Written Testimony of
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Before the

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Environment and Public Works Committee
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Introduction
My name is Ron Curry and I am the Cabinet Secretary of the New Mexico Environment Department in the administration of Governor Bill Richardson. Thank you for the opportunity to provide testimony regarding the importance of restoring Clean Water Act protections to many of America's rivers, lakes and streams.

The Clean Water Act has been our nation's main tool in ensuring the continued protection of the water we drink, enjoy for recreation and that wildlife communities rely upon. Unfortunately, the effectiveness of this tool has been blunted by two recent Supreme Court decisions. The court's rulings in Solid Waste Agency of Northern Cook County v. Corps of Engineers (SWANCC) in 2001 and Rapanos et ux., et al. v. United States (Rapanos) in 2006 have severely limited the waters that receive protection under the Clean Water Act. This is especially troubling in New Mexico, an arid state that has relied on the Clean Water Act to help us protect our limited but precious water resources.

It is important for us to remember that the Clean Water Act is one of this nation's successes. Waters that thirty years ago were thick with waste discharges now support thriving recreational and economic activities. The U.S. Environmental Protection Agency's broad policy of ensuring protection for nearly all waters was a benefit to everyone. Our quality of life improved and so did the sustainability of aquatic species and wildlife. But now those protections are mired in widespread confusion and bureaucratic gridlock because it is no longer clear what waters will continue to be protected. My objective today is to urge your support for a solution that clears waters that have been muddied and encourage you to join Governor Bill Richardson in supporting the Clean Water Restoration Act (S. 1870).

The Problem
Prior to these Supreme Court decisions, the scope of the Clean Water Act was interpreted broadly to provide protection for all the nation's water bodies, from small upland streams that flow intermittently in response to storm events, to the numerous wetlands that provide shelter for wildlife and create a natural filtration system for our aquifers. These waters were valued, just as we place value on the large rivers that are conduits for commerce and industry. First in 2001, and again last year, the courts scaled back these broad protections, defining "navigable waters" narrowly. These decisions have created great uncertainty for federal, state and local officials as well as communities and land owners regarding what waters are protected.

In effect, the Supreme Court has ruled that there are two classes of water, one class that can be tied directly to "navigability" and deserves federal protection from pollution, and a second class that is completely abandoned or must undergo a case by case "significant nexus" test whereby tributaries or wetlands would be dropped from protection if the government cannot directly prove they empty into navigable waters. As the man charged by Governor Richardson with protecting New Mexico's limited water supply from pollution, I can tell you that basing the decision on what water deserves to be clean or whether or not you can float a boat on it is lunacy. These Court decisions do not take into

account the types of intermittent water flows found in the Southwest, which experiences a dry season as well as a “monsoon” season. There are times in the summer months when you can’t even float a boat down the mighty Rio Grande, New Mexico’s main surface water resource.

To put it another way, many of you today have glasses of water before you. As an analogy, imagine that these glasses collectively made up all the waters of the United States. Before the 2001 SWANCC decision, the water in those glasses was protected by the Clean Water Act. However, today, because the SWANCC and Rapanos decisions, as much as one half of those glasses may no longer be protected.

I want you all to have good, clean water in those glasses, but if these Supreme Court decisions stand, I just can’t say for sure if you will.

The Clean Water Restoration Act solves this problem by replacing the term “navigable waters of the United States” with "waters of the United States.” This fix simply restores protections that were in place for three decades during which time the quality of America’s rivers, lakes, wetlands and streams improved dramatically. It also restores Congress’ original intent when it passed the Clean Water Act in 1972, to protect our nation’s water resources for future generations.

Local Impact

Nowhere have the limitations created by these two recent Supreme Court decisions been felt more acutely than in the desert Southwest. We simply have no water to waste, and therefore the water we have – and its quality – is of utmost importance to the continued health of our citizens and the future economic development of our region. By excluding isolated, intrastate, non-navigable waters from protections previously guaranteed under the Clean Water Act, these decisions could remove federal protections from more than 90 percent of our state’s waterbodies because they flow only intermittently. Additionally, waters within closed basins that cover up to one fifth of New Mexico would also be left vulnerable to pollution. This includes 84 miles of perennial streams, 3,900 miles of intermittent waters, 4,000 playa wetlands, and numerous headwaters, springs, cienegas and isolated wetlands. Threatened basins include the Tularosa, Mimbres, San Augustine, Estancia and Salt in central, south central and southwestern New Mexico.

These misguided rulings also threaten New Mexico’s precious, limited groundwater resources – the source of 90 percent of our clean drinking water. Surface water bodies are often directly linked to groundwater resources. Unregulated, damaging surface dumping will therefore ultimately lead to pollution in the aquifer. We cannot allow this to happen. The water beneath just one of these basins – the Salt – has been estimated by the U.S. Geological Survey to contain as much as 57 million acre feet of water, including 15 million that is potable. That could prove to be a vital, and needed, future water supply for the rapidly growing City of Las Cruces in southern New Mexico. However, if this aquifer is allowed to be polluted by surface dumping, its benefits for future New Mexicans will be severely curtailed.

New Mexico also supports efforts to ensure this bill preserves our traditional powers over our groundwater resources.

Finally, the Southwest is currently in the grips of a years-long drought, putting our already limited water resources at an even higher premium. To weaken environmental oversight now is to invite disaster. That is why Governor Richardson has taken an aggressive leadership position on this issue.

State Actions

Governor Richardson has been a leader on the issue of restoring protections to New Mexico's waters. In March 2003, he filed formal comments with the U.S. Environmental Protection Agency petitioning that New Mexico's closed basins and other imperiled waters remain protected under the federal Clean Water Act. He also strongly supported the Clean Water Authority Restoration Act of 2003, a precursor to the legislation before you today.

More recently, Governor Richardson successfully opposed oil and gas drilling in the Valle Vidal of Northern New Mexico, and in order to protect its world class trout streams, he fought to have those streams listed as Outstanding National Resource Waters. He is also fighting to protect the Salt Basin Aquifer (whose untapped water resources I mentioned before) from energy development at Otero Mesa. Governor Richardson recently launched a multi-million dollar effort – the first in state history – to provide a state funding source for river ecosystem restoration. Finally, he also led an effective collaboration with the State of Texas to address salinity issues in the lower Rio Grande. States can do a lot, but without lasting federal Clean Water Act protection, the state's efforts to restore and defend its waters could be severely eroded.

Clean Water Restoration Act

Removing protections afforded by the Clean Water Act from critical portions of our nation's aquatic systems and protecting only selected reaches of our waters will result in real costs for our citizens – costs to the economy, the environment and to our quality of life.

The Clean Water Restoration Act of 2007 provides a logical and practical solution by restoring the traditional scope of the Clean Water Act and clarifying the purpose of the Act based on long-standing regulatory definitions. This is not an expansion of federal authority but a return to a clear and comprehensive common goal. This action will also allow continued state-federal partnerships to provide streamlined and efficient regulatory programs such as those that have been in operation for more than 30 years.

The Citizens of New Mexico depend on the protection of a clean environment and sustainable water supply. If we are to ensure that New Mexico's waters and the nation's waters are protected now and for future generations, we must act collectively to restore the purpose, the scope, the clarity and the predictability of the Clean Water Act so that it will once again serve as the primary and comprehensive protection of our Nation's waters.

Thank you for inviting me here today to testify on this important issue. I look forward to your questions.