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January 11, 2006

The Honorable Arlen Specter
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, DC

The Honorable Patrick Leahy
Ranking Member, Senate Committee on the Judiciary
United States Senate
Washington, DC

RE: Earthjustice Opposition to Supreme Court Nomination of Judge Samuel A. Alito, Jr.

Dear Chairman Specter and Ranking Member Leahy:

Earthjustice is writing to express our strong opposition to the confirmation of Judge Samuel A. Alito, Jr. to a lifetime seat on the United States Supreme Court. We did not oppose President Bush's previous Supreme Court nominations of D.C. Circuit Judge John G. Roberts, Jr. and White House Counsel Harriet Miers. Indeed, we have not urged the Senate to oppose any of the eight Supreme Court nominations since Judge Robert Bork, whom we opposed in 1987.[i]

Earthjustice's opposition to Judge Alito's nomination is based upon the attached, detailed analysis of his record. This analysis reveals that Judge Alito has an extreme record that threatens Congress' constitutional authority under the Commerce Clause that provides the basis for most federal environmental laws. Judge Alito's record also threatens Congress' ability to ensure that citizens have the right to go to court to enforce these laws. Judge Alito also has a disturbing record on other issues that are fundamental to environmental protections.

Also of great concern is the fact that Judge Alito has been nominated to fill the Supreme Court seat being vacated by Justice Sandra Day O'Connor, who has frequently been a swing vote in important environmental cases. In recent years, the Supreme Court has often been a hostile forum for pro-environmental litigants, issuing rulings that have limited many of the nation's most important environmental safeguards. In other cases, environmental protections have withstood challenges by one or two votes, with one of those votes usually being cast by Justice O'Connor. The stakes for public health and the environment in this nomination could hardly be higher.

The threat posed by Judge Alito's nomination is not theoretical. For example, by July, the Supreme Court will decide two major environmental cases that will determine the constitutionality of Clean Water Act safeguards, and by extension, the fate of other national laws that protect our health and environment. Both of the Clean Water Act cases address whether the Act protects streams and tributaries that flow into larger water bodies, and whether it similarly

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protects the wetlands adjacent to these streams. The industry groups that brought these cases are also questioning whether Congress has the authority under the Commerce Clause to protect such waters. If confirmed, Judge Alito could be the swing vote in a decision that could threaten the safety of our drinking water supplies, and allow the pollution or destruction of most of the nation's creeks and streams, along with tens-of-millions of acres of ponds and wetlands.

Please consider carefully the attached more detailed analysis of Judge Alito's record on environmental and conservation issues, which we incorporate herein by reference. We would also ask that this letter and analysis be entered into the record of the proceedings before the U.S. Senate on Judge Alito's nomination to the Supreme Court.

Thank you for providing us the opportunity to comment on this critically important nomination.

Sincerely,

Vawter Parker
Executive Director

CC: Members, Senate Committee on the Judiciary

[i] While Earthjustice and other conservation groups raised concerns about the Supreme Court nomination of Judge Roberts based on his record on Commerce Clause and access-to court-issues, we withheld judgment on whether or not he should be confirmed.

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