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ATTORNEY GENERAL RAOUL CHALLENGES ROLLBACK OF CLEAN WATER PROTECTIONS

Raoul, Coalition Allege Rule Will Degrade Water Quality Across the Country

Chicago — Attorney General Kwame Raoul today joined a coalition of 15 attorneys general [filing an amicus brief](#) in support of a challenge to a regulation by the U.S. Environmental Protection Agency and the Army Corps of Engineers (agencies) that illegally strips away critical, longstanding federal water quality protections under the federal Clean Water Act. The regulation excludes more than half of the country's wetlands and hundreds of thousands of streams, which were previously protected by the act.

"Illinois streams and wetlands are vital agricultural and recreational resources, and we must take the necessary actions to keep them free of harmful pollutants," Raoul said. "Clean water is a critical resource, and I will continue working to ensure that water sources throughout Illinois are protected."

The brief, filed today in the U.S. District Court for the District of Massachusetts, supports a motion for summary judgment in a lawsuit brought by several organizations – led by the Natural Resources Defense Council and the Conservation Law Foundation – over the federal government's regulation that dramatically narrows the "waters of the United States" that are protected by the federal Clean Water Act. A broad definition of covered waters is critical to maintaining a strong federal foundation for water pollution control and water quality protection that preserves the integrity of the nation's waters.

The regulation categorically excludes from the act's protections all ephemeral streams that flow in response to precipitation and all wetlands without specific types of surface-water connections to other waters. The newly-excluded waters are integral to maintaining and restoring the nation's water quality. Ephemeral streams, for example, compromise nearly 20 percent of all stream miles nationwide and include many of the critical headwaters for the country's major rivers. Science shows that protecting wetlands without surface-water connections is critical to preventing substantial, negative impacts on downstream water quality. Wetlands perform many critical functions such as filtering out pollution, stopping erosion, and storing floodwater that would otherwise damage and destroy public and private property.

The brief argues that the reasoning the agencies rely on to justify the regulation is contrary to the purpose of the Clean Water Act – restoring and maintaining the nation's water quality. While the agencies assert that the regulation is necessary to protect states' rights, it does precisely the opposite. The Clean Water Act was passed to protect downstream states from upstream states' pollution and to prevent states from competing for economic development in a regulatory "race to the bottom." The brief explains that the regulation upends the strong federal regulatory floor necessary to achieve those aims and unlawfully prioritizes upstream states' decisions to allow pollution over downstream states' rights to protect their water quality. And, in doing so, the regulation also deprives downstream states of their statutory right to object to activities in upstream states that will harm their water quality.

The brief further argues that the agencies ignored the significant harms that the regulation will inflict on states. The agencies declined to conduct a comprehensive review of the scope of waters that would be left unprotected by the new regulation, ignoring that the regulation's massive reduction in federal protections will lead to serious degradation of ecological resources.

Joining Raoul in filing the brief are the attorneys general of California, Connecticut, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Mexico, New York, North Carolina, Oregon, Rhode Island, Virginia and Washington.