The Clean Water Rule

June 11, 2015

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All information – Can be found at www.epa.gov/cleanwaterrule

Overview of Presentation

- Why streams and wetlands matter
- Brief review of public input and rule development process
- Provisions of the Clean Water Rule

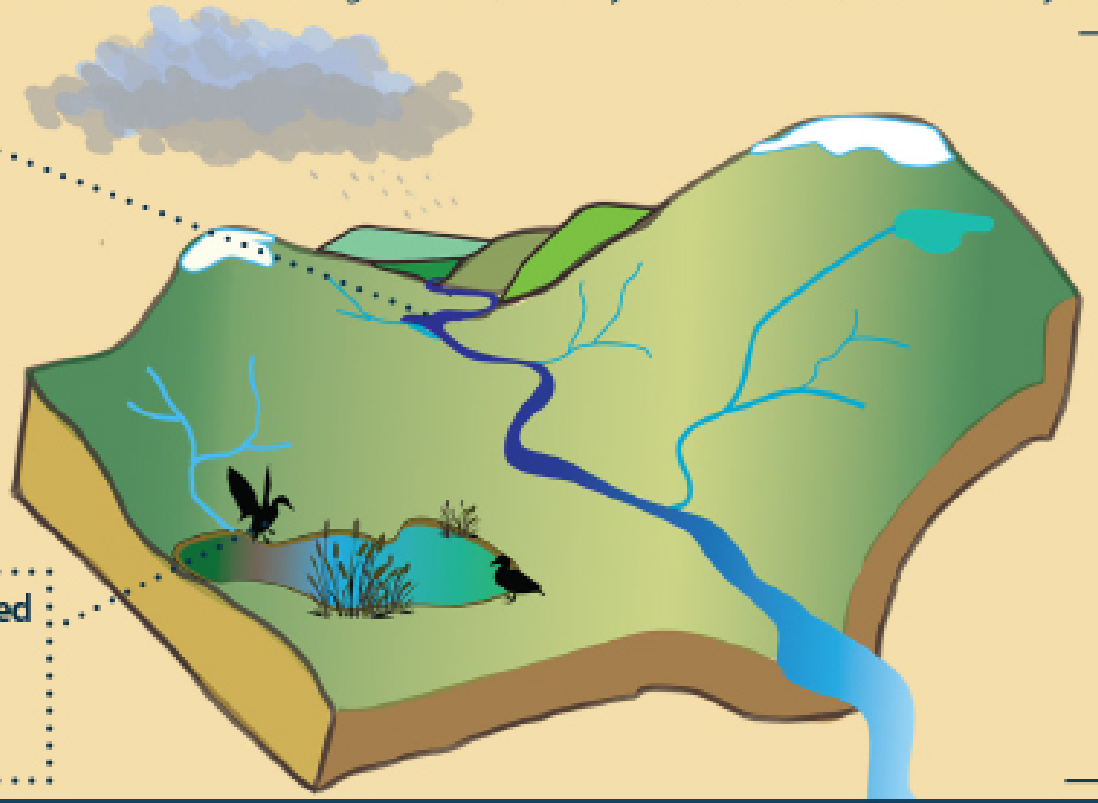
Streams and Wetlands Matter

Clean Water Rule

Clean water upstream means cleaner water downstream.

Our Clean Water Rule protects the streams and wetlands that feed our rivers, lakes, bays and coastal waters. These waters are critical for agriculture, healthy communities, our economy and our way of life.

60 % of stream miles in the U.S. only flow seasonally or after rain.



One-third of threatened and endangered species live only in wetlands.

Streams and wetlands filter pollution, reduce flooding and give fish and wildlife a place to live.

EPA

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About 60 percent of stream miles in the U.S. only flow seasonally or after rain

Wetlands filter pollution, trap floodwaters, recharge groundwater supplies, and provide habitat for fish and wildlife.

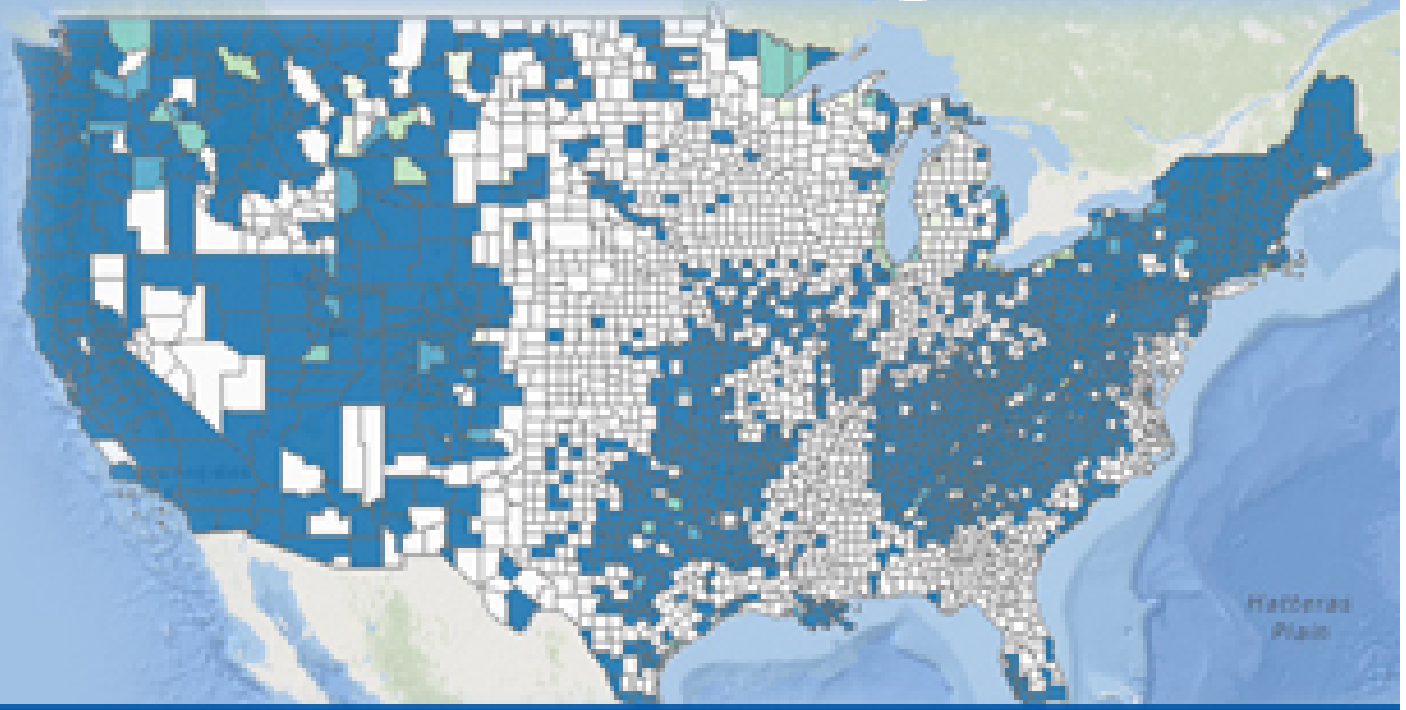
Headwater streams are vital to downstream habitat of fish.

EPA

Clean Water Rule

Your drinking water sources are better protected

Blue areas on this map didn't have clear protections for the streams that help provide their drinking water – until now. Our new Clean Water Rule protects them.



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Farms across America depend on water for livestock, crops, and irrigation

Clean water is an economic driver and critical to tourism, fishing, recreation, energy production, and manufacturing.

Our communities are impacted by what happens upstream.

Aquatic recreation is central to people's lives and livelihoods, and clean water is essential for their health and jobs.

Rule Development

Clarity Needed

Protection for many of the nation's streams and wetlands has been confusing, complex, and time-consuming as the result of Supreme Court decisions in 2001 and 2006.

Responding to Requests

For more than a decade EPA and Army received requests for a rulemaking to provide clarity from bipartisan members of Congress, state and local officials, industry, agriculture, environmental and conservation groups, scientists, builders and developers, and the public.

Supported by Science

In developing the Clean Water Rule, the Agencies utilized the latest science, including a report summarizing more than 1,200 peer-reviewed, published scientific studies which showed that small streams and wetlands play an important role in the health of larger downstream waterways like rivers and lakes.

Outreach and Input Shaped the Rule

Held over **400 meetings** with stakeholders across the country

Reviewed over **one million public comments**

Listened carefully to perspectives from **all sides**

Rule Package

Rule package includes:

- *Rule Text*
- *Preamble*
- *Technical Support Document*
- *Economic Analysis*
- *Environmental Assessment*
- *Response to Comments*

Available at: www.epa.gov/cleanwaterrule

The Clean Water Rule…

Provides greater certainty and clarity regarding the waters protected under the Clean Water Act

Makes jurisdictional determination process more straight forward for businesses and industry

Does not create any new permitting requirements for agriculture and maintains all previous exemptions and exclusions

What the Rule Does

Clearly defines and protects tributaries and other waters that impact the health of downstream waters.

Provides certainty in how far safeguards extend to nearby waters.

Reduces the frequency of case-specific analysis of waters.

Protects regional water treasures.

Focuses on streams, not ditches.

Jurisdictional Waters

Traditionally Navigable Waters

Rule language is unchanged: categorically a water of the U.S.

Traditionally navigable waters are waters that either carry or have potential to carry commercial navigation, including recreational navigation.

EPA has initiated a separate process to address how the EPA can best clarify assumable waters for dredged and fill material permit programs pursuant to the CWA section 404(g)(1).

Interstate Waters

Rule language is unchanged: categorically a water of the U.S.

Interstate waters are jurisdictional.

Supports ability of states to protect against pollution from outside their borders.

Territorial Seas

Rule language is unchanged: categorically a water of the U.S.

The Clean Water Act lists territorial seas as jurisdictional

Impoundments

Rule language is unchanged: impoundments of jurisdictional waters remain jurisdictional

Tributaries

Old regulation and Clean Water Rule consider tributaries to be waters of the United States.

Peer-reviewed scientific literature supports a conclusion that tributaries categorically have a significant nexus.

For first time defines “tributary”

- Waters with “bed and banks” and an “ordinary high water mark” that contribute flow to traditionally navigable water, interstate water, or territorial sea.

Adjacent Waters

Waters adjacent to traditionally navigable waters, interstate waters, territorial seas, tributaries or jurisdictional impoundments are waters of the U.S.

Existing peer-reviewed scientific literature supports a conclusion that adjacent waters categorically have a significant nexus.

Existing regulations define “adjacent” as “bordering, contiguous, or neighboring” -- that portion of the regulatory definition is unchanged, while final rule defines and limits “neighboring” for the first time.

Existing regulations include wetlands as “adjacent.” Final rule applies adjacency to all waters, thereby clarifying the status of ponds and lakes adjacent to jurisdictional waters.

Final rule does not consider waters “adjacent” that are being used for normal farming, ranching, or forestry activities.

Adjacent – What Neighboring Means

Neighboring means:

Waters within 100 feet of a traditionally navigable water, interstate water, territorial sea, impoundment, or tributary.

Waters within the 100-year floodplain of waters listed above but no more than 1,500 feet.

Waters located within 1,500 feet of traditionally navigable waters, territorial seas, or Great Lakes.

Case-Specific Evaluations

Case-Specific Evaluations

Some waters are jurisdictional only where case-specific analysis shows that they have a significant nexus.

(a)(7): waters of five specified types found to be categorically "similarly situated," or

(a)(8): waters in 100-year floodplain of TNW, interstate water or territorial seas, where it is beyond 1,500 feet, or

(a)(8): waters that lie beyond the adjacency limits and within 4,000 feet of a traditionally navigable water, interstate water, territorial seas, impoundment, or tributary

Similarly Situated Waters

Prairie potholes

Carolina bays and Delmarva bays

Western vernal pools in California

Texas coastal prairie wetlands

Pocosins

Non-Jurisdictional Waters

Non-Jurisdictional Waters

Retains exclusions in existing regulations:

- Prior converted cropland
- Waste Treatment Systems

Includes additional exclusions, reflecting public's call for additional clarity

- Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land
- Wastewater recycling structures created in dry land; detention/retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; water distributary structures built for wastewater

Non-Jurisdictional Waters

Irrigated areas that would revert to dry land if irrigation ceased.

Artificial lakes or ponds created on dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, cooling ponds

Artificial reflecting or swimming pools created on dry land

Small ornamental waters created on dry land

Water-filled depressions created in dry land incidental to mining or construction activity

Erosional features, such as gullies, rills, and other ephemeral features not meeting the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways

Groundwater, including groundwater drained through subsurface drainage systems

Ditches

Final rule narrows jurisdiction over ditches

For the first time would exempt certain ditches by regulation.

The rule focuses on streams, not ditches.

Ditches that are not constructed in streams and that flow only when it rains are not covered. The same is true for ditches with intermittent flow that do not drain wetlands.

Agriculture

Agriculture

The rule protects clean water necessary for farming, ranching, and forestry and provides greater clarity and certainty to farmers about what's covered by the Clean Water Act.

The final rule specifically recognizes the vital role that U.S. agriculture serves in providing food, fuel, and fiber at home and around the world.

The rule does not create any new permitting requirements for America's farmers.

Activities like planting, harvesting, and moving livestock have long been exempt from section 404 Clean Water Act regulation, and the Clean Water Rule preserves those exemptions.

Agriculture Permitting Exemptions

Normal farming, silviculture, and ranching practices.

Upland soil & water conservation practices.

Agricultural stormwater discharges.

Return flows from irrigated agriculture.

Construction/maintenance of farm or stock ponds or irrigation ditches on dry land.

Maintenance of drainage ditches.

Construction or maintenance of farm, forest, and temporary mining roads.

The Rule Does NOT

Does Not regulate new types of waters

Does Not regulate most ditches

Does Not limit ag exemptions

Does Not regulate erosional features

Does Not regulate groundwater

Does Not regulate farm ponds

Does Not regulate land use

Does Not change policy on irrigation

Does Not regulate puddles

Does Not change policy on stormwater

Does Not regulate water in tile drains

Does Not change policy on water transfers

A fact sheet online identifies where
in the rule and preamble these are found

The Rule Does

Does reflect the best current science

Does align with the Supreme Court decisions

Does relay on agency experience and expertise

Does reflect public input and comments

Does protect public health, the economy, and the environment

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Question & Answer Session