable habitat to a wide range of wildlife.

We have already lost too many of these valuable resources. In all, the United States has lost nearly 50% of its wetlands, and continues to lose about 60,000 acres of wetlands per year.

During my time at EPA, I gave a high priority to wetlands protection. 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. However, this 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 this 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 nation's waters to be adequately protected from pollution.

My fellow former Administrators and I jointly acknowledged that the reinterpretation of "navigable waters" taken by the petitioners in the *Rapanos* case would do serious damage to enforcement of the Clean Water Act and protection of not just tributaries and wetlands, but all of our nation's waters.

But in light of the Supreme Court' contentious split decision in *Rapanos,* there is now concern that wetlands and tributary protection is 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. In 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. Under the new guidance, as many as 20 million acres of the nation's wetlands and thousands of miles of seasonal streams will be vulnerable to pollution, filling, and destruction. And this will, of course, affect all of our nation's water resources.

I wholly support the Clean Water Restoration Act of 2007 because it leaves little doubt as to the scope of the Clean Water Act in protecting our nation's waters. Specifically, striking the phrase "navigable waters" from the Clean Water Act and giving a very broad definition to the term "waters of the United States" will restore the original intent Congress had for this law, and will ensure protection for ALL of our nation's waters from pollution.

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