



THE IZAAK WALTON LEAGUE OF AMERICA

**Testimony of Scott Kovarovics
Executive Director, Izaak Walton League of America**

**Subcommittee on Fisheries, Water and Wildlife
Committee on Environment and Public Works
United States Senate**

May 24, 2016

Chairman Sullivan, Senator Whitehouse, and members of the Subcommittee, I greatly appreciate the opportunity to testify today concerning the Clean Water Rule issued by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency (EPA).

I serve as Executive Director of the Izaak Walton League of America. I am honored to be here to share the perspective of the League and the much broader community of Americans who enjoy hunting, angling and outdoor recreation. The Izaak Walton League was founded more than 90 years ago by anglers, hunters and others who were concerned about the negative impacts of water pollution and unlimited development on outdoor recreation – especially fishing – and the health of fish, wildlife and other natural resources. The founders of our organization understood that clean water and healthy wetlands are essential to robust populations of fish, ducks and other wildlife and successful days in the field.

Today, the League's 43,000 members are leading efforts locally to conserve and restore habitat and monitor and improve water quality. These members also enjoy hunting, angling, recreational shooting sports, boating and myriad other outdoor recreation activities. And like League members before them, they understand that healthy natural resources, including water and wetlands, provide the foundation for the outdoor traditions they and tens of millions of other Americans enjoy every year.

Healthy Streams and Wetlands Are Vital to Hunting and Angling, Communities and the Outdoor Recreation Economy

Ensuring the nation's streams, wetlands and other waters are healthy is vitally important to Americans who hunt and fish, for communities nationwide and for the outdoor recreation economy.

Wetlands and streams provide vital habitat for fish, ducks and other wildlife. For example, the prairie pothole wetlands throughout the northern plains and southern Canada support 50 percent of the North American duck population in an average year and as much as 70 percent when water and prairie grasses are abundant. A wide array of duck species depend on these wetlands for breeding, nesting and rearing young. Ducks that hatch and grow to adulthood in these wetlands are harvested throughout the United States every fall. In addition, headwaters and other small streams are vital to cold water fish. These waters provide essential spawning habitat for

trout, salmon and other fish and are then essential to supporting these fish throughout their lifecycles.

However, following two confusing U.S. Supreme Court decisions (*SWANCC* in 2001 and *Rapanos* in 2006) and subsequent agency guidance, many streams and wetlands are increasingly at risk of being polluted or drained and filled. According to EPA, the types of streams that flow to public drinking water supplies for more than 117 million Americans are at increased risk of pollution. Wetlands are not only at greater risk, the nation is losing natural wetlands at a growing rate. In the most current *Status and Trends of Wetlands* report, the U.S. Fish and Wildlife Service concludes the rate of wetlands loss increased by 140 percent during the 2004-2009 period – the years immediately following the Supreme Court decisions – compared with the previous assessment period (1998-2004). This is the first documented acceleration of wetland loss since the Clean Water Act was enacted more than 40 years ago.

Each year, nearly 47 million Americans head into the field to hunt or fish. These are not simply traditions or hobbies – they are fundamental components of our nation’s economy. The money sportsmen and women spend benefits major manufacturing industries and small businesses in communities across the country. These expenditures directly and indirectly support more than 1.5 million American jobs and ripple through the economy to the tune of more than \$200 billion per year. Many other forms of outdoor recreation also depend on clean water and a healthy environment. According to the Outdoor Industry Association, boating – including canoeing and kayaking – had a total economic impact of \$206 billion in 2012, supporting 1.5 million additional jobs in this country.

In addition to providing critical habitat for fish and wildlife and directly supporting hunting and angling, wetlands also provide a host of other benefits to people and communities across the country. Natural wetlands are arguably the most cost-effective protection against flooding for communities large and small. According to the National Weather Service, the 30-year average for flood damage is \$8.2 billion annually. Conserving wetlands is a fiscally prudent alternative to building higher levees and concrete storm walls and armoring every stream bank with rip-rap.

The Clean Water Rule is Balanced, Science-based and Limited in Scope

The Clean Water Rule adopted by the Army Corps and EPA in 2015 is science-based, limited and more specifically identifies waters that are – and are not – covered by the Clean Water Act. The final rule represents a scientifically and legally sound definition of covered waters that:

- **Narrows the historic scope of the Clean Water Act jurisdiction**, excluding protections for some wetlands and other waters that were protected under the Act before 2001.
- **Clearly defines the limits of tributaries** through physical features, including bed, bank and ordinary high water mark, and distinguishes tributaries from dryland ditches and erosional features.
- **Draws bright line physical and measureable boundaries on covering adjacent and nearby waters.**
- **Preserves and enhances existing exemptions for farming, ranching, forestry and other land uses.**

Hunting, angling and conservation groups, including the League, strongly support the final rule. It is also supported by businesses and industries that depend on clean water and a healthy environment. The following quotations highlight some of that support:

“The clean water rule is good for our business, which depends on clean, fishable water. Improving the quality of fishing in America translates directly to our bottom line, to the numbers of employees we hire right here in America, and to the health of our brick-and-mortar stores all over the country.”

— *Dave Perkins, executive vice chairman of The Orvis Company, America’s longest continually-operating fly fishing business, with 66 retail stores and 10 outlets in the United States and approximately 1,700 employees*

“This important final rule provides clarity on protections for the lifeblood of many of our country’s prized fisheries. The health of these headwaters sets the tone for all waters downstream and creates the backbone of our nation’s water resources. If we as a nation fail to protect our headwater streams and wetlands, we could jeopardize the economy of the hunting and fishing industry and put millions of people out of work.”

— *Benjamin Bulis, president of the American Fly Fishing Trade Association, the sole trade organization for the fly fishing industry*

“Our brewery and our communities depend on clean water. Beer is, after all, over 90 percent water, and if something happens to our source water, the negative effect on our business is almost unthinkable . . . We all rely on responsible regulations that limit pollution and protect water at its source. Over the past 23 years, we’ve learned that when smart regulation and clean water exist for all, business thrives.”

— *Andrew Lemley, government affairs representative, New Belgium Brewing*

“The EPA’s rule gives the business community more confidence that clean water sources, including streams and wetlands, are protected, and removes uncertainty surrounding the agency’s authority to protect our waterways. This is good for the economy, and vital for businesses that rely on clean water for their success.”

— *Richard Eidlin, vice president of policy and campaigns, American Sustainable Business Council, which represents 250,000 businesses and 325,000 entrepreneurs, executives, managers, and investors*

Exemptions from the Clean Water Act are Maintained and Enhanced by the Clean Water Rule

Since 1977, the Clean Water Act has included a number of exemptions from the section 404 dredge and fill permit process for discharges associated with farming, construction, mining and other activities. For example, the discharge of dredge or fill material “from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices” (section 404(f)(1)(A)) is generally exempt from permitting. Other provisions exempt “construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches” (section 404(f)(1)(C)); “construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters” (section 404(f)(1)(D)); and “construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment . . .” (Section 404(f)(1)(E)). These exemptions do not apply to activities that would bring waters of the United States into

uses for which they had not previously been used or where the flow or circulation of such waters would be reduced.

Under the plain language of the Clean Water Act, discharges associated with a broad range of activities are already exempt – and have been for nearly 30 years. These statutory exemptions can only be modified by Congress; federal agencies cannot alter them and are bound by law to follow them. The final rule in no way limits or alters these exemptions.

Moreover, in an effort to provide even more clarity and certainty about the types of waters covered by the Clean Water Act, the final rule maintains existing regulatory exemptions and – for the first time in regulation – explicitly excludes specific types of waters from the definition of “waters of the United States.” **The following are among the types of waters that are excluded from the regulatory definition:**

- Waste treatment systems.
- Prior converted cropland.
- Many drainage ditches provided they are not excavated in a tributary.
- Artificially irrigated areas that would revert to dry land if irrigation ceased.
- Artificial, constructed lakes and ponds created in dry land, including farm and stock ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds or cooling ponds.
- Artificial reflecting pools or swimming pools created in dry land.
- Small ornamental waters.
- Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining sand or gravel that may fill with water.
- Erosional features, including gullies, rills and other ephemeral features.
- Puddles.
- Groundwater, including groundwater drained through subsurface drainage systems.

When considered in context with the existing statutory exemptions for certain discharges, the final rule more clearly defines the waters **not covered** by the Clean Water Act and incorporates exemptions that had previously not been in regulation. For instance, the rule – in response to comments – adopts an exclusion for certain storm water control features such as green infrastructure installations constructed in dry land.

Conserving and protecting streams, wetlands and other waters is essential to Americans who hunt, fish and enjoy a wide array of other outdoor recreation. These activities depend on clean water and healthy habitat, including wetlands. And these activities are more than traditions or hobbies – they fuel the outdoor recreation economy, which totals hundreds of billions of dollars annually and supports millions of American jobs.

The Clean Water Rule is vitally important to safeguarding our nation’s water resources, hunting and angling traditions, and the outdoor recreation economy. The final rule provides more clarity about the waters that are – and are not – covered by the Clean Water Act. The rule is based on overwhelming science and common-sense. And it responds to common calls from Supreme Court justices, industry and land owners to clarify agency regulations.

I appreciate the opportunity to testify and would be happy to answer any questions.