



# The Clean Water Rule: Protecting America's Waters

The U.S. Army Corps of Engineers and the Environmental Protection Agency have proposed a landmark rule clarifying longstanding Clean Water Act protections for many — but not all — streams, wetlands, and other waters critical to sportsmen and our hunting and fishing heritage. Many of these waters have been at increased risk of pollution and destruction for more than a decade — and it has taken its toll. For the first time since the 1980s, annual wetland losses are on the increase: the rate of wetland loss in 2004-2009 increased by 140 percent over 1998-2004.

This rule, which voices on all sides of the debate and the Supreme Court have called for, relies on the best scientific understanding of stream and wetland science to clarify the scope of the Clean Water Act, reinforce the Act's legal and scientific foundation, provide greater long-term regulatory certainty for landowners and enhance protection for America's streams, wetlands, and other waters.

## What It Does

### The Rule Restores Clean Water Act Protections to Many Streams and Wetlands.

The proposed rule ensures that the Clean Water Act once again safeguards many streams, lakes, and wetlands that have been at increased risk of pollution and destruction following Supreme Court decisions in 2001 and 2006. Extensive peer-reviewed scientific evidence shows that the waters covered by this rule have a significant impact on the quality of downstream waters and, therefore, deserve Clean Water Act protection. In addition to providing valuable fish and wildlife habitat, these waters are an effective buffer against floods, and filter pollutants out of water that otherwise would have to be treated at great expense to cities and towns.



The rule definitively restores Clean Water Act protection to two major categories of waters:

1. **Tributaries to waters already covered by the Clean Water Act** – For example, intermittent headwater streams that have a defined bed and bank and flow to a water already covered by the CWA; and
2. **Wetlands, lakes, and other waters located adjacent to or within the floodplain of these tributaries.**

### The Rule Gives Greater Certainty to Regulators and the Regulated Community.

Since the first Supreme Court decision confused Clean Water Act jurisdiction in 2001, farmers, land owners and businesses have been unsure whether to seek Clean Water Act permits for their activities that affect water; sportsmen have been stymied in their efforts to protect water resources; and federal and state water quality personnel have struggled to consistently apply the law. After more than a decade, this rule finally provides clear and predictable protections for many streams, wetlands, and other waters, giving greater certainty to the regulated community and better guidance to federal and state regulators, which will streamline the permitting process.

## **What It Does Not Do**

While the 2001 Supreme Court decision confused Clean Water Act jurisdiction, it did signal an upper bound by rejecting one of the grounds for finding jurisdiction. Therefore, the proposed rule does not – and cannot – restore protections to all the wetlands and other waters that were protected for almost 30 years prior to 2001.

Additionally, the rule specifically lists which waters do not receive Clean Water Act protections. It preserves the existing exemptions for farming, forestry, mining and other land use activities, such as the exemption in the existing regulation for many wetlands converted to cropland prior to 1985, as well as exemptions written into the Clean Water Act itself that cannot be changed by administrative action. The rule also – for the first time – explicitly excludes many upland water features important for farming and forestry.

### **Clean Water Act statutory exemptions.**

The rule reiterates CWA exemptions for the following activities that are important for farming, forestry and mining from applicable permitting requirements:

- Most common farming and ranching practices, including “plowing, cultivating, seeding, minor drainage, harvesting for the production of food, fiber, and forest products;”
- “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;” and
- “Construction or maintenance of farm or forest roads or temporary roads for moving mining equipment.”

### **Additional waters exempted by the rule.**

The rule also excludes the following water features from Clean Water Act permitting requirements. This is the first time such waters have been declared exempt explicitly.

- Upland drainage ditches with less than perennial water flows;
- Artificially irrigated areas that would revert to upland should irrigation cease;
- Artificial lakes or ponds created in uplands and used for purposes such as stock watering;
- Artificial ornamental waters created in uplands for primarily aesthetic reasons;
- Water-filled depressions created as a result of construction activity;
- Groundwater; and
- Gullies and rills.

## **Many Important Waters Remain At Risk**

The rule allows that Clean Water Act protections may apply to wetlands and small lakes located beyond river floodplains, but only in limited circumstances. Federal regulators must still decide on a more localized basis whether these waters, which include millions of acres of wetlands that provide fish and wildlife habitat, important flood storage, and water filtration, deserve Clean Water Act protection.

**Now is the time for sportsmen to stand up and protect our sporting heritage. Support a strong Clean Water Act rule that restores protections to those waters we care about the most.**

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### **For more information, please contact:**

Mike Leahy, Izaak Walton League of America, 301-548-0150, [mleahy@iwla.org](mailto:mleahy@iwla.org)  
Jan Goldman-Carter, National Wildlife Federation, 202-797-6894, [goldmancarterj@nwf.org](mailto:goldmancarterj@nwf.org)  
Jimmy Hague, Theodore Roosevelt Conservation Partnership, 202-639-8727, [jhague@trcp.org](mailto:jhague@trcp.org)  
Steve Moyer, Trout Unlimited, 703-284-9406, [smoyer@tu.org](mailto:smoyer@tu.org)

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