



THE IZAAK WALTON LEAGUE OF AMERICA

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**On the Interpretative Rule Regarding the Exemption from the Dredge and Fill Permit
Process of the Clean Water Act for Normal Farming,
Silviculture and Ranching Activities**

**Subcommittee on Conservation, Energy and Forestry
Committee on Agriculture
U.S. House of Representatives**

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Chairman Thompson, Ranking Member Walz, and members of the Subcommittee, I greatly appreciate the opportunity to testify today concerning the Interpretive Rule issued by the Army Corps of Engineers and Environmental Protection Agency (EPA), in close cooperation with U.S. Department of Agriculture (USDA), concerning the exemption from the dredge and fill permit process of the Clean Water Act for normal farming, silviculture and ranching activities.

I serve as Executive Director of the Izaak Walton League of America. I am honored to be here today to share not only the perspective of the League but also the perspective of the much broader community of Americans who enjoy hunting, angling and outdoor recreation. The Izaak Walton League was founded more than 90 years ago by anglers, hunters and others who were concerned about the negative impacts of water pollution and unlimited development on outdoor recreation – especially fishing – and the health of fish, wildlife and other natural resources. The founders of our organization understood that clean water and healthy wetlands are essential to robust populations of fish, ducks and other wildlife and, in turn, to enjoyable and successful days in the field.

Today, the League's more than 44,000 members are leading efforts locally to conserve and restore habitat and monitor and improve water quality. Our members and staff actively support Farm Bill and other government programs that conserve soil, wetlands and other natural resources on farms and ranches nationwide. These members also enjoy hunting, angling, recreational shooting sports, boating and myriad other outdoor recreation activities. And like League members before them, they understand that healthy natural resources, including water and wetlands, provide the foundation for the outdoor traditions they and tens of millions of other Americans enjoy every year.

I believe it goes without saying that American hunters, anglers, farmers and ranchers agree that healthy natural resources are essential to our way of life, our traditions and our economy. Hunters and anglers know that habitat on private land – especially land used in some form for agriculture – sustains wildlife nationwide. Moreover, hunting overwhelmingly occurs on private land. According to the latest *National Survey of Fishing, Hunting and Wildlife-Associated Recreation*, 78 percent of all days spent hunting occurred on private land. Because we share common goals, American hunters and anglers are partnering with farmers nationwide. We're working together on everything from habitat restoration projects large and small to advocating for Farm Bill programs and funding that directly supports natural resource conservation on private lands. At the most fundamental level, sportsmen want our partners in agriculture to succeed.

Healthy Streams and Wetlands Vital to Sportsmen, Communities and the Outdoor Recreation Economy

Ensuring the nation's streams, wetlands and other waters are healthy is vitally important to the tens of millions of Americans who hunt and fish annually, for communities nationwide and for the outdoor recreation economy.

Wetlands and streams provide vital habitat for fish, ducks and other wildlife. For example, the prairie potholes wetlands throughout the northern plains and southern Canada support 50 percent of the North American duck population in an average year and as much as 70 percent when water and prairie grasses are abundant. A wide array of duck species depend on these wetlands for breeding, nesting and rearing young. Ducks that hatch and grow in these wetlands are harvested throughout the United States every fall. Headwater and other small streams are vital to cold water fish. These waters provide essential spawning habitat for trout, salmon and other fish and are then essential to supporting these fish throughout their lifecycles.

However, following two confusing U.S. Supreme Court decisions (*SWANCC* in 2001 and *Rapanos* in 2006) and subsequent agency guidance, these vital resources are increasingly at risk of being polluted or drained and filled. According to EPA, 60 percent of stream miles in the United States, which provide drinking water for more than 117 million Americans, are at increased risk of pollution. Wetlands are not only at greater risk, the nation is losing natural wetlands at a growing rate. In the most current *Status and Trends of Wetlands* report, the U.S. Fish and Wildlife Service concludes the rate of wetlands loss increased by 140 percent during the 2004-2009 period – the years immediately following the Supreme Court decisions – compared to the previous assessment period (1998-2004). This is the first documented acceleration of wetland loss since the Clean Water Act was enacted more than 40 years ago.

Each year, 47 million Americans head into the field to hunt or fish. These are not simply traditions or hobbies – they are fundamental components of our nation’s economy. The money sportsmen spend in pursuit of their passion supports everything from major manufacturing industries to small businesses in communities across the country. The economic benefits of hunting and angling are especially pronounced in rural areas, where money brought in during the hunting season can be enough to keep small businesses operational for much of the year. These expenditures directly and indirectly support more than 1.5 million jobs in every corner of the country and ripple through the economy to the tune of \$200 billion per year. Many other forms of outdoor recreation also depend on clean water and a healthy environment. According to the Outdoor Industry Association, boating, including canoeing and kayaking, had a total economic impact of \$206 billion in 2012, supporting 1.5 million jobs.

The story of these economic benefits plays out in local communities around the nation. For example, each year more than 125,000 anglers visit the Driftless Area of Minnesota, Wisconsin, Illinois and Iowa. Some of the Driftless Area’s best streams flow through the district represented by Ranking Member Walz. Across the Driftless Area, anglers spend \$647 million annually, which goes directly into the local economy. This spending also produces a “ripple effect” of \$465 million in indirect and induced benefits as those dollars continue to circulate through the economy. The direct spending plus that ripple effect exceeds \$1.1 billion per year. Since 2007, more than 75 miles of stream in this region have been restored, and these restoration projects are extremely effective, increasing fish populations ten-fold, e.g. from 350 fish per mile to 3,500 per mile. On one stream, fishing-related expenditures were less than \$200,000 per year prior to restoration and grew to \$1 million per year after restoration.

In addition to providing critical habitat for fish and wildlife and directly supporting hunting and angling, wetlands also provide a host of other benefits to people and communities across the country. Natural wetlands are arguably the most cost-effective protection against flooding for communities large and small. According to the National Weather Service, the 30-year average for flood damage is \$8.2 billion annually. Conserving wetlands is an alternative to building higher levees and concrete storm walls and armoring every stream bank with rip-rap.

Wetlands provide essential benefits to rural communities and agriculture. Wetlands help recharge ground water supplies. The National Ground Water Association (NGWA) estimates that 44 percent of U.S. population depends on groundwater for drinking water, either from a public source or a private well. As every member of this Subcommittee understands, groundwater is vitally important for irrigation. According to NGWA, irrigation accounts for the greatest usage of groundwater – more than 50 billion gallons daily. For example, NGWA reports that more than 90 percent of the water pumped from the Ogallala aquifer – the nation’s largest, stretching from South Dakota to Texas – is used for agricultural irrigation. By capturing, storing

and slowly releasing water, wetlands replenish vital groundwater supplies on which the American people, agriculture and our economy depend every day.

Interpretive Rule Provides More Clarity about Agricultural Exemptions in the Clean Water Act

Since 1977, the Clean Water Act has included an exemption from the section 404 dredge and fill permit process for normal farming, silviculture and ranching activities. Under this provision (section 404(f)(1)(A)), the discharge of dredge or fill material “from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices” is exempt from permitting. Separate provisions exempt “construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches” (section 404(f)(1)(C)) and “construction or maintenance of farm roads or forest roads . . .” (Section 404(f)(1)(E)). These exemptions do not apply to activities that would bring waters of the United States into uses for which they had not previously been used or where the flow or circulation of such waters would be reduced.

These statutory exemptions can only be modified by Congress – federal agencies cannot alter them and are bound by law to follow them. In issuing the Interpretive Rule, the Corps and EPA make clear that the farming, silviculture and ranching exemptions remain in full force and effect. The agencies state, “It is important to emphasize that this interpretive rule identifies additional activities considered exempt from permitting under section 404(f)(1)(A), but does not affect, in any manner, the scope of agriculture, silviculture, and ranching activities currently exempt from permitting under section 404(f)(1)(A) including, for example, plowing, seeding, cultivation, minor drainage, etc.”

The purpose of the Interpretive Rule is to provide more clarity and certainty to farmers, ranchers and others about specific activities that are covered by the exemption for “normal farming activities” in section 404(f)(1)(A). The Corps and EPA worked directly with USDA to develop this rule, which identifies 56 specific agricultural conservation practices that meet this definition and are therefore exempt from the 404 permit process. Furthermore, the Interpretive Rule states, “So long as these activities are implemented in conformance with NRCS technical standards, there is no need for a determination of whether the discharges associated with these activities are in ‘waters of the United States’ nor is site-specific, pre-approval from either the Corps or the EPA necessary before implementing these specified agricultural conservation practices.” When implementing one of these practices as part of an established farming or ranching operation, agricultural producers can move forward with more clarity and certainty.

In addition, USDA, the Corps and EPA have signed a separate memorandum of understanding (MOU) that includes a “process for identifying, reviewing and updating NRCS agricultural conservation practices and activities that may include discharges in waters of the United States that would qualify under the exemption established by section 404(f)(1)(A).” Under this process, the three agencies agree to review the practices at least annually and can identify additional practices that would be covered by the exemption. It is also possible that activities on the initial list could be removed if the agencies conclude they are having a negative, rather than beneficial, impact on water quality.

Additional Specific Waters Excluded From the Definition of “Waters of the United States”

In addition to issuing the Interpretive Rule, the Corps and EPA have taken steps in the separately proposed “waters of the United States” rule to more specifically define the waters that are and are not included in the regulatory definition. This is the first time the agencies have identified specific types of waters that are excluded from that definition. This action will provide additional clarity for stakeholders across the spectrum, including farmers and ranchers.

Section (b) of the proposed regulatory definition of “waters of the United States” identifies 11 specific waters or features that are “not ‘waters of the United States.’” The waters or features most pertinent to agriculture include:

- Prior converted cropland
- Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow
- Artificially irrigated areas that would revert to upland if irrigation ceased
- Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing
- Groundwater, including groundwater drained through subsurface drainage systems
- Gullies and rills and non-wetland swales

In issuing the Interpretive Rule and this section of the proposed “waters of the United States” rule, the Corps and EPA have taken additional steps to provide clarity and certainty for farmers and ranchers nationwide.

Public Process Provides Opportunity for Broad-based Participation and Input

Over the past few years, stakeholders from across the spectrum – including sportsmen and agricultural groups -- as well as Supreme Court justices have called on the Corps and EPA to conduct a formal rulemaking to clarify the specific waters covered by the Clean Water Act. Issuance of the Interpretive Rule is part of that process. Last week, the Corps and EPA announced they are extending the comment period on this rule for 30 days through July 7. This extension will give interested parties additional time to provide input and recommendations. At the same time, the agencies extended the public comment period on the proposed “waters of the United States” rule through October 20, 2014 – providing a total of 6 months for public input.

In closing, the Interpretive Rule provides more clarity and specificity about a wide range of activities that are covered by the exemption from Clean Water Act dredge and fill permitting for normal farming and ranching activities. This is an important step within a larger process designed to provide greater clarity to all stakeholders about the waters that are – and are not – covered by the Clean Water Act.

Conserving and protecting streams, wetlands and other waters is vitally important to Americans who hunt, fish and enjoy a wide array of other outdoor recreation. These activities depend on clean water and healthy habitat, including wetlands. And these activities are more than traditions or hobbies – they drive the outdoor recreation economy in America, which totals hundreds of billions of dollars annually and supports millions of jobs.

I appreciate the opportunity to testify today and would be happy to answer any questions.