WATER FACTS

Advancing America's Clean Water Legacy:

Proposed Clean Water Protection Rule Will Better Protect Streams and Wetlands

Overwhelming, bipartisan majorities in Congress passed the Clean Water Act in 1972, guaranteeing that all of our nation's waters would be covered by a suite of pollution control programs. Supreme Court decisions in 2001 and 2006 undermined this popular bedrock environmental law by creating uncertainty about what types of waters are protected by the law. Agency policies issued under former president George W. Bush further limited the ability of pollution control officials to protect waters, making implementation of the law difficult, time consuming, and expensive. As a consequence, it became unclear whether the law protected a variety of waters, especially those that are geographically isolated from others, or that lack permanent flow. Without clear rules protecting critical waterways, it's tough to keep our water clean.

Fortunately, the Obama Administration is acting to protect our nation's clean water resources by clarifying what streams, wetlands, and other waters are protected by the Clean Water Act. When complete, this initiative will help protect the drinking water sources for more than 117 million Americans.

San Pedro River

Stormwater from construction sites carried oil, grease, and other pollutants into tributaries to the San Pedro River—an internationally recognized river ecosystem supporting diverse wildlife. However, the waters in question only flow for part of the year. EPA has had to discontinue all enforcement cases in this area because it was so time-consuming and costly to prove that the Clean Water Act protects these rivers.

Source: EPA /Tana Kappel © The Nature Conservancy.

Georgia

Challenges in proving jurisdiction hampered enforcement efforts when a large animal feeding operation in Georgia discharged liquid manure to tributaries. Unhealthy levels of viruses and bacteria were found downstream in Lake Blackshear, used for waterskiing and other water recreation.

Source: EPA/Georgia Department of Natural Resources, State Parks and Historic Sites

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These photographs and explanations were produced by EPA – see: www2.epa.gov/uswaters.

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Court decisions and policies of the prior administration have made it difficult to fully protect many small, seasonal, and rain-dependent streams and wetlands. Litigation over whether the law protects specific waterways is common. Lower court decisions to date have dealt with the Supreme Court's opinions inconsistently. And this legal uncertainty has adversely affected hundreds of law enforcement actions involving suspected violations of the Clean Water Act, like those highlighted on the front of this fact sheet. That's why the Obama administration is seeking to provide clarity to businesses, citizens, and pollution control officials by updating the national clean water rules as several Supreme Court Justices, members of Congress, and advocates on all sides of the issue have requested. The administration now has taken two key steps toward that goal.

First, EPA scientists developed a detailed scientific report, *Connectivity of Streams and Wetlands to Downstream Waters*, that summarizes the peer-reviewed literature showing how different bodies of water—particularly headwater, intermittent and ephemeral streams, wetlands adjacent to such streams, and so-called "isolated" waters—have physical, chemical, or biological linkages to other, generally larger, waters.

In addition, in April 2014, the Environmental Protection Agency, along with the Army Corps of Engineers, launched a public comment period for a draft rule clarifying what types of streams, wetlands, and other waters are protected by numerous pollution programs in the Clean Water Act. The proposal relies on the scientific report, and the agencies have committed to following the science in the final rule. This process will result in regulations that clearly state which kinds of waterways are protected, as well as which ones are not.

The Administration is committed to better protect our nation's critical waters by using sound science and more strongly adhering to the Clean Water Act's history and purpose. When these rules are in place, Americans can be confident that streams, ponds, and wetlands that were once clearly protected from pollution and destruction will be covered again.

WHAT DOES THE CLEAN WATER PROTECTION RULE DO?

- Slightly increases the percentage of waters nationwide protected by the Clean Water Act (by about 3 percent). That's still less inclusive than policies in place under President Reagan.
- Enormously improves clarity about what waters are in and what ones are out, making implementation and enforcement of the law far more efficient and predictable.
- Maintains existing exemptions, codifies a number of exemptions that had previously only been followed as a matter of agency policy, and reduces coverage for ditches.
- Is paired with a ruling that 56 different agricultural/conservation practices are generally exempt from Corps' permitting.

BY THE NUMBERS: QUANTIFYING THE THREAT

Streams, brooks, and headwater and irregularly-flowing creeks make up more than half the river miles in the continental United States, while wetlands filter polluted water, reduce the risk of flooding, and provide important wildlife habitat. The Obama administration's actions will make clear that the Clean Water Act protects these types of water bodies.

- **20 percent** of an estimated 110 million acres of wetlands in the continental United States are considered isolated, leaving them without federal protection today.
- About **2 million miles** of the stream miles outside of Alaska, about 60 percent, do not flow year-round.
- Approximately **117 million** people in the lower 48 states, "get some or all of their drinking water from public drinking water systems that rely at least in part on intermittent, ephemeral or headwater streams," according to an EPA analysis of drinking water supplies that rely on small and non-perennial streams.
- In a four-year period, more than **1,500** major pollution investigations of "[c]ompanies that have spilled oil, carcinogens and dangerous bacteria into lakes, rivers and other waters are not being prosecuted, according to Environmental Protection Agency regulators working on those cases," as reported in the *New York Times*.
- The "EPA estimates that more than **40 percent** of the 37,000 permits with locational data discharge into either start reaches or intermittent/ephemeral streams, excluding Alaska. Approximately 28 percent of these discharges are from municipal sewage treatment systems, systems that treat domestic sewage as well as wastewater from commercial and industrial users."

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