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Clean Water Act Rule to Protect Our Nation's Streams and Wetlands from Pollution

In March 2014 the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) proposed a long-overdue Clean Water Act rule *(Definition of "Waters of the United States" Under the Clean Water Act)* to end the confusion over which streams and wetlands are protected by the law. Congress originally protected these vital water resources when it passed the landmark Clean Water Act in 1972, but those protections were called into question over a decade ago because of two polluter-friendly Supreme Court decisions in 2001 and 2006 and subsequent Bush administration policies. Following these controversial decisions, Clean Water Act enforcement has declined, putting the health of our rivers, lakes and bays at risk.

Why These Resources Matter and Need Protection

The health of our nation's rivers, lakes, and bays depends on the network of small streams and wetlands that flow into them. Here's what's at stake:

The drinking water sources for over 117 million Americans. One in three Americans get drinking water from public systems that rely on headwater and seasonal streams.

20 million acres of wetlands that provide flood protection, recharge groundwater supplies, filter pollution, and provide essential wildlife habitat.

Over half of all the stream miles in the United States. Many of these streams are critical habitat for fish and other aquatic life and provide the majority of the water flow in rivers.

These resources are economic drivers for our communities. Recreationists, farmers, hunters, anglers and businesses ranging from clean tech to craft brewers all depend on clean water. Anglers alone generated nearly $115 billion in economic activity in 2011, breathing life into rural communities and supporting more than one million jobs. Craft brewers contributed nearly $34 billion to the U.S. economy in 2012, supporting over 360,000 jobs.

What the Rule Covers

This proposed rule definitely restores Clean Water Act protections to most tributary streams and wetlands:

1. **Tributaries to waters already covered by the Clean Water Act** — for example, intermittent or ephemeral streams that have a defined bed and bank and flow to traditionally navigable waters, interstate waters, territorial seas, or impoundments of those waters.
2. **Wetlands, lakes and other waters located near or within the floodplain** of waters already covered by the Clean Water Act, including tributary streams of those waters.

Waters positioned outside of a floodplain or riparian area, also known as "other waters" will continue to require a case-by-case analysis to determine whether or not they have a "significant nexus" to waters already covered by the Clean Water Act and can therefore be protected by the law. The 2001 Supreme Court ruling signaled an upper limit on jurisdiction by rejecting a Reagan-era policy that based federal jurisdiction of geographically isolated waters on their use by migratory birds. **To be consistent with this ruling, the proposed rule does not restore protections to all the wetlands and other waters that were protected for almost 30 years before 2001.**

What the Rule Does *Not* Cover

The proposed rule reaffirms existing exemptions from Clean Water Act permitting requirements for agriculture, mining, forestry and certain other activities that produce food, fuel or fiber:

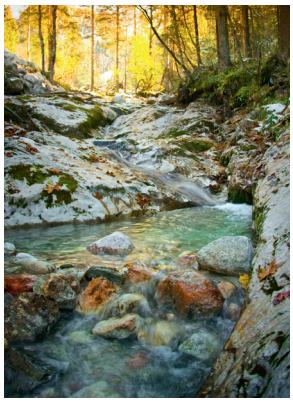
- Most common farming and ranching practices, including "plowing, cultivating, seeding, minor drainage, harvesting."
- "Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches."
- "Agricultural stormwater discharges and return flows from irrigated agriculture."
- "Construction of temporary sediment basins on a construction site."
- "Construction or maintenance of farm or forest roads or temporary roads for moving mining equipment."

The proposed rule also codifies waters that have long been excluded from Clean Water Act permitting requirements in practice but not explicitly exempted by rule:

- Upland drainage ditches with less than perennial flow
- Artificially irrigated areas that would revert to upland should irrigation cease
- Artificial lakes or ponds used for purposes such as stock watering
- Artificial ornamental waters created for primarily aesthetic reasons
- Water-filled depressions created as a result of construction activity
- Groundwater, gullies, rills and non-wetland swales

Previous exemptions in the regulation also remain for waste treatment systems, including treatment ponds and lagoons, as well as prior converted cropland.

Rule Provides More Benefits Than Costs



EPA estimates that the proposed rule would provide $388 million to $514 million annually in benefits to the public, including reducing flooding, filtering pollution, providing wildlife habitat, supporting hunting and fishing, and recharging groundwater. These public benefits significantly outweigh the costs of about $162 million to $279 million per year for mitigating impacts to streams and wetlands, and taking steps to reduce pollution to waterways.

Another benefit of this rule is that it will streamline the permitting process by providing greater certainty to the regulated community and better guidance to regulators, by establishing specific categories of which waters are protected by the Clean Water Act, and specific categories of waters which are not protected by the law.

Additional Resources

Learn more about the proposed Clean Water Rule at: *http://www2.epa.gov/uswaters*

Read comments submitted to the Proposed Rule Docket for "Definition of 'Waters of the United States' Under the Clean Water Act" at *www.regulations.gov*, search for docket number EPA-HQ-OW-2011-0880.

For more information visit: *http://cleanwater.org/Protecting-All-Water*

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