

## ***CACIWC supports proposed definition to the Clean Water Act***

On September 23, 2014 the CACIWC Board of Directors voted to support the US Environmental Protection Agency (EPA) & US Army Corps of Engineers (Corps) proposed definition of "waters of United States" in the Clean Water Act. We urge our member commissions to join the Rivers Alliance of Connecticut and Clean Water Action in supporting this important initiative. Please read the below information & draft letter of support and contact the Rivers Alliance of Connecticut ([rivers@riversalliance.org](mailto:rivers@riversalliance.org)) to indicate your willingness to sign on to the local official letter (or the similar organization letter) *by September 30, 2014*.

### **MESSAGE FOR LOCAL OR STATE OFFICIALS HELP RESTORE PROTECTIONS UNDER THE CLEAN WATER ACT**

Rivers Alliance of Connecticut is joining Clean Water Action and others in calling upon all local or state government officials to support a highly important rule put forward by the EPA to restore and maintain traditional water protections under the Clean Water Act. Yesterday, we asked organizations to sign on. Today we are asking individual officials, including members of local land-use or water commissions or other local government, and members of statute-based task forces or other policy groups.

Clean Water Act protections have been undermined by policy changes and several court rulings, most notably the US Supreme Court ruling in the *Rapanos* case. For more information on *Rapanos* go to our website's Legal Watch page and read "Wetlands in the Balance" [http://www.riversalliance.org/legal\\_watch.cfm#wetbal](http://www.riversalliance.org/legal_watch.cfm#wetbal) and "The Clean Water Act Post-*Rapanos*" [http://www.riversalliance.org/legal\\_watch.cfm#postrap](http://www.riversalliance.org/legal_watch.cfm#postrap)

**Please add your name and position to the letter below and return to us.** This letter has been written by Clean Water Action. I have signed on as a local and state government official. Of course, if you're not an official, you can always write your own, personalized message to the EPA (we would much appreciate a copy), or just add your name and town below. We will be sure all signatures reach the EPA. Your efforts will be welcome, we are sure, to EPA Administrator Gina McCarthy, who knows many of you personally.

October 1, 2014

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| The Honorable Gina McCarthy<br>Administrator<br>US Environmental Protection Agency | The Honorable Jo-Ellen Darcy<br>Assistant Secretary of the Army<br>Department of the Army, Civil Works |
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Water Docket  
Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Avenue  
Washington, DC 20460

Email to: [ow-docket@epa.gov](mailto:ow-docket@epa.gov)

Re: Clean Water Rule Docket ID # EPA-HQ-OW-20011-0880

Dear Administrator McCarthy and Assistant

Secretary Darcy:

The undersigned local and state officials in Connecticut, appreciate the opportunity to comment on the US Environmental Protection Agency (EPA) and US Army Corps of Engineers (Corps) proposed *Definition of "Waters of the United States Under the Clean Water Act"* to clarify which streams, wetlands and other waters are protected under the Clean Water Act. This rule is long overdue. Many of us have spent more than a decade advocating to restore Clean Water Act protections to all wetlands and tributary streams, as Congress originally intended when it passed the landmark Act in 1972.

For its first thirty years, the Clean Water Act safeguarded nearly all of our rivers, streams, lakes and wetlands, in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Despite the law's dramatic progress at combating water pollution nationally, federal policy changes in the last decade have left many small streams and "isolated" wetlands vulnerable to pollution or destruction.

These federal policy changes have called into question Clean Water Act protections for nearly 60% of our nation's stream miles and at least 20 million acres of wetlands in the continental United States.

For the last decade, polluter-backed loopholes in the Clean Water Act have caused confusion about which streams, wetlands and other water are protected from pollution and destruction. Headwater and seasonal streams feed the drinking water sources of 117 million Americans, including 2.2 million residents in Connecticut. Clarifying that all tributary streams, regardless of size or frequency of flow are covered under the Clean Water Act will restore protections to 844 miles of streams that 63% of our residents depend on for drinking water. This number includes 100% of those who depend on public water supplies.

Whether or not a stream or wetland is a “water of the U.S” determines whether or not a polluter must get a permit to limit the amount of pollution that can be dumped into that water. In 2007, EPA estimated that 9% of individual NPDES discharge permits in Connecticut are for discharges into headwater streams, including some streams that do not flow year round. Clarifying that these streams fall under the Clean Water Act will ensure they are protected from pollution or destruction, and therefore better protect the quality and health of downstream tributaries and rivers.

**We support the proposed rule for the clear protections it restores to headwaters, intermittent and ephemeral streams, and to wetlands and other waters located near or within the floodplain of these tributaries. We urge the Agencies to strengthen the final rule by further clarifying that important wetlands and other waters located beyond floodplains are also categorically protected under the Clean Water Act.** Millions of small streams and wetlands provide most of the flow to our most treasured rivers, including the Farmington, Thames, Connecticut, and Housatonic Rivers. If we do not protect these streams and wetlands, we cannot protect and restore the lakes, rivers and bays on which communities and local economies depend. Leaving critical water resources vulnerable jeopardizes jobs and revenue for businesses that depend on clean water, including outdoor activities like angling and water-based recreation.

**We support the Agencies’ proposal to define all tributaries as “waters of the United States,” including headwaters and small streams that may only flow**

**seasonally.** Headwater streams – streams that have no other streams flowing into them - account for 52% of the total stream miles in Connecticut. Intermittent and ephemeral streams may only flow during parts of the year, but they support water quality in downstream waters by filtering pollutants and capturing nutrients and make up 8% of Connecticut’s stream miles. These streams are also critical habitat for fish and other aquatic species.

**In addition, we support the Agencies’ definition of tributary and strongly agree that ditches should be defined as “waters of the U.S.” where they function as tributaries.** There is sufficient scientific evidence that some ditches function as tributaries moving water and pollutants downstream. In those cases protection is important.

**We support the Agencies’ determination that all adjacent wetlands are “Waters of the U.S.”** Wetlands perform critical functions that support aquatic life, clean drinking water and safeguard communities from floods. Wetlands protect the water quality of entire watersheds by filtering pollutants. They also store floodwaters, reducing flood flows that can threaten property and infrastructure. Wetlands also provide essential fish and wildlife habitat that support robust outdoor recreation and tourism. When wetlands are polluted, dredged or filled, these benefits are lost.

In order to protect wetlands and other resources, we also urge the agency to:

**Categorically define certain non-adjacent “other waters” as “Waters of the United States” and identify additional subcategories of waters that are jurisdictional, rather than requiring case-by-case determinations.** Wetlands and other waters, even so-called isolated ones that are not adjacent to tributaries, provide many of the same natural benefits as adjacent waters located within floodplains. In fact, it is because of their placement outside of floodplains that they function as “sinks” to capture and filter pollutants and store floodwaters, protecting the physical, biological and chemical integrity of downstream waters. Examples of “other waters” where the science supports our recommendation that they should be categorically protected by rule include: prairie

potholes, Carolina and Delmarva Bays, Texas coastal prairie wetlands and vernal pools such as those found all over Connecticut.

**Provide for new science by not categorically excluding any of the “other waters,” and establishing a process by which evolving science can inform jurisdictional decisions in the future.** “Other waters” that cannot be defined as jurisdictional in the final rule should still be assessed on a case-by-case basis and provisions made for categorically including them as “Waters of the United States” if and when evolving science indicates that this is appropriate.

The Agencies’ commonsense proposal is based on the best scientific understanding of how streams and wetlands affect downstream water quality. The public benefits of the rule – in the form of flood protection, filtering pollution, providing wildlife habitat, supporting outdoor recreation and recharging groundwater – far outweigh the costs. When finalized, this rule will provide the regulatory assurance that has been absent for over a decade, eliminate permit confusion and delay, and better protect the critical water resources on which our communities depend.

**We urge the Agencies to swiftly finalize a rule to clarify that all waters with a “significant nexus” to downstream waters are clearly protected under the Clean Water Act.** We thank the Agencies for their efforts to protect these waters and look forward to working with them to finalize and implement a strong *“Definition of Waters of the United States under the Clean Water Act.”*

Sincerely,

Margaret Miner, Roxbury ZBA & Co-chair Water Planning Council Advisory Group  
Anthony Irving, Chairman, Eightmile River Wild & Scenic Coordinating Committee  
Lynn Werner, Chair, Kent Inland-Wetlands Commission

CC: US Senators and Representatives

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