

Clean Water Rule

One in three Americans receives drinking water that depends on sources that are not clearly protected from pollution. How can this happen when we have had a Clean Water Act since the early 1970s? Weak policies adopted in the 2000s eroded some of the vital protections of the Clean Water Act. We must take action to restore the safeguards promised by the Clean Water Act and ensure that our waters will be clean for generations to come. Fortunately, the Obama administration is doing just that. The Clean Water Rule will return guaranteed protections to hundreds of thousands of miles of streams and tens of millions of acres of wetlands across the country.

This issue brief highlights how important the waters the Clean Water Rule would protect are and exposes the current threats to many of them.

BACKGROUND

For almost 30 years, both the courts and the agencies responsible for enforcing the Clean Water Act applied it broadly to protect all kinds of water bodies. However, following a pair of Supreme Court decisions, the Bush administration denied protection to numerous waters and created unnecessary new barriers to protecting others, shattering the fundamental framework of the Clean Water Act.

As a result, many important waters—large and small—lack critical protections against pollution or destruction. The proposed Clean Water Rule is an essential and commonsense reform to protect critical waters, including drinking water sources. Without such action, a generation's worth of progress in cleaning up our nation's waters may be lost. We cannot afford to return to the days of dirty water.

NORTH DAKOTA: WETLANDS AND LAKES ABANDONED

Applying existing weak policies, the U.S. Army Corps of Engineers denied Clean Water Act protections to two large water bodies in North Dakota. In October 2014, the Corps ruled a 150-acre North Dakota prairie pothole basin out of the Clean Water Act.¹ Consequently, this wetland could be buried under dirt and rubble. These prairie potholes, like other wetlands, absorb runoff and reduce the risk of flooding²—critical functions, considering the national annual cost of approximately \$2 billion in flood damages.³

Pearl Lake occupies 1,500 acres in North Dakota, but in December 2014, the Army Corps declared that the Clean Water Act did not protect this lake, despite its recreational value to the surrounding community.⁴ Local nonprofit Birding Drives Dakota developed a tour of Pearl Lake and



Prairie Pothole Basin

Source: Google Earth



Pearl Lake

Source: Google Earth



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Mud Lake, which are reportedly stocked with perch⁵ and home to more than a dozen types of ducks.⁶ Without the protection of the Clean Water Act, polluters could dump sewage or industrial waste into the lakes and petroleum companies could store enormous quantities of oil on the shores without so much as a spill prevention plan under the federal law.

ARIZONA: LAW ENFORCEMENT DROPPED

The San Pedro watershed includes the first national riparian conservation area, established by Congress in 1988 to “protect and enhance” habitat for some 300 bird species. Rainfall within the watershed and in ephemeral stream channels recharges groundwater, providing a majority of water for municipalities, water companies, and landowners in the region.⁷ Construction sites polluted these waters but the U.S. Environmental Protection Agency (EPA) acknowledged difficulties enforcing the Clean Water Act here, even though “[s]tormwater ... carried oil, grease, and other pollutants into tributaries to the San Pedro River—an internationally recognized river ecosystem supporting diverse wildlife ... [but where] the waters in question only flow for part of the year.” The agency stated that it “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.”⁸



San Pedro River watershed, Arizona
Source: Tana Kappel © The Nature Conservancy

GEORGIA: DIFFICULTY ADDRESSING LIVESTOCK FACTORY POLLUTION

People swim, waterski, and fish on Lake Blackshear, nestled in one of the state’s most popular parks, Georgia Veterans State Park.⁹ Unfortunately, challenges demonstrating that upstream tributaries to this lake were protected by the Clean Water Act threatened Lake Blackshear’s visitors. This indecision “hampered enforcement efforts when a large animal feeding operation discharged liquid manure to tributaries. Unhealthy levels of viruses and bacteria were found downstream in Lake Blackshear....”¹⁰



Lake Blackshear, Georgia
Source: Georgia Department of Natural Resources, State Parks and Historic Sites

MASSACHUSETTS: POLLUTER DELAYS RESTORATION

In the headwaters of the Weweantic River in Massachusetts, the EPA found that the operators of a cranberry production site filled several dozen acres of freshwater wetlands. The EPA initiated legal action in 1999, and in 2004 the operators were fined \$75,000 and were required to restore the impacted wetlands. This decision was upheld on appeal, but in 2006 and 2007, the operators convinced a court to re-examine the case because of the Supreme Court rulings. After further proceedings, the defendants were found liable again in 2011



Wetlands were converted into cranberry bogs in Massachusetts
Source: U.S. Environmental Protection Agency

and the litigation was finally settled in 2012, essentially reinstating the original penalty.¹¹ This protracted litigation shows how the current policies allow polluters to drag out cases and waste tax dollars before complying with pollution control requirements.

KENTUCKY: DISCHARGER POSTPONES RESPONSIBILITY FOR MINE DRAINAGE

Acid mine drainage flowed into Pond and Caney Creeks, which are tributaries of Kentucky's Green River, in part because property owners destroyed wetlands and caused contaminated water to bypass those wetlands and into these streams. In an enforcement case regarding the destruction of nearly 200 acres of wetlands adjacent to the creeks, legal wrangling over the effects of one of the Supreme Court's cases extended the litigation enormously. The dischargers were finally held liable more than 17 years after the defendants' actions triggered government action.¹²



Discharge going to tributaries to the Green River in KY

Source: Plaintiff's Exhibit, U.S. v. Cundiff, Federal District Court Case

OHIO: PROTECTIONS DENIED FOR COMMUNITY WETLANDS

Without strong protective policies, the burden of preserving our waters may fall on dedicated volunteer community members. In 2012, the Army Corps concluded that nine acres of wetlands in Columbus, Ohio were not protected by the Clean Water Act, even though they were meant to be perpetually protected as compensation for unlawful filling of other wetlands. This conclusion enabled a developer in Columbus, Ohio to seek to fill the wetlands, which are among the few remaining open spaces in the community.¹³

Led by a retired environmental education teacher and another community member, with support from the City Council and County Commissioners,¹⁴ the Friends of Sawmill Wetlands formed to defend open space and unique vernal pool wetlands.¹⁵ The group managed to stop the development in the Sawmill Wetlands even though the current interpretation of the law did not offer adequate protection.¹⁶ They have worked with the state government to open the wetlands to the community on Saturdays for environmental education. Many wetlands around the country are not fortunate enough to have such strong community involvement.



Sawmill Wetlands

Source: Friends of the Sawmill Wetlands

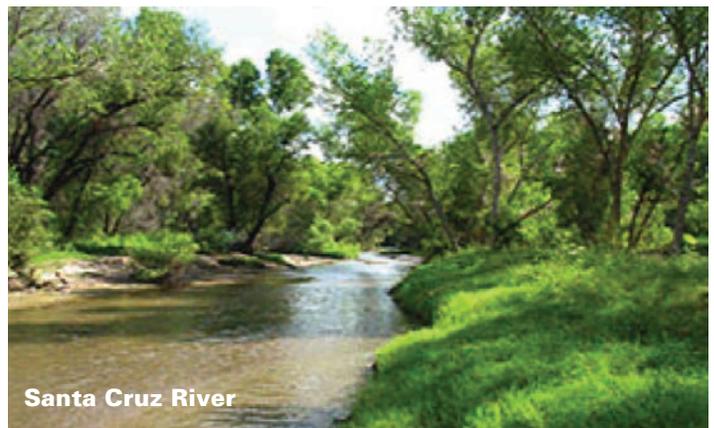


Sawmill Wetlands

Source: Friends of the Sawmill Wetlands

ARIZONA: ATTACKS ON FEEDER STREAMS TO MAJOR INTERNATIONAL RIVER

Arizona's Santa Cruz River has been at the forefront of Clean Water Act protection issues. A decade ago, developers bulldozed 2,000 acres within the lower Santa Cruz River's largest active floodplain.¹⁷ This stretch bends along in natural braids, so the developers argued the river was not "navigable" thereby undermining protections for its tributaries. With support from the local county commissioner, the EPA invoked authority to designate the Santa Cruz a "special case," to ensure better protections for the river's tributaries.¹⁸ After extensive litigation, the main river was ultimately protected;¹⁹ however, protections remain unclear for some headwaters and tributaries, which are still at risk from mining operations.²⁰



Santa Cruz River

Source: Environmental Protection Agency



Suwannee River

Source: Paddle Florida

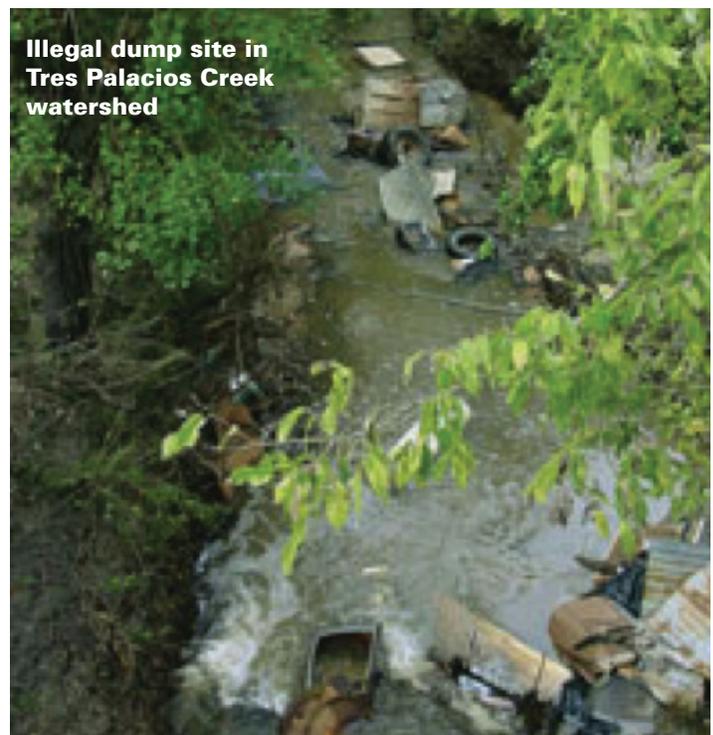
FLORIDA: PROTECTIONS ELIMINATED FOR IMPORTANT WETLANDS

Florida's iconic Suwannee River flows through rural areas and has relatively unimpaired water quality. In the early 2000s, it was even designated as one of 12 EPA National Showcase Watersheds. Now the river and its springs are being contaminated with nitrogen, which can cause slimy algae blooms to develop, impacting recreation and fisheries. Although wetlands can remove nitrogen from runoff into groundwater supplies, the Corps determined that 15.2 acres of nearby wetlands were "isolated" from the Suwannee, and thus not protected under current policies.

NATIONWIDE: GRANT PROGRAM HELPS RESTORE PROTECTED WATERS

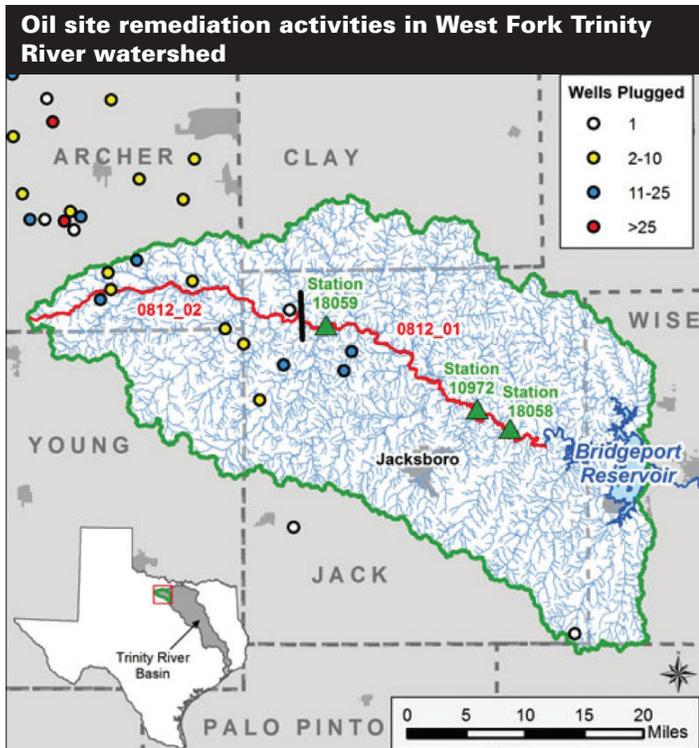
Under the Clean Water Act, states develop management programs for "nonpoint" pollution (pollutants that don't pass through conveyances like pipes) into waters covered by the Act. The EPA then provides grants to support program implementation.²¹ Today, many water bodies that previously failed to meet state-established pollution limits have been cleaned up. Excluding certain kinds of water bodies from the Act could undermine achievements like these. These three examples illustrate the importance of these management plans and underscore the importance of protecting feeder streams under the rules.

- Tres Palacios Creek in south-central Texas, which begins as an intermittent stream, failed to achieve state standards for contact recreation, because of elevated bacteria levels from illegal dump sites. With EPA assistance through this Clean Water Act program, the Texas Commission on Environmental Quality and the Lower Colorado River Authority investigated and enforced prohibitions on illegal dumping and ran a public awareness campaign. As a result, bacteria levels dropped noticeably and the state eventually removed the creek from its list of impaired waters.²²

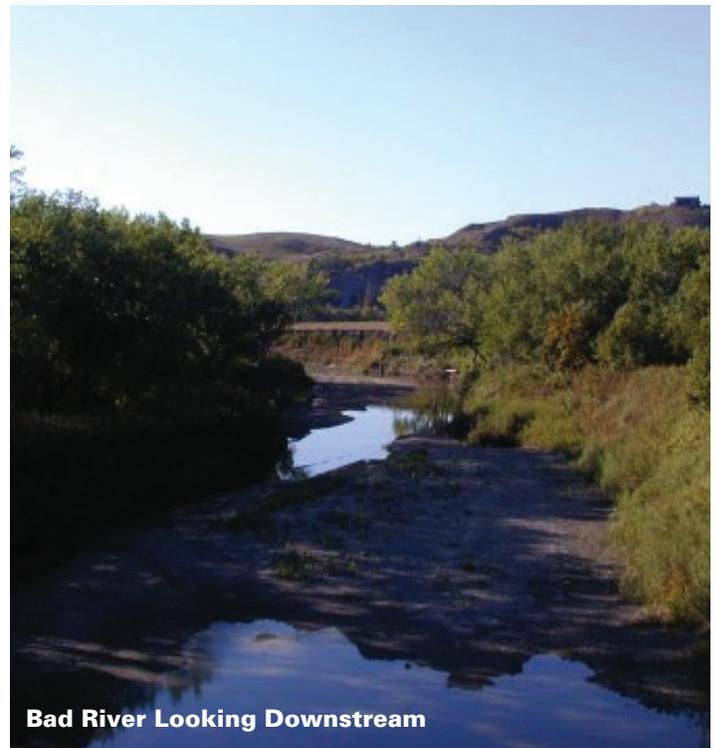


Illegal dump site in Tres Palacios Creek watershed

Source: Environmental Protection Agency



Source: Environmental Protection Agency



Bad River Looking Downstream

Source: National Weather Service, Downloads for Bad River (SD) near Fort Pierre (FTPS2)

- The West Fork Trinity River in Texas is an intermittent stream that flows to the Bridgeport Reservoir, which helps supply the Tarrant Regional Water District. However, the river had a history of excess chloride from leaky oil and gas wells, which can make drinking water unpleasantly briny. So, the Texas Commission on Environmental Quality and the Railroad Commission of Texas developed a saltwater minimization project focused on oil well remediation. Since then, chloride levels fell and a segment of the river now complies with state standards.²³

- Polluted runoff from intermittent streams in South Dakota's Bad River watershed flowed into Lake Sharpe, a reservoir along the Missouri River that supplies drinking water and recreational fishing. Loss of channel depth due to sediment build-up in the Bad River also contributed to flooding in Pierre and Ft. Pierre. Through Clean Water Act funding, local leaders worked with farmers to reduce sediment input by more than 40 percent.²⁴

Endnotes

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