these 'waters' in the sense of possessing a continuous surface connection that creates the boundary-drawing problem we addressed in *Riverside Bayview*."[85]

For example, there are compelling legal and scientific reasons for ensuring that man-altered and man-made waters are covered as tributaries, and those reasons apply equally to ditches, canals, and similar features. As the 11th Circuit stated in *U.S. v. Eidson*, "[t]here is no reason to suspect that Congress intended to regulate only the natural tributaries of navigable waters. Pollutants are equally harmful to this country's water quality whether they travel along man-made or natural routes."[86]

Conclusion

If the agencies go through with their predetermined plan to revise the WOTUS definition in pursuit of their current deregulatory policy objective, it will be the fifth time since 2014 that the agencies will improperly attempt to create a novel regulatory interpretation of the Clean Water Act that would eliminate water quality protections for the nation's waters contrary to the intent of Congress. As a unanimous Supreme Court determined in *United States v. Riverside Bayview Homes*, "[p]rotection of aquatic ecosystems, Congress recognized, demanded broad federal authority to control pollution, for '[w]ater moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source.' . . . [This is precisely why] Congress chose to define the waters covered by the Act broadly."[87] The agencies do not possess the authority to exclude waters that Congress intended to cover from the definition of "waters of the United States" to achieve their own independent (and ever-shifting) bureaucratic policy goals.[88]

Instead of pursuing this course of action, we urge the agencies to provide clarity and certainty, as well as consistency with the law, by maintaining the protections provided in the current regulatory definition. Any revisions to the regulatory definition, guidance, memoranda, or other administrative actions must fully encompass waters necessary to adequately protect the chemical, physical, and biological integrity of the nation's waters as intended by Congress and must follow the public participation requirements of the Clean Water Act and APA, including full notice and comment rulemaking.[89] A clear WOTUS definition that protects the integrity of the nation's waters greatly

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[85] *Rapanos*, 547 U.S. at 757.

[86] United States. v. Eidson, 108 F.3d 1336, 1342 (11th Cir. 1997) *cert. denied*, 522 U.S. 899 (1997).

[87] *Riverside Bayview*, 474 U.S. at 132-33 (citation omitted).

[88] *See* Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 325, 328 (2014) ("An agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. . . . We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.")

[89] *See* 33 U.S.C. § 1251(e) ("Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States."); 5 U.S.C. § 553. The agencies must follow the APA's public notice and comment requirements when they enact, amend, or repeal a rule. *See* Nat'l Parks Conservation Ass'n v. Salazar, 660 F. Supp. 2d 3, 5 (D.D.C. 2009). The agencies cannot satisfy the APA "good cause" exception given the nature and scope of this regulation, and notice and comment rulemaking regarding this regulatory definition is not "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. §