



How Did We Get Here?

Fighting for clean water and healthy wetlands has been a part of the Izaak Walton League mission since day one. Since 2001, that fight has focused on restoring Clean Water Act (CWA) protections to streams and wetlands in our communities. This effort received a major boost in 2015 when the U.S. Army Corps of Engineers and Environmental Protection Agency (EPA) issued the Clean Water Rule. The Rule restores protections for many small streams and wetlands that are vital to safe drinking water and outdoor recreation across America.

Unfortunately, the Trump Administration took a tremendous step backward in February when the president signed an Executive Order directing the EPA and Corps of Engineers to revise and rescind the existing Clean Water Rule. The EPA took the first step on July 27 by issuing a formal notice to completely repeal the Clean Water Rule after a 30-day public comment period. After repealing the Rule, February's Executive Order requires the EPA and Corps to draft new regulations to define the types of waters protected by the Clean Water Act.

A Flawed Analysis

The Executive Order specifically directs the agencies to evaluate the types of waters that would be protected by the CWA based on a narrow and unprecedented definition set forth by the late Justice Antonin Scalia. In a minority opinion in the 2006 *Rapanos* case, Justice Scalia argued that the Clean Water Act should only apply to streams that flow “continuously” and wetlands with a “continuous surface connection” to larger waters, such as rivers or lakes. He specifically stated that the law should not protect streams that flow periodically or following rain events and his narrow definition of wetlands would exclude Prairie Potholes and other critically important wetlands. According to the EPA, 60 percent of all streams in America do not flow continuously all year and as many as 20 million acres of wetlands would be at risk if Scalia's interpretation of waters of the United States is adopted.

The approach advocated by Justice Scalia cannot be reconciled with the purpose of the Clean Water Act or simple hydrology. The purpose of the CWA is to “restore and maintain the chemical, physical and biological integrity of the Nation's waters.” The law was passed to improve water quality. An overwhelming body of science and common sense demonstrate the impossibility of improving water quality in rivers or lakes if the streams flowing into them are not protected from pollution. Science also proves that wetlands directly affect other waters

even if those wetlands do not have a surface connection to those waters. Consider how wetlands filter pollution and slow storm water runoff – which directly affects water quality overall. Wetlands play this vitally important role even when they are not physically adjacent to the very limited types of waters that would still be protected under Justice Scalia’s opinion.

The policy set forth in Justice Scalia’s opinion has never been adopted by any court and has been rejected by Republican and Democratic administrations because it would dramatically reduce the waters protected by the Clean Water Act. When passing the CWA, the sponsors of the law in Congress stated again and again and unequivocally that the intent was not simply to protect waters large enough for navigation, but to protect a wider array of natural waters that affect water quality nationwide. For decades, the EPA and Army Corps reflected this intent in regulations implementing the Act. Those regulations applied Clean Water Act protections to streams, for example, regardless of how many days they flow annually.

The Right Path Forward

The League believes the Clean Water Rule is fundamentally sound and further delay in restoring protections for streams and wetlands risks long-term damage to water quality, habitat for fish and wildlife, and the outdoor recreation economy. Unfortunately, the administration has set a different course. In light of this decision, the League believes that the administration must not rely on the extreme opinion from Justice Scalia and ensure that any new policy:

- Is grounded in the clear and overwhelming science on the interconnected system of waters. The protections in the existing rule are supported by more than 1,200 scientific studies demonstrating the connections between and effects of tributary streams and other upstream waters on larger downstream waters such as rivers and lakes;
- Effectively safeguards streams, wetlands, and other waters as required by the Clean Water Act. The purpose of the Clean Water Act is to improve water quality nationwide – it is impossible to achieve that goal without protecting waters covered by the existing Clean Water Rule, including tributary streams and small wetlands; and
- Gives hunters and anglers confidence that streams and wetlands will be healthy to ensure our outdoor traditions thrive for generations to come. Clean water and abundant wetlands are essential to hunting and angling nationwide. If this critical habitat is degraded, our hunting and angling traditions – and the \$887 billion outdoor recreation economy – will suffer.