Weakening the Clean Water Act:
What It Means for Tennessee

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 in 2001 (*SWANCC*) and 2006 (*Rapanos*) and subsequent federal agency directives. **In Tennessee, 60% of streams are headwater streams that are at risk of being filled and polluted, along with over half the state's remaining wetlands.** These at-risk streams and wetlands support the state's larger rivers and lakes by supplying water, filtering out pollution, slowing flood waters, and providing habitat to fish, birds and other wildlife. **Unless Congress or the Administration restore Clean Water Act protections for waters protected prior to 2001, these waters will continue to be polluted and destroyed.**

Restoring Clean Water Act protections for small streams and wetlands will keep Tennessee's waters clean.

Intact small streams and wetlands trap substantial amounts of sediment, nutrients, and chemicals keeping those pollutants from reaching downstream waters. In one study, 64% of inorganic nitrogen (one of the main chemicals in agricultural fertilizers) was neutralized after traveling just 1,000 yards in a small stream. Pollutants that are not filtered out will reach downstream waters, increasing drinking water treatment costs and damaging fisheries and recreation.

- **More than 3.5 million Tennesseans (approximately 1 in 2) receive drinking water from public water supplies that are fed at least in part by headwater streams or streams that do not flow year round.**
- At least 210 industrial and municipal facilities in Tennessee with pollution controls required by Clean Water Act permits are located on at risk Tennessee streams. If these streams lose Clean Water Act protections, federal permits will no longer be necessary and pollution from these facilities into these sensitive waterways will likely increase.

Restoring Clean Water Act protections for small streams and wetlands is vital for Tennessee's fish, wildlife, and thriving recreational industry.

According to the Tennessee Wildlife Resource Agency (TWRA), "The vast majority of Tennessee's aquatic biological diversity, including state and federally threatened and endangered species, occurs in non-navigable streams…"

- The TWRA has found over 70 species of fish residing *only* in smaller, non-navigable streams.
- Many of Tennessee's valued trout streams are small, non-navigable streams.

Reelfoot Lake crappie. (Al Hamilton's Guide Service)

- Stoneflies, mayflies, and other invertebrates which game fish depend upon for food originate in fishless upstream waters and drift downstream.

- The TWRA has found that poor water quality reduces trout growth and survival, forcing higher stocking rates to maintain angler catch rates and limiting the potential for producing quality-sized fish.

- Fish species, such as chain pickerel, largemouth bass, smallmouth bass, carp, and northern pike rely on wetlands for spawning and during their juvenile life stages.

The U.S. Fish and Wildlife Service reports that 2.8 million residents and nonresidents spent $2.3 billion on wildlife-related recreation in Tennessee in 2006, including $600 million on fishing-related expenditures alone.

Restoring Clean Water Act protections for small streams and wetlands will reduce flooding in Tennessee's communities.

Intact small streams and wetlands reduce the intensity and frequency of floods by absorbing significant amounts of water and slowing the flow of water downstream. A single acre of wetland can store 1 to 1.5 million gallons of flood water, and just a 1% loss of a watershed's wetlands can increase total flood volume by almost 7%.

In May 2010, Tennessee received what the Corps of Engineers described as a "1,000-year rain event." Following 13-plus inches of rain in one weekend, Cumberland River flooding in the Nashville area caused an estimated $1.5 billion in damages and contributed to the deaths of 20 people.

Encroaching development on wetlands and floodplains and resulting increases in impervious surfaces likely contributed to the widespread flooding and subsequent damage. **Tennessee has lost almost 60% of its original wetlands and most of those that remain are at risk of being dredged or filled.**

View from the bridge - North Reelfoot Creek heading west (Gregg Siedschlag)

Restoring and clarifying Clean Water Act protections will ensure that clean water safeguards are enforced and permitting costs and delays are reduced.

From July 2006 until early 2008, the *Rapanos* decision and guidance negatively affected more than 500 Clean Water Act enforcement cases nationally. Jurisdictional confusion stemming from the *SWANCC* and *Rapanos* decisions continues to undermine Clean Water Act enforcement of oil, gas, sewage, and other pollution controls, as well as wetland and stream destruction limits.

This confusion has also added uncertainty and burdensome fact-finding, paper work, cost, and delay to the Clean Water Act permitting process. This uncertainty, cost and delay is hurting business and public infrastructure development, as well as the environment.

Reelfoot Lake. (Photo: John McFadden)

No Jurisdiction, No Protection

Since the Court's decisions, the Army Corps of Engineers and EPA have made countless "non-jurisdictional determinations," formal findings that particular water bodies do not qualify for protection under the Clean Water Act. Here are just a few examples:

- The Corps has rejected CWA protections for Tennessee wetlands associated with Reelfoot Creek, the Wolf River, Watkins Creek and the Harpeth River, and Lackey Creek and the Tennessee River.
- In Lebanon, Tennessee, the Army Corps' Nashville District rejected CWA protections for three ephemeral streams, despite acknowledging the potential importance of such waters.

Tennessee supports broad legal protections for small streams and wetlands.

Tennessee joined over 30 states in asking the Supreme Court to uphold broad legal protections for small tributaries and their adjacent wetlands.

Governor Phil Bredesen (2003-11) wrote in 2008:

> *Tennessee's 60,000 miles of rivers and streams contain the greatest freshwater biodiversity in the nation. Most of these waters are hydrologically connected to one or more of our sister states. Each of our eight adjoining states implements requirements of the federal Clean Water Act. It is, therefore, critical to the states that there be clarity in the jurisdictional reach of the Clean Water Act and that it be sufficient to protect entire watersheds.*

Brent Moore, Flickr

To protect Tennessee waters, the Administration should restore Clean Water Act protections by affirming and clarifying the EPA and Corps of Engineers' definition of "Waters of the United States."

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 its 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.

For more information contact:

Jan Goldman-Carter
Wetlands and Water Resources Counsel
www.nwf.org/waters

goldmancarterj@nwf.org
202-797-6894

National Wildlife Federation • National Advocacy Center • 901 E Street NW, Suite 400 • Washington, DC 20004