

May 26, 2011

Dear Member of Congress:

On behalf of the millions of hunters, anglers, and conservationist our organizations represent, we write in strong support of proposed Clean Water Act guidance issued April 27 by the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers. The proposed guidance, which is now available for public comment and review, is a common-sense clarification of the Clean Water Act that is based on sound science and falls well within the bounds of the Supreme Court's *SWANCC* and *Rapanos* decisions.

Hunting, angling, and conservation organizations like ours support the proposed guidance because healthy wetlands and streams are essential to the outdoor traditions that tens of millions of Americans enjoy. Under the Supreme Court decisions and agency guidance issued in 2003 and 2008, these vital natural resources are increasingly at risk of being drained, filled, or polluted. Together, the Court decisions and agency guidance have served to remove Clean Water Act protections for at least 20 million acres of wetlands, particularly prairie potholes and other seasonal wetlands essential to waterfowl populations and duck hunting nationwide. Intermittent streams that provide critical habitat for fish, especially trout, and feed into the public drinking water systems for more than 117 million Americans also are at risk.

The use of agency guidance to instruct staff in the field about how to interpret court decisions and statutes is a long-standing, appropriate, and perfectly legal administrative practice. Administrations regardless of party have issued guidance across a range of topics. This guidance is also being fashioned in the most transparent means possible, crafted with input from a host of important stakeholders, and open for public comment for sixty days. We believe it is essential for Congress to allow this transparent, public process to continue without funding or other limitations.

The proposed guidance puts science squarely at the center of analysis the Corps and EPA must perform to determine if specific waters are covered by the Clean Water Act. This draft rests on well-established scientific principles about the hydrological, ecological, and biological connections between waters. Relying on this science-based process will result in more consistent and timely decision-making, which will benefit the public, landowners, and hunters and anglers alike.

The draft guidance is also very specific about the types of waters that are not covered by the Clean Water Act. Agency guidance can not alter the exemptions already in the Clean Water Act (at Sections 402(l) and 404(f)) for a wide range of normal farming, forestry, mining, and construction activities. For example, the Act includes a broad exemption for common farming and ranching practices, including "plowing, cultivating, seeding, minor drainage, harvesting for the production of food, fiber, and forest products." The Act also exempts: "construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;" "construction of temporary sediment basins on a construction site;" and "construction or maintenance of farm or forest roads or temporary

roads for moving mining equipment.” In addition, the draft guidance does not affect existing regulatory exemptions for prior converted cropland and waste treatment systems. Finally, the proposal lists other water features that are generally not considered “waters of the United States,” including: “[A]rtificial reflecting pools or swimming pools excavated in uplands;” [S]mall ornamental bodies of water created by excavating and/or diking dry land to retain water primarily for aesthetic reasons;” and “[E]rosional features (gullies and rills), and swales and ditches that are not tributaries or wetlands.” Because these features are generally not subject to the Clean Water Act, the guidance does not apply to them.

By issuing proposed guidance for public comment, the EPA and Army Corps have taken a prudent step on the path toward restoring essential Clean Water Act protections for streams, wetlands, and other waters. Americans who hunt, fish, boat, and enjoy the outdoors understand how important these protections are for our traditions, economy, and health. We are also pleased that the agencies have committed to undertaking formal rulemaking as the next step. Rulemaking is widely supported by stakeholders across the spectrum and will provide additional opportunities for public participation.

We urge you to join us in supporting the proposed guidance.

Sincerely,

American Fisheries Society
American Fly Fishing Trade Association
American Sportfishing Association
Arkansas Canoe Club
Arkansas Wildlife Federation
B.A.S.S. LLC
Berkley Conservation Institute, Pure Fishing
Federation of Fly Fishers
Izaak Walton League of America
Minnesota Conservation Federation
National Marine Manufacturers Association
National Wildlife Federation
North American Grouse Partnership

North Carolina Quality Deer Management
Association
North Carolina Wildlife Federation
Northwest Sportfishing Industry Association
The Ozark Society
The Wildlife Society
Theodore Roosevelt Conservation
Partnership
Trout Unlimited
Western Native Trout Initiative
Wildlife Management Institute
Wisconsin Wildlife Federation