



Weakening the Clean Water Act: What it Means for Arkansas

Across the country, small streams (headwater, intermittent, and ephemeral streams) and wetlands are losing Clean Water Act protections in the wake of two recent Supreme Court decisions and subsequent federal agency directives. **In Arkansas, at least 63% of streams and their adjacent wetlands are at risk of uncontrolled filling and pollution.** Without intervention from Congress or the Administration to restore Clean Water Act protections for waters that were protected prior to 2001, these waters will continue to be polluted and destroyed.

Waters at Risk due to *SWANCC* and *Rapanos* Supreme Court Decisions and Agency Guidance

Arkansas has lost an estimated 72% of its wetlands since the 1780s, which amounts to more lost wetland acres than any other inland state in the nation. Wetlands destruction continues in Arkansas despite the numerous benefits these wetlands provide—wildlife habitat, flood control, recreation, etc.

Wetlands and streams store water, acting as sponges during flood periods, and flow reserves during drought. According to the Arkansas Game and Fish Commission (AGFC):

“[[Arkansas’s wet flats] store a lot of precipitation that would otherwise run overland to the small streams, making them very flashy and prone to erosion. This water also provides base flow for these tributaries through slow release of this water through subsurface transport. Large expanses of these wet flats could be compromised if the protections of isolated wetlands or tributaries are removed, and degradation of downstream areas is sure to follow.”

The AGFC has noted that the state “is rich with mountain streams, most of which are tributary orders away from any river used or historically used for commercial navigation... [including] the Buffalo, an Ozark Zone Blue Ribbon smallmouth bass stream and a national recreation destination.” These streams and their adjacent wetlands now may not be protected by the Clean Water Act. The AGFC states that “removing the Buffalo National River, its tributaries, or similar streams from CWA jurisdiction would have devastating impacts both to the biological integrity of the stream, and the economy of Arkansas.”

Source water protection areas containing small or intermittent streams and rivers provide water to drinking water supplies serving more than 940,000 Arkansas residents. Failure to protect them may increase drinking water treatment costs or risks to public health.

Wildlife, Hunting, and Fishing Impacts

Arkansas is a premier destination for many of the nation’s waterfowl hunters and their expenditures support many local economies. **Duck hunting in Arkansas is being harmed by the rollback of Clean Water Act protections.** The at-risk wetlands of the Prairie Pot-hole Region (also known as “the Duck Factory”) produce most of the ducks that migrate to Arkansas. Clean Water Act protections have recently been withdrawn from most of these wetlands. If these protections are not restored, duck seasons will be shorter and bag limits will be reduced.

Ninety percent of fish caught by American recreational anglers need wetlands for shelter, food supply, spawning, and nursery areas. Wetlands are essential spawning and breeding grounds for fish and they house the insect and smaller fish that serve as food for many larger fish. Arkansas’s wetlands support a wide diversity of wading birds, migratory song birds, and other wildlife that attract wildlife enthusiasts to the Arkansas outdoors. Arkansas’ outdoor recreation and tourism economy rely upon the continued protection of these waters. **Over \$2 billion was spent in Arkansas in 2006 on fish and wildlife-related recreation, most of which is dependent upon healthy and abundant aquatic habitat.**



Wildlife, Hunting, and Fishing Impacts, contd.

According to the AGFC, many Ozark Mountain headwater tributaries originate in karst topography, where seeps and caves support endemic crayfish and the endangered Ozark cave fish. All three federally-listed plants in Arkansas are restricted to specific wetland habitats. Pollution of wetlands in karst topography pose an especially elevated risk to drinking water supplies and streams.



Ozark cave fish, USFWS

No Jurisdiction, Less Enforcement

From July 2006 until early 2008, the *Rapanos* decision and guidance negatively affected more than 500 Clean Water Act enforcement cases nationally. About 140 of these compromised enforcement actions occurred in EPA Region 6 covering Arkansas, Louisiana, Texas, Oklahoma, and New Mexico.

At least 389 polluting facilities are located on at-risk streams in Arkansas. Their pollution is presently limited by Clean Water Act permits, but these permits may no longer be necessary.

Restoring Protections will Streamline the Clean Water Act Permitting Process

The Supreme Court decisions and subsequent agency guidance have added uncertainty and time-consuming investigations and paper work to the Clean Water Act permitting process and have negatively affected Clean Water Act enforcement cases regionally and nationwide. As a result, extensive resources are being diverted away from protecting human health and the environment to determining whether or not a water is protected by the Clean Water Act.

State Protections in Arkansas

Arkansas has no independent state permitting program that regulates dredge and fill discharges in so-called isolated wetlands or small streams and their associated wetlands. Arkansas's Department of Environmental Quality (DEQ) does have Clean Water Act 401 water quality certification authority over the State's wetlands and other surface waters where federal Clean Water Act permits are issued, but this authority will evaporate with respect to waters no longer recognized as Clean Water Act "waters of the United States" by EPA and the Corps of Engineers.

Arkansas joined more than 30 states in asking the Supreme Court to uphold Clean Water Act protections for small tributaries and their adjacent wetlands.



Richard Seeley

The Administration Must Restore Clean Water Protections for the Nation's Waters

For almost a decade, Congress has failed to enact legislation restoring the historic scope of the Clean Water Act. **To protect the Nation's waters, EPA and the Corps of Engineers should revise their definition of "Waters of the United States" to restore and clarify Clean Water Act protections, including for so-called "isolated wetlands," in a manner consistent with both law and science.** A successful rulemaking will restore and clarify protections for millions of wetland acres and stream miles, and will place these restored protections on a much more secure legal and scientific foundation.



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