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Rewrite of Clean Water Rule Writes Off Protections for Most Streams Nationwide

In February 2017, President Donald Trump signed an executive order directing the Environmental Protection Agency and Army Corps of Engineers to repeal the Clean Water Rule defining the waters protected by the Clean Water Act. In addition, the president directed the EPA and Corps to replace the rule with a new one that considers the opinion written by the late Supreme Court Justice Antonin Scalia in *Rapanos v. United States*. In his minority opinion, which was not adopted by the Supreme Court, Justice Scalia sought to dramatically reduce the waterbodies that would be protected by the Clean Water Act. His position is not based on science, the purpose of the Clean Water Act, or common sense.

What Did Justice Scalia Say?

In redefining “waters of the United States,” Justice Scalia was articulating precisely which waters would, and would not, be protected by the Clean Water Act. Because the Act’s language grants protections not to specific waterbodies, but to “waters of the United States,” defining WOTUS has huge ramifications on the ability of the Act to limit pollution to our nation’s water resources. The Act’s clearly stated goal of restoring and maintaining the physical, chemical, and biological integrity of the Nation’s waters demands a scientific interpretation of what waters fall under its jurisdiction. But rather than looking to the established science on hydrology and the connectivity of waters, Justice Scalia based his definition of “waters of the United States” on a dictionary and its definition of “waters” and “streams.” He concluded that Clean Water Act protections should only apply to streams and wetlands that meet the following criteria:

- Streams that are “continuously flowing bodies of water,” meaning only streams that flow all year, although he suggests that an exception could be made for some streams during a drought.
- Wetlands with a “continuous surface connection” to another waterbody that would be covered by Justice Scalia’s very narrow definition, such as rivers that cross state lines or the Great Lakes.

According to the EPA, using these criteria, many streams and wetlands would lose essential protections, including:

- **60 percent of streams in America:** Since 6 in 10 streams do not flow continuously, many tributaries to rivers and larger streams would lose protection, meaning pollution flowing into these tributaries would not be prohibited under the CWA. But that pollution will still wind up in even continuously flowing rivers and streams from these tributaries.
- **Sources of drinking water for 1 in 3 Americans:** 117 million of us draw all or some of our water from public drinking water systems that depend at least partly on the streams that do not flow continuously.



- **20 million acres of wetlands:** All or parts of iconic wetlands like the Big Cypress Swamp in Florida and the Atchafalaya Basin in Louisiana, as well prairie potholes in the northern Great Plains that provide the majority of waterfowl nesting habitat in North America, would lose protection from draining or filling.

If this flawed Scalia-based rule is adopted, the Clean Water Act would not protect these vital waters from pollution or being drained. It focuses on limiting pollution based only on how frequently a stream flows – every day, all year – not on how that stream is connected to other streams and rivers or how what is in it affects water quality downstream. If this becomes the new standard for clean water protection, it would be completely at odds with the fundamental purpose of the Clean Water Act, which is to improve and protect water quality. Even Justice Scalia did not argue that a larger stream would not be protected by the Clean Water Act provided it flows all year. Common sense and overwhelming science tell us it is impossible to protect water quality in that stream if the tributaries flowing into it are also not protected from pollution.



See which streams near you would lose protection if these criteria are adopted at iwla.org/CWA.

The Izaak Walton League and the Clean Water Rule

The Clean Water Act was signed into law in 1972 to safeguard our country's most precious natural resource, and did so successfully for decades. But Supreme Court decisions in 2001 and 2006 led to flawed policies that stripped protections for some wetlands and streams. The Clean Water Rule corrected these mistakes and reestablished protections for wetlands and tributary streams to ensure America's waters are safe for drinking, fishing, swimming, and other uses.

IWLA believes that the Clean Water Rule is fundamentally sound and opposes its repeal. Moving forward, we believe any replacement of the Clean Water Rule must:

- Be grounded in science. The Clean Water Rule was supported by more than 1200 studies demonstrating the effects of upstream pollution on downstream waters.
- Effectively safeguard streams, wetlands, and other waters as required by the Clean Water Act. The purpose of the Clean Water Act is to improve water quality nation-wide. It is impossible to achieve that goal without protecting tributary streams from pollution or small wetlands from being drained and filled.
- Ensure America's outdoor traditions thrive for generations to come.

Clean water and abundant wetlands are essential to hunting and fishing. If this critical habitat is degraded, our hunting and angling traditions – and the \$887 billion outdoor recreation economy – will suffer.