



Healing Our Waters-Great Lakes Coalition

April 25, 2017

The Honorable Tammy Duckworth
Ranking Member, Subcommittee on Fisheries, Water and Wildlife
Senate Committee on Environment and Public Works
Washington, DC 20510

The Honorable Kirsten Gillibrand
United States Senate
Washington, DC 20510

Dear Sens. Duckworth and Gillibrand:

As Great Lakes members of the Senate Committee on Environment and Public Works, I ask that you submit this letter for the record for the Committee's April 26 hearing entitled "A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule."

The HOW Coalition believes that the Clean Water Rule, finalized by the previous administration, is one of many important steps needed to protect and restore our Great Lakes. We view the actions that the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers took were under the authority granted to them by Congress under the Clean Water Act to legally clarify the statute's jurisdiction and are scientifically justified. Our coalition supported this rulemaking and supports this rule and urges Congress to take no action to undermine the clean water benefits it provides.

Clean Water Protections at Risk

For years the Clean Water Act protected all wetlands and streams, which was Congress' intent when it recognized the interconnectedness of U.S. waters when passing the act in 1972. It clearly articulated its intent that the tributaries of navigable waters be protected when it stated in a January 1973 report: "Water moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source."¹

Prior to this rule many of the waters on which the Great Lakes depend were at increased risk and had been for nearly fifteen years. Supreme Court decisions in 2001 (SWANCC vs. Army Corps of Engineers) and 2006 (Rapanos vs. United States) and subsequent agency actions had created a confusing, time-consuming, and frustrating process for determining what waters were protected under the Clean Water Act and state laws. This threat in particular left

¹ Congressional Research Service. 1973. "A Legislative History of the Water Pollution Control Act Amendments of 1972." Library of Congress, Washington, D.C. Volume 2, P. 77.

intermittent and headwater streams vulnerable to pollution and adjacent wetlands open to be filled

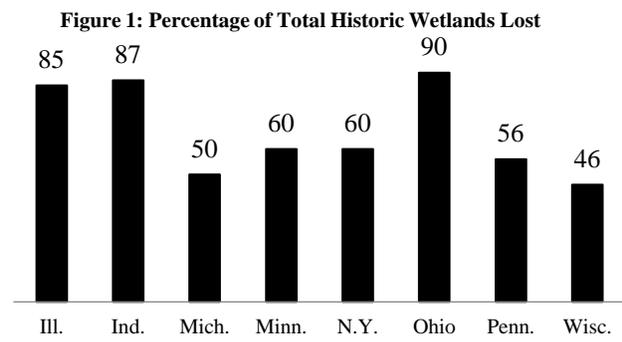
and destroyed. Half of the streams in Great Lakes states do not flow all year, putting them, and adjacent wetlands, at risk of increased pollution and destruction. Over 117 million Americans get their drinking water from surface waters, including nearly 37 million people in Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New York. More importantly, 83 percent of the population in Great Lakes states are dependent on public drinking water systems that rely in intermittent, ephemeral, and headwater streams (See Table 1).³ In addition, according to the U.S. Fish and Wildlife Service, the rate of wetlands loss accelerated nationally by 140 percent from 2004 to 2009, the years immediately after the Supreme Court rulings.⁴ The Great Lakes region has already lost 66 percent of their historic wetlands (See Figure 1).⁵

Table 1: Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S. Completed by U.S. EPA in July 2009

State	Population Served by Public Drinking Water Systems using surface water ²	Population Dependent on Public Drinking Water Systems relying on I/E/H	% Population on Public Drinking Water Systems relying on I/E/H	Total Stream Miles in Source Protection Areas	Miles of I/E/H in SPAs	% of streams in SPAs that are I/E/H
Ill.	4,872,325	1,680,948	34%	9,894	5,688	57%
Ind.	1,951,112	1,703,230	87%	2,330	1,158	50%
Mich.	1,977,536	1,400,633	71%	1,342	551	41%
Minn.	1,068,598	978,928	92%	1,736	627	36%
N.Y.	11,471,432	11,146,815	97%	10,436	5,728	55%
Ohio	5,894,716	5,285,318	90%	11,605	6,978	60%
Penn.	8,215,216	8,035,216	98%	18,604	10,720	58%
Wisc.	1,392,700	391,531	28%	504	254	50%
Total	36,843,635	30,622,619	83%	56,453	31,703	56%

The Trump Administration is now seeking to rescind the Clean Water Rule and replace it with a rule that will likely cover fewer waters. The President’s executive order requires the EPA and Army Corps to base a new legal analysis regarding what waters should be covered under a

much narrower interpretation of the Clean Water Act written for a minority of Supreme Court Justices by former Justice Antonin Scalia. Experts estimate that the Scalia opinion’s narrow view of the Clean Water Act’s scope would leave millions of acres of wetlands and tens of thousands of river miles and streams completely unprotected from pollution under federal law.



²All data found at:

http://water.epa.gov/lawsregs/guidance/wetlands/upload/2009_12_28_wetlands_science_surface_drinking_water_surface_drinking_water_results_state.pdf

³ U.S. Environmental Protection Agency. 2009. “Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S.”

⁴ Dahl, T.E. 2011. “Status and trends of wetlands in the conterminous United States 2004 to 2009.” U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 45.

⁵ Dahl, T.E. 1990. “Wetlands Losses in the United States 1780’s to 1980’s.” U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 6.

Our Great Lakes are Connected and Important

Protecting and restoring wetlands and streams is critical to the restoration and protection of the Great Lakes. According to a review of more than a thousand publications from peer-reviewed scientific literature conducted by an EPA Science Advisory Board, streams, tributaries (e.g., headwater, intermittent, ephemeral), and wetlands are connected to downstream waters. The overwhelming science concludes that upstream waters in tributaries (intermittent, ephemeral, etc.) exert strong influence on the physical, biological, and chemical integrity of downstream waters. Common sense also tells us this is true. Pollution in a tributary is carried downriver into bigger and bigger waterways. Upstream waters also feed water to rivers and lakes, like the Great Lakes.

Additionally, other water features connected to rivers and lakes also play important roles. Healthy wetlands improve water quality by filtering polluted runoff from farm fields and city streets that otherwise would flow into rivers, streams, and water bodies across the country, including the Great Lakes. Wetlands and tributaries provide vital habitat to wildlife, waterfowl, and fish; reduce flooding; and replenish groundwater supplies. According to the SAB, all of this science provides an adequate basis for the key components of the rule.

A good example of how pollution upstream impacts bigger waters downstream is the 2014 drinking water crisis in Toledo, Ohio. Excess phosphorus and other pollutants washing off the land and impervious urban surfaces during heavy rains flow into the Maumee River, which empties into Lake Erie. Excess phosphorus mixes with a complicated brew of threats in the lake (like zebra and quagga mussels) driving the re-emergence of harmful algal blooms.⁶ The blooms that shut off Toledo's drinking water produced deadly toxins harmful to human health requiring city officials to issue 'do not drink' orders. To protect drinking water systems like Toledo's, it is vital to protect the source of drinking water upstream, which the proposed rule does by covering streams and tributaries that play a vital role in keeping our waters clean and ensuring access to safe drinking water.

Clean Water Rule Supports Great Lakes Restoration Investments

Recognizing the important role wetlands and streams play in the overall health of the Great Lakes, the region's business, environmental, and governmental leaders endorsed a plan that calls for the restoration of more than 1 million acres of wetlands.⁷ Over the last seven years, the U.S. Congress and has invested more than \$2.2 billion to restore the Great Lakes. These efforts are producing results in communities around the region—including the restoration of more than 150,000 acres of wetlands and other habitat.⁸ The Clean Water Rule supports Great Lakes restoration efforts and ensures that restoration gains are protected so that as we take one step forward we aren't also taking two steps back.

⁶ According to the Ohio Lake Erie Phosphorus Task Force, "...there are multiple contributors to phosphorus into Lake Erie, but agriculture is the leading source [of phosphorus] due to the majority of land use in agriculture in the Maumee River..." See: Ohio Department of Agriculture, et al. 2013. "Ohio Lake Erie Phosphorus Task Force II Final Report." P. 1. Members of this Task Force included the Ohio Department of Agriculture, Ohio Farm Bureau Federation, and Ohio Environmental Council, among others.

⁷ Great Lakes Regional Collaboration. 2005. "Strategy to Restore and Protect the Great Lakes." Found at: http://www.gllrc.us/documents/strategy/GLRC_Strategy.pdf

⁸ U.S. Environmental Protection Agency. 2016. "Fiscal Year 2017: Justification of Appropriation Estimates for the Committee on Appropriations." Washington, D.C. P. 289.

The clean water and restoration investments protected by the rule also support good-paying jobs and lay the foundation for long-term prosperity. Investments in Great Lakes restoration are creating jobs and leading to long-term economic benefits for the Great Lakes states and the country. A Brookings Institution report shows that every \$1 invested in Great Lakes restoration generates at least \$2 in return.⁹ Research from Grand Valley State University shows that the return for certain projects is closer to 6-to-1.¹⁰ The University of Michigan has also demonstrated that over 1.5 million jobs are connected to the Great Lakes, accounting for more than \$60 billion in wages annually.¹¹ Great Lakes businesses and individuals account for about 33 percent of the U.S. gross domestic product, according to a profile of Bureau of Economic Analysis data presented by World Business Chicago.¹²

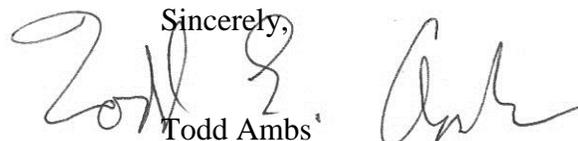
The Clean Water Rule helps protect our investment in restoring and protecting our Great Lakes by safeguarding vital wetlands and other waterways from pollution and/or destruction. In particular, the rule provides clear and predictable protections for many streams, wetlands, and other waters and it provides certainty in how far safeguards extend to nearby waters. The effect of this is to give greater certainty to the regulated community by providing better guidance from federal and state regulators. This helps streamline the permitting process and reduces the use of case-specific analyses of waterbodies.

While the rule covers waters that have historically been covered by the Clean Water Act, it does not extend coverage to new types of waters that have not historically been under the Act's jurisdiction, such as groundwater. It does not add any new requirement for agriculture or regulate most ditches. The rule also does not cover any artificial lakes, ponds, and artificial ornamental waters or water-filled depressions incidental to construction activity.

Conclusion

The HOW Coalition strongly supports this rule. The Great Lakes region cannot protect the Great Lakes alone. They need the help from the Clean Water Act to ensure all Great Lakes rivers, streams, and wetlands can provide clean drinking water, habitat for wildlife, and safe opportunities for fishing, paddling, and swimming. The rule's clarifications provide just that support.

Please do not hesitate to contact Chad Lord, our Coalition's Policy Director, at (202) 454-3385 or clord@npca.org with questions.

Sincerely,

Todd Ambs
Campaign Director

⁹ Austin, et.al. 2007. "Healthy Waters, Strong Economy: The Benefits of Restoring the Great Lakes Ecosystem." Metropolitan Policy Program, The Brookings Institution. Washington, D.C. 16 pp.

¹⁰ Isely, et.al. 2011. "Muskegon Lake Area of Concern Habitat Restoration Project: Socio-Economic Assessment." Grand Valley State University, Grand Rapids, Michigan. P. 23

¹¹ Michigan Sea Grant. 2011. "The Great Lakes: Vital to our Nation's Economy and Environment." University of Michigan. 2 pp.

¹² Found at: https://www.worldbusinesschicago.com/files/data/GLSL_Economy_2013%20%282011%20data%29.pdf