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Keep the Protections Flowing: The Need for the Clean Water Restoration Act

A Congressional Fix for the Clean Water Act Is Urgently Needed in the 111th Congress

WHY ACT NOW?

The Clean Water Act, long considered one of the country's most successful environmental laws, is broken. Only Congress can overturn the Supreme Court decisions that have led too much of the current disastrous situation for the nation's waters. Every day that Congress fails to act, more streams, rivers, wetlands and other waters that have long been protected by the Clean Water Act are being polluted or destroyed.

The Environmental Protection Agency has admitted that they dropped enforcement of hundreds of alleged violations of the Clean Water Act, lowered others in priority, and has had to fight frequent attempts by defendants to escape legal responsibility. Because of confusion caused by the court cases, the EPA was unable to determine if the waters were legally protected. In sum, over 500 enforcement cases – involving oil spills, waste discharges and filled wetlands – were affected during an 18 month period in 2006 and 2007. They have not done a new survey, but agency staff confirms this is an ongoing problem.

Further, there are a great deal more foregone enforcement cases involving waters deemed to be "isolated" by EPA and the Corps. EPA has acknowledged that the government effectively stopped enforcing the requirement of its regulations that protects intrastate waters, the use, degradation, or destruction of which may affect interstate commerce. In 2008, EPA Assistant Administrator for Water Benjamin Grumbles testified before Congress that they have not asserted jurisdiction over *any* such waters for over seven years, even where the agency retains the legal authority to do so.

The federal courts are struggling to determine how to implement the Supreme Court's decisions, resulting in conflicting decisions and uncertain standards in different parts of the country.

HEALTH AND ENVIRONMENTAL CONSEQUENCES OF INACTION

One EPA estimate suggests that, since the SWANCC decision in 2001, to date, the Corps has left well over 10,000 water bodies out of the Clean Water Act's pollution control program – perhaps as high as 15,000.

Public health and safety are threatened each day this situation continues until Congress fixes the law. Waters losing protections include headwater, intermittent, and ephemeral streams that supply public drinking water systems that serve more than 110 million Americans – 5,646 public water supply systems.

More than 40% of facilities (14,800) with Clean Water Act NPDES permits discharge into small or intermittent streams, and already several such facilities are arguing that because or

Rapanos and *SWANCC*, they no longer require permits which impose limits on their pollution levels.

Dredging or filling streams, and draining and filling wetlands, can cause or exacerbate flooding downstream with significant public safety and economic implications. A single acre of wetland can store 1 to 1.5 million gallons of flood water. Wetlands in the continental United States save an estimated \$30 plus billion in annual flood damage repair costs.

Senate:

The Senate Environment and Public Works Committee passed a compromise version of the Clean Water Restoration Act (S787) on June 18. This is a compromise, which mean we did not get as strong a bill as we would have liked to see come out of committee when compared to the bill as introduced. However, we are pleased to see progress in restoring protections. We pledge to work with these Senators and the rest of Congress to pass the strongest possible bill.

The Senate must act quickly to move the Clean Water Restoration Act to a full vote in the Senate. The Senate moving forward on this bill means that headwater and intermittent streams and "isolated" waters are one step closer to regaining critical protections.

House:

The Transportation and Infrastructure Committee should take up and vote for a strong bill which would restore Clean Water Act protections to water bodies that had been protected for decades. We are expecting a modified version of last Congress's Clean Water Restoration Act to be introduced soon. We are not seeking to expand the Clean Water Act, only to restore the protections that existed prior to the first Supreme Court decision in 2001.