



CLEAN WATER RULE UPDATE

TU Strongly Opposes EPA and Army Corps "Replacement" Rule

What happened:

On Tuesday, December 12, 2018, the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA)(Agencies) unveiled a proposal to significantly narrow the scope of protections for our nation's waters. The proposal would replace a 2015 rule designed to clarify the scope of Clean Water Act protections, which does protect headwaters, intermittent and ephemeral streams, and wetlands.



What it means:

The Agencies' proposal (Replacement Rule) would end protections for thousands of stream miles in the country – streams that contribute to the drinking water supplies of 117 million Americans and provide essential fish and wildlife habitat that support a robust outdoor recreation economy worth \$887 billion. It also erases protections for millions of acres of wetlands, a critical part of functioning watersheds, including groundwater recharge, pollution filtration, as well as protecting communities from flooding. In eliminating these protections, the replacement rule would deregulate a host of development activities, such as pipeline construction that will, over time, degrade hunting and fishing opportunities in every state in the country.

While long-standing protections for perennial streams, rivers and lakes remain, the most direct, significant impacts will be to ephemeral streams and wetlands.

- **Wetlands:** Millions of acres of which would lose federal protections under the proposal. The rule would regulate only wetlands in close proximity to protected rivers and lakes, or that have a direct hydrologic connection to such waterways. This change in approach could cut half of the wetlands in the continental U.S. off from protection.
- **Ephemeral Streams:** only tributaries that flow year-round or intermittently would be protected under the proposed Replacement Rule. Ephemeral streams that flow only briefly (hours to days) in response to rainfall — a large portion of waterways in the arid West — will be out. Both the George W. Bush and Obama Administrations protected ephemeral streams; the new proposal would drop protections for thousands of miles of these important waters.

Why This Matters for Trout Unlimited:

When the Clean Water Act was passed in 1972, it protected virtually all of America's waters--every type of stream, wetland, river, lake or bay. A 2001 Supreme Court decision first questioned if all wetlands and streams should in fact be protected--and the issue has become ever-more politicized since then.

As directed by the Supreme Court rulings, in 2012 the EPA and Army Corps (agencies) began a rulemaking process to clarify the extent of protections. Following a multi-year process which utilized the best available science and drew more than one million supporting comments, the agencies published the Clean Water Rule of 2015.

The 2015 Rule was a critical step in clarifying Clean Water Act protections for headwaters streams and wetlands across the country. The rule gained strong support from sportsmen, scientists and the public, but it was opposed by a powerful coalition of agriculture and development interests

Early in 2017, President Trump directed the EPA to first rescind and then replace the 2015 Clean Water Rule ([see related post](#)).

- **Step One:** proposal to rescind the 2015 Clean Water Rule.
- **Step Two:** proposal to replace the 2015 rule to **substantially narrow** the current protections.

The Administration's efforts to rescind the 2015 Rule have been partially blocked, as the 2015 Rule is in effect in 22 states. The new replacement proposal is NOT based in science and is NOT consistent with the goals of the Clean Water Act. The new proposal will undermine long-standing protections for wetlands and small streams and will harm hunting and fishing in America.

To be effective, the Clean Water Act must be able to control pollution at its source -- upstream in the headwaters and wetlands that flow downstream through communities to our major lakes, rivers, and bays. The Clean Water Act — and the 2015 Clean Water Rule — were designed to ensure that our nation's small waters remain intact, and that the water flowing from them is fresh and clean. These waters are the spawning and rearing waters for trout, salmon and other wild and native fish that contribute greatly to the \$50 billion recreational fishing industry in the United States. What's more, these streams send clean water downstream, where it's used to water our crops, cool our industrial generators and provide clean, fresh drinking water for our cities and towns.

Ephemeral streams, though they receive less consideration in the national discussion, are as equally-important as perennial and intermittent streams. These are the capillaries of watersheds. They help move nutrients downstream. They can be important food sources for fish, and they have a profound effect on drinking water. If Clean Water Act protections are removed, suddenly those dry creek beds might become a place to put animal waste or store gas tanks. When a rain event occurs, the pollution is transported downstream.

How will TU respond and how you can help:

TU has been a leader in the conservation community on supporting and defending Clean Water Act protections for headwater streams since 2001, and for supporting the Clean Water Rule for the past 10 years. TU, the conservation community, and the courts have succeeded so far in blocking the congressional and administrative efforts to repeal the 2015 Rule, and in fact the 2015 Rule is in effect in 22 states based on a recent District Court ruling. ***We now face one of our biggest tests*** –defending the 2015 Clean Water Rule against this new proposal to replace it in a manner that will jeopardize millions of miles of headwater streams and millions of acres of wetlands across the U.S.

The Clean Water Act and the 2015 Rule are vital to TU’s work and to anglers across the nation. Whether TU is working with farmers to restore small headwater streams in West Virginia, removing acidic pollution caused by abandoned mines in Pennsylvania, or protecting the world-famous salmon-producing, 14,000-jobs-sustaining watershed of Bristol Bay, Alaska, we rely on the Clean Water Act to safeguard our water quality improvements.

TU members, and sportsmen and women nationwide, want to move forward with progress on cleaning up our nation’s waters, not go backwards. Thus, the Clean Water Act needs to be improved, not weakened.

Comments for the Record: Trout Unlimited will be an active participant in this process, working with volunteers, staff and partners to provide information to the record and to ensure our concerns are heard during the public comment period. The rule provides a 60-day comment period, however Trout Unlimited and our partners will request an extension to a minimum of 90-days, which is more customary for a rule of this magnitude.

Note: The comment period will begin to run on the date of publication in the Federal Register. While a pre-publication copy of the rule is available on the EPA’s website, the rule is not yet formally published. Once the rule is published, we will provide an update with timelines and a link to take action.

- **TU Comments for the Record:** We are reviewing the proposal carefully and will work with our TU Science team to develop substantive comments in response.
- **Council letters:** The Government Affairs and Volunteer Operations team have a draft template letter prepared to assist TU Councils in submitting a comment letter for the record. Please look for note from TU staff in the coming days with a draft letter and some proposed state or region-specific talking points. We are here to help as much or as little as required to support each Council in submitting a letter outlining TU’s key interests and concerns.
- **Action Alert:** will be posted on <http://standup.tu.org/stand-up-for-clean-water/> as soon as the comment period officially begins. We would love to work with Councils and Chapters to promote this call to action to ensure the voices of TU members and supporters are well represented during the comment period.

TU Volunteer Briefing and Training Call

Schedule: The TU Volunteer Operations team has helped us set up three calls to inform and engage our volunteers:

- Dec 11 @ 8 p.m. Eastern: NLC conference call briefing.
- Dec 19 @ 8 p.m. Eastern: Council Chair, Council Conservation Chair and Council Advocacy Chair conference call briefing.
- Jan 10 8 p.m. Eastern: All Volunteer Leader conference call briefing.



Please email Jeff Yates (jeff.yates@tu.org) for call-in details.

Sharing your stories: Letters to the Editor, Blogs, etc...:

- We encourage you to share your stories and concerns through letters to local papers or blog posts on TU.org or other online publications. The TU Communications team has templates and tools available to assist you. Contact Shauna Stephenson (shauna.stephenson@tu.org) for help drafting or submitting.

Press highlights:

- [Washington Post](#): Trump administration moves to slash federal protection for waterways
- [NPR](#): Trump EPA Proposes Major Rollback Of Federal Water Protections
- [Philadelphia Inquirer](#): Environmentalists call Trump water rule proposal big gift to business
- [San Francisco Chronicle](#): Trump administration announces plan to roll back rules on stream, wetland protection
- TU.org: [TU Press Release](#), EPA and the Army Corps of Engineers aim to cut protections for thousands of streams.
- [TU.org](#): Chris Wood blog post, Standing tall for small waterways

Additional Information:

- [EPA info page](#), including pre-publication copy of Replacement Rule

For questions, please contact:

Steve Moyer
Vice President of Government Affairs
steve.moyer@tu.org

Kate Miller
Director of Government Affairs
kate.miller@tu.org

Clean Water Rule Rollback Talking Points

Trout Unlimited is sharply critical of, and strongly opposed to, the EPA/Corps (agencies) proposal to rollback protections for our nation's waterways and wetlands by replacing the 2015 Clean Water Rule (2015 Rule) with a new proposal (replacement rule) that would eliminate clean water protection for many thousands of stream miles in the Nation, as well as hundreds of thousands of acres of wetlands.

The proposed replacement rule will undermine sensible regulation of a host of development activities, such as pipeline construction, that will over time degrade hunting and fishing opportunities in literally every state in the country. It is a fundamentally flawed proposal that is contrary to the goals of the Clean Water Act, which poll after poll shows that Americans so overwhelmingly support.

The plan's greatest flaw, among many, is the proposed elimination of protections for Ephemeral streams.

What are ephemeral streams?

Ephemeral streams flow only briefly (hours to days) in direct response to precipitation in the immediate vicinity. Ephemeral streams have a channel that is always above the water table regardless of stream-volume.

Ephemeral streams, though they receive less consideration in the national discussion, are as equally-important as perennial and intermittent streams. In contrast to ephemeral waterways, perennial streams flow year-round. Intermittent streams flow continuously only at certain times of the year, however intermittent streams are fed through the contributions of springs, groundwater inputs, or a surface water source such as rain or melting snow. Intermittent streams stop flowing when the water table falls below the stream bed elevation.

Why are ephemeral streams important? These streams:

- Are physically, chemically, and biologically connected to downstream rivers.
- Contribute to downstream intermittent and perennial stream flow through direct delivery of overland flows and delayed delivery through groundwater and aquifer recharge.
- Enhance downstream water quality by mitigating flooding, and by transforming and removing excess nutrients in the system.
- Provide fish habitat by delivering food, nutrients, spawning gravels, and woody material downstream, and offering refuge for fish during high flows.
- Deliver the impacts of upstream disturbances, transporting pollutants such as sediment and toxins to downstream waters during precipitation events.

How common are ephemeral streams?

- A conservative estimate of ephemeral stream density is that there are 0.5 to 2 miles of ephemeral streams for every 1 mile of perennial or intermittent stream.
- Ephemeral streams are more abundant in arid landscapes, such as the Southwest.

- The United States Geologic Service’s National Hydrologic Dataset (NHD) inventoried ephemeral streams in the arid West and found that ephemeral streams account for 35% of all streams in this region.

Both the George W. Bush and Obama Administrations protected ephemeral streams.

TU Goal: Ensure that seasonally dry headwater streams –intermittent and ephemeral--receive full Clean Water Act protection as they have since the 1972 Clean Water Act was implemented.

Core message:

- Clean water is a right of all Americans—protecting our water resources has never been more important. We all live downstream. Clean water benefits individuals, fish, wildlife and our pocketbooks – it is far more cost effective to keep water clean now than to clean dirty water later.
- The 2015 Clean Water Rule, based in sound science and law, provides a baseline protection for all citizens, regardless of where they live, holding polluters accountable while maintaining important traditions such as agriculture.

Values:

- We as anglers, hunters, parents, businessmen and women, conservationists and neighbors believe the quality of our water should be held to a high standard and that it is in our national interest to protect it.
- We believe in accountability and sound scientific and legal standards when crafting rules that affect all Americans.
- We are opposed to extremes and believe strongly in collaborative solutions that value protection of clean water while balancing the needs of users. The 2015 Clean Water Rule strikes that balance.

Small headwater streams are like the roots of our trees, the capillaries of our arteries. Sportsmen and women know that all the benefits of our larger streams, rivers, and bays downstream are dependent on the health of our small streams.

TU urges the agencies and go back to the drawing board and develop a plan that is at least as protective of our streams and wetlands as the 2015 Rule.

For questions, please contact:

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steve.moyer@tu.org

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