The U.S. Army Corps of Engineers and the Environmental Protection Agency have finalized a landmark rule clarifying longstanding Clean Water Act protections for many—but not all—streams, wetlands, and other waters critical to sportsmen and our hunting and fishing heritage as well as to the 117 million Americans who depend on them for drinking water. Many of these waters have been at increased risk of pollution and destruction for more than a decade—and it has taken its toll. For the first time in over 40 years, the rate of wetland loss is on the rise.

This carefully-crafted final rule, which voices on all sides of the debate and the Supreme Court have called for, balances the urgent need to protect our nation’s essential water resources with landowners’ desire for clarity. The final rule relies on the best scientific understanding of stream and wetland science to clarify the scope of the Clean Water Act, reinforces the Act’s legal and scientific foundation, provides greater long-term regulatory certainty for landowners, and enhances protection for America’s streams, wetlands, and other waters.

The Clean Water Rule: Protecting America’s Waters

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The Rule Clearly Restores Clean Water Act Protections to Many Streams and Wetlands

The Clean Water Rule ensures that the Clean Water Act once again safeguards 60% of the nation’s streams and millions of acres of wetlands and small lakes that have been at increased risk following Supreme Court decisions in 2001 and 2006. Extensive peer-reviewed scientific evidence shows that the waters covered by this rule have a significant impact on the quality of downstream waters and, therefore, deserve Clean Water Act protection. In addition to providing valuable fish and wildlife habitat, these waters are an effective buffer against floods, provide water in times of drought, and filter pollutants out of water that otherwise would have to be treated at great expense to cities and towns.

The final rule definitively restores Clean Water Act protection to two major categories of waters, while drawing brighter-line clarifying boundaries:

1. Tributaries to waters already covered by the Clean Water Act—For example, intermittently-flowing headwater streams that have a defined bed and bank and ordinary high water mark, and flow to a traditionally navigable or interstate water body already covered by the Clean Water Act; and

2. Wetlands, lakes, and other water bodies located adjacent to these tributaries (i.e., within the 100-yr floodplain up to a maximum distance of 1,500 ft).

Based on the best wetland science, the final rule bolsters protections of specified wetlands located beyond river floodplains: prairie potholes in the Dakotas, western vernal pools in California, carolina and delmarva bays and pocosins along the Atlantic coastal plain, and Texas coastal prairie wetlands along the Gulf of Mexico. These wetlands function together—i.e., are “similarly situated”—to provide fish and wildlife habitat, important flood storage and drought resistance, and critical pollution filtration, and therefore warrant Clean Water Act protection.
The Final Rule Gives Clarity and Certainty to Regulators and the Regulated Community

Since the first Supreme Court decision confused Clean Water Act jurisdiction in 2001, farmers, land owners and businesses have been unsure whether to seek Clean Water Act permits for their activities that affect water; sportsmen have been stymied in their efforts to protect water resources; and federal and state water quality personnel have struggled to consistently apply the law. After more than a decade, this rule finally provides clear and predictable protections, giving greater certainty than ever before to the regulated community and local governments, and much clearer guidance to federal and state regulators, which will streamline and improve the permitting process.

The final rule is a scientifically and legally sound definition of covered waters that:

- Narrows the historic scope of Clean Water Act jurisdiction, excluding protections for some wetlands and other waters protected for almost 30 years prior to 2001.
- Clearly defines the limits of tributaries (i.e., bed, bank, ordinary high water mark) and distinguishes them from dryland ditches and erosional features.
- Draws bright line physical and measurable boundaries on covering adjacent and nearby waters.
- Preserves and enhances the existing exemptions for farming, ranching, and forestry.
- Explicitly excludes many ditches and other constructed water features important for farming, forestry, stormwater and water delivery systems, and public and private infrastructure.
- Significantly reduces the use of burdensome case-specific analysis of waters.

<table>
<thead>
<tr>
<th>Clean Water Act statutory exemptions</th>
<th>Additional waters exempted by the final rule.</th>
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<tbody>
<tr>
<td>The rule reiterates CWA exemptions for the following activities that are important for farming, forestry and mining from applicable permitting requirements:</td>
<td>In addition to existing exemptions for prior converted cropland and waste treatment systems, the final rule explicitly excludes, for the first time, the following water features from CWA permitting requirements:</td>
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<td>• Most common farming and ranching practices, including “plowing, cultivating, seeding, minor drainage, harvesting” for the production of food, fiber, and forest products;”</td>
<td>• Drainage ditches not constructed in streams and that flow only when it rains;</td>
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<td>• “Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;”</td>
<td>• Artificially irrigated areas that would revert to upland should irrigation cease;</td>
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<td>• “Agricultural stormwater discharges and return flows from irrigated agriculture;”</td>
<td>• Artificial lakes or ponds constructed in dry land and used for purposes such as rice growing, irrigation, and stock watering;</td>
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<td>• “Construction of temporary sediment basins on a construction site;” and</td>
<td>• Artificial ornamental waters created in uplands for primarily aesthetic reasons;</td>
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<td>• “Construction or maintenance of farm or forest roads or temporary roads for moving mining equipment.”</td>
<td>• Water-filled depressions created as a result of construction activity;</td>
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<td>• Groundwater, shallow subsurface flow, tile drains;</td>
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<td>• Gullies, rills, grass swales.</td>
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</table>

Protect America’s Waters. Join the 79% of voters who support the Clean Water Rule that—at long last—restores protections for our nation’s essential water resources while providing much-needed clarity for landowners and businesses.

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