

Testimony of

**Austin Williams, Esq.
Alaska Director of Law and Policy for Trout Unlimited**

Before the

U.S. Senate Committee on Environment and Public Works

Field Hearing: Impacts of the Proposed Waters of the United States Rule

Fairbanks, Alaska

April 8, 2015

Chairman Sullivan:

My name is Austin Williams, and I am the Alaska Director of Law and Policy for Trout Unlimited (TU)—the nation’s largest coldwater conservation organization. TU is dedicated to conserving, protecting and restoring North America’s trout and salmon fisheries. I thank the committee for the opportunity to testify.

Clean water, and the abundant fish and wildlife it supports, is the lifeblood of Alaska. TU has more than 1,000 members in Alaska that are passionate anglers, lodge owners, fishing and hunting guides, and commercial fishermen among various other occupations. In addition to our members in more remote parts of the state, we have active chapters in Fairbanks, Anchorage and the Mat-Su, on the Kenai Peninsula, and in Southeast. Our way of life is directly tied to healthy watersheds and clean water. As in Alaska, most of our 150,000 nationwide members love to fish, and they give back to the rivers and streams they love by dedicating more than 600,000 volunteer hours each year to conserving streams and rivers, restoring damaged and polluted watersheds, and teaching young people how to fish and care for their local waters.

TU supports the proposed Clean Water Act rule because it will ensure protection of critical water resources, the nation’s millions of miles of headwater streams, and Alaska’s most important and productive wetlands and waterways. Headwater streams and wetlands are some of the most important components of a watershed, and are critically important to the overall health of downstream waters. We cannot ensure clean water in our most important rivers and streams without also protecting the smaller waters that feed into them.

Since its inception, the Clean Water Act has provided valuable protection for small headwater streams and wetlands, as project developers were required to get permits before they could dredge, dam, road or discharge pollutants into these streams. This broad jurisdictional scope is

central to the Act and necessary for ensuring water quality sufficient to maintain abundant fish and wildlife.

In rejecting a proposal to narrow the scope of the Act during debate over the 1977 amendments, both sides of the aisle acknowledged that a fundamental element of the Act was its broad application. Democrat Senator Bentsen observed that the Act covered “all waters of the United States, including small streams, ponds, isolated marshes, and intermittently flowing gullies.”¹ Republican Senator Baker recognized that:

A fundamental element of the Water Act is broad jurisdiction over water for pollution control purposes It is important to understand that toxic substances threaten the aquatic environment when discharged into small streams or into major waterways. Similarly, pollutants are available to degrade water and attendant biota when discharged in marshes and swamps, both below and above the mean and ordinary high water marks The once seemingly separable types of aquatic systems are, we now know, interrelated and interdependent. We cannot expect to preserve the remaining qualities of our water resources without providing appropriate protection for the entire resource.²

Numerous similar statements can be found spanning the more than 40 years that the Clean Water Act has been in existence that recognize and reaffirm the need for protections for our headwaters and wetlands.

Like all Alaskans, hunters and anglers rely on clean water. Yet, recent administrative guidance following two Supreme Court Cases, *SWANCC* in 2001 and *Rapanos* in 2006, has thrown decades of precedence, logic and stability on its head and muddied the waters. As a result, 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 and destruction.³ The rate of wetland loss increased by 140 percent during the years immediately following the Supreme Court decision from 2004-09, which was the first documented acceleration of wetland loss since the Clean Water Act was enacted more than four decades ago during the Nixon administration.⁴

Justice Roberts and dozens of stakeholders of all kinds have asked the agencies to fix the problem and clarify the jurisdiction of the Clean Water Act. TU, along with many other sportsmen organizations, businesses and industry groups, have been requesting a rulemaking

¹ Congressional Record, August 4, 1977, at 26711.

² Congressional Record, August 4, 1977, at 26718.

³ EPA, Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral and Headwater Streams in the U.S. at 1 (July 2009), available at http://water.epa.gov/lawsregs/guidance/wetlands/upload/2009_12_28_wetlands_science_surface_drinking_water_surface_drinking_water_study_summary.pdf.

⁴ U.S. Fish & Wildlife Service, Status and Trends of Wetlands in the Conterminous United States 2004 to 2009 at 45 (Sept. 2011), available at <http://www.fws.gov/wetlands/Documents/Status-and-Trends-of-Wetlands-in-the-Conterminous-United-States-2004-to-2009.pdf>.

to resolve the confusion for years. Six Congresses and multiple agency chiefs have not stepped up to clarify the law. At last, in March, 2014, the Corps and EPA took the strong step to propose a fix that will help ensure clean water for our fish and wildlife, including Alaska's iconic salmon runs.

At the heart of the agencies' clean water proposal is what every angler knows: that small streams influence the health of larger rivers, and that clean water from small streams help grow big fish. The agencies have proposed reapplying protections to intermittent and ephemeral rivers and streams, and the trout and salmon habitat they support. This proposal seeks to restore jurisdiction to important headwaters without expanding the original authority of the Clean Water Act. It seeks to provide more regulatory certainty and more timely review of permit applications by doing away with the case-by-case jurisdictional determinations on intermittent and ephemeral streams, nearly all of which are ultimately found jurisdictional. By doing away with the case-by-case jurisdictional analysis, permit applicants should be able to more quickly obtain review of the substance of their proposal without lengthy delays.

Having grown up in the Pacific Northwest, I am all too familiar with the plight of salmon and how an action in one place can have large and long-lasting consequences far downstream. Salmon populations in Idaho and Oregon, the home states of my youth, are a fraction of their historic levels. While various factors affect salmon abundance and have contributed to these declines, one thing remains constant: salmon cannot survive without clean water.

Like many Alaskans, I first came to our great state to experience its legendary fish and wildlife, and like many Alaskans these same qualities are why I continue to call Alaska home and why my wife and I choose to raise our family here. My son is only three and my daughter is not yet two months old, but my hope is for them to grow up able to enjoy the same great fishing and hunting available to you and me—all of which depends on clean water.

Fishing isn't just an enjoyable pastime, it's also big business. Hunting and fishing collectively represent a \$200 billion a year economy and support 1.5 million jobs nation-wide.⁵ In Alaska, nearly \$650 million a year is spent on sport fishing while another \$425 million a year is spent on hunting.⁶ When you factor in multiplier effects for local communities, sport fishing totaled more than \$1 billion in economic impact to Alaska.⁷ When hunting and other wildlife-related recreation is added in, Alaska received \$3.4 billion in economic impact in 2011.⁸ More than 500,000 people age 16 or older sport fish in Alaska each year while 125,000 people age 16 or older hunt.⁹

⁵ U.S. Fish & Wildlife Service, 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (Feb 2014), available at <http://www.census.gov/prod/2012pubs/fhw11-nat.pdf>.

⁶ U.S. Fish & Wildlife Service, 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation: Alaska at 4 (Feb. 2014), available at <http://www.census.gov/prod/2013pubs/fhw11-ak.pdf>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 6.

In addition to sport fishing, Alaska's commercial fisheries are the underpinnings of many Alaska communities. In 2014, commercial salmon harvest totaled 157 million fish with a dockside value of nearly \$577 million.¹⁰ For 2015, the Alaska Department of Fish and Game projects the state-wide salmon harvest to increase to more than 220 million fish.¹¹ That is 220 million salmon that rely on clean water and functioning headwater systems. We are fortunate in Alaska to have such abundant and strong populations of fish and wildlife that contribute so much to our local economies and, if well cared for, can sustain themselves indefinitely; however, this economic engine runs on clean water.

Alaskans' widely recognize the importance of salmon to their economic wellbeing and lifestyle. Statewide polling by The Nature Conservancy shows that Alaskans have deep concern for salmon and salmon habitat. Ninety-six percent of Alaskans said salmon are essential to the Alaskan way of life, while 89 percent of Alaskans said that even in tough economic times it is important to maintain funding for salmon conservation.¹² More than 80 percent of Alaskans said protecting the forest, tundra and wetlands around streams is as important as protecting the streams themselves.¹³ Seventy nine percent of Alaskans were concerned about pollution of rivers, lakes and streams, which ranked on par with issues like reducing the federal budget deficit and unemployment.¹⁴ Two-thirds of Alaskans eat salmon at least once a month.¹⁵

TU is a science-driven organization, and in this case the science is clear. Headwater streams provide essential fish habitat and improve water quality in larger streams and rivers downstream. Better habitat translates to better fishing, and better fishing is good for Alaska. That's why TU and hundreds of other sportsmen's groups are applauding the agencies' proposal to reaffirm Clean Water Act protection to thousands of miles of headwater streams.

TU knows that the rule must work for industry. We work with farmers and ranchers across the country, from vintners in California, to ranchers in Colorado, to dairy farmers in Wisconsin, West Virginia and Pennsylvania, and we want this proposed rule to work for them. The proposal does not change any of the existing rules for regular farming activities, and makes clear that puddles in irrigated fields and ponds are not regulated by the Clean Water Act. No one is interested in regulating a farmer's swale or pond. And as important as farming is, remember that fishing is an industry, too—and it's worth \$48 billion per year.

The rule must work to protect jobs in Alaska's fishing industries and it must also protect the way of life for the hundreds of thousands of people who fish Alaska's waters. Very directly and personally for me, the rule must work to ensure clean water for the many headwater streams

¹⁰ ADFG, Run Forecasts and Harvest Projections for 2015 Alaska Salmon Fisheries and Review of the 2014 Season, Special Publication 15-04 at 3 (Mar. 2015), available at <http://www.adfg.alaska.gov/FedAidPDFs/SP15-04.pdf>.

¹¹ *Id.* at 2.

¹² The Nature Conservancy, Nature Conservancy Releases Poll Showing Broad Support for Salmon in Alaska (June 2011), available at <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/alaska/newsroom/nature-conservancy-releases-poll-showing-broad-support-for-salmon-in-alaska.xml>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

and wetlands that produce and sustain Alaska's iconic salmon and trout populations—both for those that earn a living from fishing, but also for those that come to enjoy Alaska's bounty. Development must be balanced effectively with the need to protect Alaska's clean waters, and we need an effective Clean Water Act to ensure that development is done in a responsible manner that doesn't put at risk our streams, rivers and lakes.

I urge Congress to allow the agencies the opportunity to clarify the jurisdictional scope of the Clean Water Act, establish the certainty and reliability that the Act dearly needs, and ensure protections for small streams that existed for the first 30 years of the Clean Water Act. Fix the foundation. Mend the safety net. Do not kick the can down the road by gutting the proposal and sending it back to the starting line.

Allow this process to play out without delaying, derailing, or significantly altering the intent of the rule. Protect headwater streams, for healthy watersheds, healthy kids, and healthy communities. Thank you for the opportunity to provide this testimony.