



# America Needs Clean Water and Healthy Wetlands: Restore Clean Water Act Protections

## What happened to the Clean Water Act?

Millions of acres of wetlands and thousands of miles of streams are losing Clean Water (CWA) protections in the wake of Supreme Court decisions in 2001 (*SWANCC*) and 2006 (*Rapanos*) and subsequent Corps of Engineers and EPA guidance. **Without Congressional intervention to restore the CWA protection for waters that were protected prior to 2001, these waters will continue to be polluted and destroyed.**

Recent storms, floods, wildfires and droughts offer one clear lesson: we must protect our natural water supplies and water infrastructure. Healthy streams and wetlands are vital, they:

- Naturally filter and replenish our drinking water supplies
- Absorb flood waters and protect coastlines during heavy storms and hurricanes
- Recharge and release precious water supplies during times of drought
- Support diverse and abundant fish and wildlife
- Support local hunting, fishing, birdwatching, and boating industries
- Offer refuge and recreation close to home for people and wildlife alike.

These waters are all the more important in the face of climate change which will drastically alter the water cycle, leading to increased occurrences of flooding and drought, as well as sea level rise and increased storm intensity.

## What do we have to lose? What has already been lost?



**Intermittently flowing streams:** According to EPA, 59% of stream miles in the continental U.S. are intermittent or ephemeral and many are losing Clean Water Act protection as a result of the 2006 *Rapanos* decision and 2007-2008 *Rapanos* guidance. These smaller streams provide important drinking water, flood control, and aquatic habitat functions.

**Wetlands:** An estimated 20 million acres of wetlands – or **20% of all remaining wetlands in the lower 48 states** – are already losing Clean Water Act protection after the *SWANCC* decision. Many more are at risk after *Rapanos*.

**Drinking Water:** EPA estimates that **one-third of Americans get their drinking water from public supplies fed in whole or in part by intermittent or ephemeral streams vulnerable to pollution under these decisions.** Treating polluted drinking water is expensive. New York City estimates that pollution of small streams and wetlands in the city's drinking water source areas could cost up to \$6 billion for treatment plant construction and \$300 million/year for operation.

**Industry and Agricultural Water Supplies:** Farmers and ranchers need clean water for irrigation and livestock. Food and drink processing requires clean water. Pollution and destruction of wetlands and small streams threaten surface and ground water supplies.

**Migratory Bird Habitat:** After the 2001 *SWANCC* decision and guidance, **the Corps and EPA abandoned Clean Water Act protections for millions of acres of geographically isolated wetlands**, including those of the Prairie Pot-hole Region. These wetlands provide essential breeding habitat for 50- 75% of North America's duck population.

## What do we have to lose? (contd.)



**Flood Control:** The Midwest has suffered two 500-year floods in the last 15 years. Wetlands and intermittently flowing streams naturally absorb flood waters, moderating peak flood stages and reducing flood damage. **A 1% loss of a watershed's wetlands can increase total flood volume by almost 7%.** Floods cause an estimated \$3.7 billion in damage annually. Recent flooding in Illinois and Iowa underscores the need for wetland protection. These two states have lost over 85% of their wetlands.

**Fishing and Boating Lakes:** Several Midwestern lakes have lost Clean Water Act protections, including the 86-acre Gurno Lake in northern Wisconsin which supports active recreational fishing for largemouth bass, muskie and walleye in an area well-known for fishing, boating and outdoor recreation.

### Enforcement of Clean Water Act Pollution Controls:

Uncertainty due to the Court decisions and agency guidance is undermining enforcement of the Clean Water Act's pollution controls, according to a March 2008 EPA memo and a December 2008 House oversight committee report. Since July 2006, the *Rapanos* decision or the Guidance has compromised at least 500 enforcement cases.

Some federal courts have reversed pollution convictions based on the Supreme Court decisions, and the U.S. Department of Justice faces an unprecedented enforcement workload triggered by them. In 2007, the 11th Circuit U.S. Court of Appeals overturned Clean Water Act criminal penalties for a company that intentionally dumped oil, zinc and lead in an Alabama creek that flows year-round and into a larger river. In December 2008, the Supreme Court refused to clarify its confusing *Rapanos* decision in this case.



**Timely Permitting and Certainty:** The confusing and cumbersome new requirements for jurisdictional determinations have delayed permit reviews by two months to two years. The *Rapanos* guidance has substantially delayed and increased the cost of transportation projects. December 2008 revisions to the *Rapanos* guidance only further confuse decisions on the scope of Clean Water Act protections.

## Congress Must Restore Clean Water Protections for the Nation's Waters

We urge the 111th Congress to restore CWA protections that existed prior to *SWANCC* and *Rapanos* by:



1. Adopting a statutory definition of "waters of the United States" based on the longstanding definition in EPA and Corps regulations.
2. Deleting the term "navigable" from the Act to clarify that Congress' primary concern in 1972 was to protect the nation's waters from pollution rather than just sustain the navigability of waterways.
3. Including findings that explain the factual basis for Congressional assertion of constitutional authority over waters and wetlands, including those that appear to be geographically "isolated."
4. Preserving the Act's long-standing exemptions for farming, ranching, mining, and forestry activities.



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