# Weakening the Clean Water Act: What it Means for Central California

Across the country, small streams (headwater, intermittent, and ephemeral streams) and wetlands are losing Clean Water Act protections in the wake of two recent Supreme Court decisions and subsequent federal agency directives. **In California, at least 66% of streams and more than 77,000 acres of scarce wetlands are at risk of uncontrolled filling and pollution.** In the more arid parts of the state the risks are even greater, as up to 100% of streams — including some major rivers — do not flow year round. **Without intervention from Congress or the Administration to restore Clean Water Act protections for waters that were protected prior to 2001, these waters will continue to be polluted and destroyed.**

## Restoring Clean Water Act protections for small streams and wetlands will keep California waters clean.

**Intact small and seasonal streams and wetlands trap substantial amounts of nutrients, chemicals, and sediments.** They are vital for capturing fertilizers and other run-off from California's cities and 75,000 farms and ranches. **In one study, 64% of inorganic nitrogen (one of the main chemicals in agricultural fertilizers) was neutralized after traveling just 1,000 yards in a small stream.** Pollutants that are not filtered out will reach downstream waters, increasing drinking water treatment costs and damaging fish and wildlife.

- **More than 7.3 million Californians** — including 1.3 million people in Fresno, Tulare, Kern, Monterey, Merced, Stanislaus, San Joaquin, Kings, Ventura, and San Diego counties— **get their drinking water from systems that rely extensively on small and seasonal streams.**
- On average, 57% of streams serving the state's public drinking water systems are small or seasonal and therefore at risk.

*Blue Heron, California Dep. Of Water Resources*

## Restoring Clean Water Act protections for small streams and wetlands will maintain California's water supply.

**Intact small streams and wetlands recharge groundwater in the wet season and maintain stream flow in the dry season.** EPA reports that seasonal streams are responsible for "a large portion of basin ground-water recharge" in California's arid and semi-arid regions. Wetlands recharge groundwater at a rate of up to 20% of wetland volume per season, and some forested wetlands can recharge 100,000 gallons of water per acre per day. **Recurring droughts and overuse of existing water supplies make protecting this vital recharge process critical for Californians.**

*Oranges growing in Kern County, California Dep. Of Water Resouces*

- Facing its third year of drought, California entered the 2009-2010 water year with its key water supply reservoirs at only 66% of average (Trinity, Shasta, Oroville, Folsom, Don Pedro, New Melones, and San Luis).
- Groundwater levels for irrigation wells in the northern Sacramento Valley dropped an average of 8 to 9 feet from 2006 to 2009.

**Threats to the reliability and availability of fresh water are adding to mounting pressures on California's $37 billion agricultural industry.**

- The state currently irrigates 9.6 million acres to produce 22% of the nation's milk supply, and half the fruits, nuts, and vegetables grown in the United States.
- In 2009, low reservoir levels forced the Yolo County Flood Control and Water Conservation District to deliver only about 10% of normal irrigation supplies.

## Restoring Clean Water Act protections for small streams and wetlands will reduce flooding in California communities.

**Intact small streams and wetlands reduce the intensity and frequency of floods by absorbing significant amounts of water and slowing the flow of water downstream.** A single acre of wetland can store 1 to 1.5 million gallons of flood water, and just a 1% loss of a watershed's wetlands can increase total flood volume by almost 7%. California has already lost 91% of its historic wetlands and 90% of its riparian woodlands.

**Flooding is a major problem in California; since 1950, all 58 California counties have been declared flood disaster areas at least 3 times.**

- One of the worst floods in California's history occurred in January 1997: 300 square miles were flooded and 48 counties were declared disaster areas. Flood damages approached $2 billion, with indirect costs exceeding $5 billion.
- Floods in January and March 1995 killed 26 people and caused close to $2 billion in damages. The Napa River reached record highs, and the Russian and Pajaro rivers approached peak heights.

*Flooding along Russian River, FEMA, Dave Gatley*

## Protecting small streams and wetlands is vital for fish and wildlife, and a vibrant recreational industry in California.

Intact small streams and wetlands provide critical fish and wildlife habitat. The California Department of Fish and Game's Wildlife Action Plan recommends a host of actions to protect and restore wetlands and streams for the benefit of the state's wildlife resources. Wetlands provide essential foraging, nesting, and escape habitat for fish and wildlife, and are particularly important for juvenile fish and birds migrating through the Pacific flyway. About 55% of the animals and 25% of the plants designated by California as threatened or endangered depend on wetland habitats. **Merced County has more at risk species (20) tied to geographically isolated wetlands than any other county in the nation.** Headwater and intermittent streams are vital for many native fish, including salmon and trout; and riparian habitats provide nesting, migration, and wintering habitat to a host of species, including more species of birds (40) than any other habitat type in California.


*Sprin-run Chinook, California Dep. Of Fish and Game*

**The U.S. Fish and Wildlife Service reports that California residents and nonresidents spent $8 billion on wildlife recreation, including $2.4 billion on fishing, in 2006.** More than 7.4 million Californians (25% of residents older than 16), including 1.7 million anglers, participated in wildlife associated activities.

The 160,000-acre Grassland Wetlands in Merced County bring $11.5 million into the local economy each year. Nearly 110,000 acres of these precious wetlands are privately owned. The Grassland Wetlands are home to more than 550 species of birds, animals, and plants; and provide wintering grounds for up to 2 million waterfowl.

## Protecting small streams and wetlands is essential for California's restoration initiatives.

California has made substantial investments in restoring small streams and wetlands; investments jeopardized by lost Clean Water Act protections.

- For example, in partnership with local government and conservation organizations, the state owns and manages the 46,000-acre Cosumnes River Preserve in the Central Valley. In recent years, the entire lower Cosumnes River has often been completely dry throughout most of the salmon migration period (October to December).
- The state's Inland Wetlands Conservation Program is carrying out programs established by the Central Valley Joint Venture, including the Joint Venture's 2006 management plan which calls for protecting "all remaining unprotected wetlands" and restoring more than 120,000 acres of wetland and riparian habitat.

## Without administrative action or legislation, California's waters will continue to lose Clean Water Act Protections.

*Suisun Marsh, California Dep. Of Water Resources*

**Between 2004 and 2006, at least 26 water bodies were denied Clean Water Act protections in southern California.** After two years of review, EPA recently overturned a June 2008 ruling by the Army Corps of Engineers that would have severely undermined Clean Water Act protections for 90% of the Los Angeles River and its vital headwaters, tributaries, and wetlands. In Kern County, Sandy Creek is no longer covered by the Clean Water Act, removing federal pollution limits from a prison wastewater treatment plant that discharges into the creek. Kern County's Caliente Creek is also no longer protected, even though the water from Caliente Creek reaches the Eastside Canal, which is used to irrigate crops.

## Restoring and clarifying Clean Water Act protections will ensure enforcement of Clean Water Act safeguards and reduce permitting costs and delays.

The Supreme Court decisions and subsequent agency guidance have added uncertainty and burdensome fact-finding requirements to the Clean Water Act permitting process. Before an applicant even gets to the permit phase, the Army Corps now carries out a comprehensive analysis to determine whether the water at issue has a chemical, physical, or biological effect on a navigable water, adding significant delays to the permitting process. For example, the Corps' determination regarding the Los Angeles River led to a 25-month delay in the permit process. EPA also reports that extensive resources, including long-term watershed studies requiring thousands of hours of employee time, are being diverted away from protecting human health and the environment to determining whether or not a water is protected by the Clean Water Act.

## California supports broad legal protections for small streams and wetlands.

- California joined more than 30 states in asking the Supreme Court to uphold Clean Water Act protections for small tributaries and their adjacent wetlands.
- **The State is so intent on protecting these resources that it has undertaken a costly and resource intensive effort to prepare legislation to protect waters that are no longer covered by the Clean Water Act.**
- The California State Lands Commission has enacted a resolution supporting the Clean Water Restoration Act.
- The *Los Angeles Times*, *San Jose Mercury News*, *San Diego Union Tribune*, *Sacramento Bee*, and *Fresno Bee*, among other papers, have editorialized in support of protecting small streams and wetlands.


## The Administration Must Restore Clean Water Protections for the Nation's Waters

For almost a decade, Congress has failed to enact legislation restoring the historic scope of the Clean Water Act. **To protect the Nation's waters, EPA and the Corps of Engineers should revise its definition of "Waters of the United States" to restore and clarify Clean Water Act protections, including for so-called "isolated wetlands," in a manner consistent with both law and science.** A successful rulemaking will restore and clarify protections for millions of wetland acres and stream miles, and will place these restored protections on a much more secure legal and scientific foundation.

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