

**TESTIMONY OF:**

**CHUCK CLAYTON  
THE IZAAK WALTON LEAGUE OF AMERICA**

**REPRESENTING THE VIEWS OF:  
AMERICAN FLY FISHING TRADE ASSOCIATION  
AMERICAN SPORTFISHING ASSOCIATION  
BASS/ESPN OUTDOORS  
BERKLEY CONSERVATION INSTITUTE  
IZAAK WALTON LEAGUE OF AMERICA  
NATIONAL WILDLIFE FEDERATION  
TROUT UNLIMITED**

**BEFORE THE**

**SUBCOMITTEE ON FISHERIES, WILDLIFE, AND WATER  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE**

**ON**

**INTERPRETING THE EFFECT OF THE US SUPREME COURT'S DECISION  
IN THE JOINT CASES OF *RAPANOS V. UNITED STATES* AND *CARABELL V.  
US ARMY CORPS OF ENGINEERS* ON "THE WATERS OF THE UNITED  
STATES."**

**AUGUST 1, 2006  
DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, D.C.**

Mr. Chairman, Members of the Committee, my name is Chuck Clayton. I am the immediate Past National President of the Izaak Walton League of America, dedicated since 1922 to science-based conservation policy. The League has over 40,000 members and supporters, consisting of avid sportsmen and women, and others who simply enjoy the outdoors. We have 20 state divisions and more than 300 local chapters across the nation. The League advocates common sense conservation and I am proud to continue that tradition with my remarks today. My comments also represent the views of millions of Americans who belong to the many organizations who have joined the Izaak Walton League in submitting this testimony, including American Sportfishing Association, BASS/ESPN Outdoors, Berkeley Conservation Institute, Trout Unlimited.

As a landowning resident of South Dakota, and an avid hunter and angler, I appreciate this opportunity to share my views with the committee, and to illustrate just how the recent US Supreme Court decision in the joint cases *Rapanos* and *Carabell* is affecting wetland and stream protection where it matters most, on the ground.

Frankly, the benefits of extending comprehensive protections to waters such as non-navigable headwater streams and seasonally dry potholes are numerous and undeniable. Among their many functions, these various forms of waters improve water quality by retaining and recycling nutrients such as nitrogen and phosphorus, which when left unchecked, lead to oxygen exhausting algae blooms and dead zones. Wetlands also trap tremendous amounts of sediment, leading directly to clearer, healthier downstream waters, that otherwise would be choked by sunlight depleting sedimentation; and when left intact, wetlands lessen the devastation caused by floods and storms, like that which we so painfully witnessed during the Gulf Coast storms of 2005.

In addition to the important water quality functions that all forms of wetlands and headwater streams play, they also provide critical habitat for many species of fish and wildlife, including numerous species that are listed as threatened and endangered. Salmon and trout use cold headwaters for spawning, these streams may often be intermittent or ephemeral, and as such their protection under the Clean Water Act was left open for debate by the Supreme Court's decision in *Rapanos*. These ephemeral and intermittent streams make up nearly 60% of the streams in the United States, losing them would be yet another barrier to restoring native runs of trout, salmon, and shad.

Other important game fish, such as largemouth bass and northern pike, use varied types of wetlands and headwaters for many of the same purposes. Each specific type of wetland provides a certain set of conditions, including the proper food and cover, necessary for the survival of that specific species of fish. And by temporarily storing water, even isolated wetlands ensure that downstream flows remain both cool and relatively constant, critical elements for healthy fish populations, but also important elements in the fight to stave off the negative effects of drought.

The thousands of small wetlands that make up the prairie pothole region of the Dakotas, often referred to as North America's "duck factory," annually support four million pairs of waterfowl that depend on high quality wetlands for nesting and the rearing of their

young. The Supreme Court's decision in *Rapanos* leaves the status of virtually all prairie potholes in limbo. Losing these wetlands to development would put the future of these ducks in grave peril. Many other species are also wetland dependent. For example, deer, pheasants, quail, and many songbirds, as well as reptiles and amphibians such as turtles and frogs depend on healthy wetlands as a key component of their habitat during the year.

The benefits of wetlands are important for people, too. Thirty-four million anglers and thirteen million hunters rely on the clean water and healthy fish and wildlife populations that isolated wetlands support. These sportsmen and women contribute directly to the sustained economic growth and viability of communities across the US, to the tune of about \$70 billion annually. The economic benefit stems not just from hunters and anglers, but also from bird watching, one of the most popular and fastest growing pastimes in the nation, which pumps millions more into local economies. Outside of recreation, wetlands are also vital to three-fourths of America's commercial fish production, which is worth about \$111 billion. If wetlands are left unprotected from agricultural, residential, and commercial development, the economic loss would be staggering.

Despite the benefits, the protection of wetlands and many other waters has been bogged down by bureaucratic misinterpretations, allowing important Clean Water Act determinations to be made on an ad hoc basis. While the Administration did a good job of defending protection of wetlands and streams in the *Rapanos* case, they have not sufficiently led the way for consistent, vigorous use of the Clean Water Act to protect these vital resources. For instance, over a six-month span in 2005, in the Omaha region of the US Army Corps of Engineers, which includes parts of six states, including my home state of South Dakota, the Corps deemed that at least 2,676 acres of wetlands, lakes, streams, and other waters fell outside the scope of the Clean Water Act. This approach to protecting our most important water resources is just not working.

The recent Supreme Court decision in *Rapanos*, further muddied the waters, providing little clarification to agency officials for how they should proceed to protect these important waters and providing no meaningful direction on how the Clean Water Act is to be applied. The decision fails to provide what government land managers and environmental regulators so desperately need: a clear formula for protecting our valuable water resources. Protection should be the rule, not the exception. The conservation of our most important waters now depends on the leadership of Congress to make the Clean Water Act more explicitly inclusive of all wetlands, streams, and lakes. The Environment and Public Works Committee is currently considering legislation that would plainly codify the protection of these key resources. The Clean Water Authority Restoration Act (S. 912) would make real progress towards definitively granting important protections to water resources. Congress must pass this legislation. We in the conservation community believe that the Clean Water Act was written to be applied in the broadest fashion, to ensure that all waters of the United States are protected by the power of law. All wetlands and streams, no matter how isolated or intermittent, warrant strict protections under the Clean Water Act, because even the most isolated wetlands are

part of an intricate hydrological web, upon which entire ecosystems, including humans, rely.

Mr. Chairman, this concludes my remarks. Again, on behalf of the aforementioned conservation organizations, I would like to thank you for this opportunity to share the views of the Izaak Walton League and our partners. I would be happy to respond to any questions that the Members of the Committee may have.