

Timothy Mauck Testimony

Senate Environment and Public Works and House Transportation and Infrastructure Hearing: *Impacts of the Proposed Waters of the United States Rule on State and Local Governments*

Submitted January 30th, 2014

My name is Timothy Mauck. I was elected to the Clear Creek Board of County Commissioners in 2010 and reelected in 2014.

Clear Creek County is a historic gold and silver mining community located in the Rocky Mountains 30 minutes west of Denver. We have a population of about 9,000 residents, and are the proud home of four 14,000 foot peaks, the Loveland Ski Area, and the Henderson Mine – North America's largest producer of primary molybdenum.

As Commissioner, I have focused on economic development, enhancing Clear Creek's recreational and tourism industries and working to bring about sensible development strategies to improve transportation along the Interstate 70 Mountain Corridor. I am passionate about hunting and angling and am an active member of Trout Unlimited and Ducks Unlimited, and a 4-H youth archery instructor.

I also serve on the boards of the Denver Regional Council of Governments, Jefferson Center for Mental Health, and as chair of the Clear Creek Greenway Authority and Clear Creek Fire Authority boards.

As an elected county commissioner, I am testifying to convey how important clean water is for my community. The proposed clean water rule will protect the headwaters, tributaries, and wetlands that are essential for providing the high quality water that supports the hunting, fishing, rafting, and outdoor recreation that are an economic backbone for my community. Clean water from streams and wetlands also provide drinking water for thousands of our residents.

Clear Creek County is truly a headwater county. We are bordered by the continental divide and provide clean water for downstream communities within the Denver Metropolitan Area. In fact, Clear Creek flows right into the Coors Brewing Company brewery in Golden, Colorado, before merging into the South Platte River which provides drinking water for Colorado residents and irrigation for our agricultural industries. We are also facing the legacy impacts of historic silver and gold mining in the area. We have struggled with maintaining water quality due to mine runoff, and have worked consistently to treat contaminated water and reclaim abandoned mine sites. I know too well the impacts of contaminated water and the costs and time it takes to mitigate and treat it. I also know Clear Creek has made a remarkable rebound over the past 30 years, as we have made progress – like so much of the country – toward the Clean Water Act goals of fishable, swimmable waters.

In addition, these strides in water quality, while important in their own right, have also made Clear Creek County an outdoor recreation destination. By river segment, Clear Creek hosts the 2nd most commercial rafting trips in Colorado, behind only the Arkansas River which is the number one rafting destination in the world. Whitewater rafting alone has a total economic impact to the community of approximately \$23 million¹. Hunting and angling generates also a total economic impact of nearly \$6

¹ Commercial River Use in the State of Colorado: <http://www.croa.org/wp-content/uploads/2015/01/2014-Commercial-Rafting-Use-Report.pdf>

million to the county. This is not only the story of Clear Creek but also across Colorado and the nation. According to the National Shooting Sports Foundation, hunting and angling's total economic impact is \$192 billion². Outdoor recreation in Colorado generates \$13.2 billion and employs more than 124,000 people. Across the country, it generates \$646 billion and 6.1 million jobs³. Many of these jobs are dependent on clean water, and will benefit from the EPA and Army Corps of Engineer's efforts.

In fact, 55% of stream miles in the historic range of native trout in our state are intermittent or ephemeral, and would clearly be protected by the clean water rule. The upper stretches of the world famous Arkansas River nearby are 68% intermittent or ephemeral⁴. Even with seasonal flow, these waters provide habitat for trout, or simply maintain the water quality needed by fish in downstream rivers. As a duck hunter, too, I've spent many cold mornings in the wetlands, sloughs, and creeks feeding the South Platte and know how important it is to protect these places from irresponsible development.

As an elected official with the responsibility of looking after our county's finances I am also concerned about undue regulatory burden. I have read and considered the comments on the rule submitted by the National Association of Counties (NACO), and while I take their opinions very seriously, I respectfully disagree with their position. NACO and others have expressed concerns about the rule's potential for overreach, but the EPA and Corps of Engineers have consistently demonstrated that this rule is not an expansion of Clean Water Act authority. Instead, it will restore jurisdiction to fewer of the waters than had been covered from the passage of the Clean Water Act in 1972 until the first Supreme Court decision in 2001 weakened the law. During that time period, the population of Clear Creek County increased from approximately 5,900 to 9,400. Colorado's population nearly doubled from 2.2 million to 4.4 million⁵. The state's gross domestic product increased more than ten-fold from \$13.6 to \$181 billion⁶. Furthermore, natural gas production increased from 116 trillion cubic feet to 817 trillion cubic feet, and coal production increased from 5,500 short tons to 33,000 tons⁷.

If opponents of the rule are worried about returning to the previous jurisdiction of the Clean Water Act, they should realize that protecting intermittent and ephemeral streams and wetlands is fully consistent with population growth, energy production, and economic development writ-large.

Indeed, the rule should help provide more regulatory certainty and more timely review of permit applications. Currently, the need for case-by-case jurisdictional determinations on intermittent and ephemeral streams – nearly all of which are ultimately found jurisdictional – creates significant backlogs and delays. By clarifying and simplifying the question of jurisdiction for these tributaries and adjacent wetlands, applicants should be able to more quickly get the substance of their proposals reviewed without those lengthy delays created by doing case-by-case jurisdictional analyses.

² Hunting and Fishing: Bright Stars of the American Economy:

<http://www.nssf.org/PDF/research/bright%20stars%20of%20the%20economy.pdf>

³The Outdoor Recreation Economy: <http://outdoorindustry.org/advocacy/recreation/economy.html>

⁴ Waters of the United States, Colorado: http://www.tu.org/sites/default/files/colorado_wotus.pdf

⁵ US Census Data:

https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude_&met_y=population&idim=county:08019&hl=en&dl=en#!ctype=l&strail=false&bcs=d&nselm=h&met_y=population&scale_y=lin&ind_y=false&rdim=country&idim=county:08019&idim=state:08000&ifdim=country&hl=en_US&dl=en&ind=false

⁶ Real Gross Domestic Product By State: http://www.eia.gov/state/seds/sep_use/notes/use_gdp.pdf

⁷ State Energy Data System 1960-2012: <http://www.eia.gov/state/seds/seds-data-complete.cfm?sid=CO>

Another consistent criticism of the rule has been about process. A multitude of interests have called for everything from a complete withdrawal of the rule, to a one year delay, to requesting another comment period after having a chance to incorporate feedback provided in the comment period that closed in November. While I understand the need for further clarity on some outstanding issues, so do the EPA and Corps of Engineers. The proposal specifically asked in multiple locations for recommendations on how to address certain issues. The ongoing discussion about the Clean Water Act's jurisdiction is also not a new one. We have been dealing with the impacts of unclear jurisdiction for nearly a decade and a half. We have seen a series of guidance and rulemakings, both proposed and finalized, as well as numerous court cases. The issues and positions of interested parties have been widely known for years. I fail to see how another year or even 60 days will resolve the outstanding issues for all parties. In the meantime I am ready to have my county's headwaters and wetlands clearly protected under the Clean Water Act.

That brings me to the recently finalized report from the EPA's Scientific Advisory Board entitled *The Connectivity of Streams to Wetlands and Downstream Waters*. Once again, the information contained within this report is a synthesis of long-existing information and peer-reviewed science. The report clearly demonstrates that the agency would be scientifically justified in going further with its current rule. The chemical, biological, and hydrological connectivity of intermittent and ephemeral streams and wetlands is not new information to those who have been involved in this years-long process.

I am not alone as a local elected official who supports this rule. More than 280 local elected officials signed letters in support of this rule during the comment period. Cities as large as Pittsburgh, Philadelphia, Austin, Boston and Baltimore passed resolutions or submitted comments in favor of the rule, as did counties from New Jersey to Michigan⁸. Collectively, a non-exhaustive count of the residents whose elected officials support clean water on their behalf exceeds 10 million people, a strong showing on top of the more than 800,000 supportive comments the EPA received. Those are impressive numbers to someone who represents a county of only 9,500 people, but we share their passion for protecting our waters.

Although we are small, we are expected to grow in the future. An expansion of Interstate 70 is underway, and along with it a growth in home and road development for those from nearby metropolitan areas seeking solace in the mountains. In addition, we face a challenge of economic diversification as we approach the end of the life of the Henderson Mine, which provides a large portion of our property tax base. There are hundreds of mine claims that exist in undeveloped or underdeveloped areas, many of which are very near headwater streams. The rule will help us balance the need for diversification while providing the necessary protection for streams and wetlands as we encourage development of all kinds.

Finally, I will conclude by conveying that this issue extends beyond my duties as an elected official, or even the economic benefits provided by clean water. As someone who grew up hunting and fishing with my father throughout Colorado, I have a deeply personal connection to clean water. My outdoor pursuits begin in the early summer chasing trout at elevations of 10,000 feet just above my home. By fall, I follow these same headwaters as they flow into the South Platte, and meander northeast of Denver to the agricultural communities of Brush and Fort Morgan where I hunt waterfowl. The Clean Water Act is an indispensable part of providing those hunting and fishing opportunities and passing America's sporting tradition across generations. In all my time spent on the water, I see firsthand a

⁸ Local officials support the Administration's proposal to protect clean water:

http://org.salsalabs.com/o/2155/p/salsa/web/common/public/content?content_item_KEY=12837

simple truth: what happens upstream in the headwaters and connected wetlands makes its way downstream to our rivers and streams. The proposed rule simply recognizes this reality.

From a personal passion about hunting and angling, to my responsibility as a county commissioner to provide clean water for drinking and outdoor recreation, I strongly support the Waters of the United States rule. The EPA and Corps of Engineers can, and undoubtedly will provide more clarity to interested parties about what waters are and are not covered. I urge the committee to allow this process to play out without delaying, derailing, or significantly altering the intent of the rule.