

Testimony of
The Honorable Brett Hulsey
Supervisor from Dane County, Wisconsin
In Support of the Clean Water Restoration Act, H.R. 2421/S. 1870
Before the U.S. House Transportation and Infrastructure Committee
April 16, 2008

Thank you, Chairman Oberstar, Ranking Member Mica, and members of the committee for allowing me to testify today on the Clean Water Restoration Act.

My name is Brett Hulsey and I am a Dane County Supervisor and Chair of the Lakes and Watersheds Commission which has authority over all waters of the county. Dane County is the largest agricultural county in Wisconsin, home to the Yahara Chain of lakes, the capitol of Wisconsin, and many outstanding trout streams and fisheries. We have led the nation with many clean water innovations including an award-winning county stormwater ordinance that protects trout streams from thermal pollution.

I have served on the Dane County board for 10 years, but been involved in clean water and wetlands issues for 20 years writing a number of reports on drinking water safety, wetlands, flooding, and clean water. For this, the Federal Emergency Management Agency gave me their highest honor, the Distinguished Public Service Award, in 2000 and *Men's Fitness* Magazine named me a "Clean Water Champion" in 1996. I am also member of the National Association of Counties Environment, Energy and Land Use Steering Committee and former chair of the Water Subcommittee.

My county constituents place a high value on the quality of our lakes, streams and drinking water. They want clean safe water for recreation – for swimming, boating and fishing. They understand that protecting drinking water sources from pollution makes for better quality water coming out their taps and protects our health and safety at a lower cost.

As Chair of the county Personnel and Finance Committee, I also understand the costs of flooding to taxpayers. We have experienced five major floods costing local residents and the county \$50 million since 1993. Our citizens want to prevent flood damage in the most environmentally protective and cost-effective ways possible to avoid the costs of repairing homes and infrastructure damaged by flooding. They also want to avoid the costs of cleaning up waters that have been needlessly polluted by others.

We saw the importance of protecting headwater streams and isolated wetlands during the Mississippi River floods of 1993 killed more than 50 and cost at least \$16 billion. Our county is at the headwaters of the Yahara River that flows to the Rock River and to the Mississippi River that drains 40% of the continental United States.

One *Restoration Ecology* study showed that restoring just 3% of the Mississippi River watershed to wetlands would have prevented this flood. Protecting wetlands is one of the most cost-effective ways to reduce flooding because they store more flood water than any other wetland. After these floods, I worked with FEMA and state agencies to purchase more than 10,000 homes and structures and move them out of harms' way.

Yet recent Supreme Court rulings in *SWANCC* and *Rapanos* threaten these longstanding protections for many of our nation's streams and wetlands. The Environmental Protection Agency studies show that the headwater, intermittent and ephemeral streams make up 59 percent of the nation's streams. These streams have been long protected under the Clean Water Act.

The EPA estimates that some 20 million acres of wetlands, one-fifth of the remaining wetlands in the lower 48 states, could lose protections based on its interpretation of these Supreme Court decisions. This would allow developers to drain wetlands, build new homes that would then be flooded, and have to be purchased by local government and taxpayers. There is a compelling reason to protect these wetlands and headwater streams from development in the first place.

These headwater streams and wetlands provide essential services to our counties and communities by:

- Protecting Our Drinking Water Sources – According to EPA data, headwater streams that are at risk of losing Clean Water Act protections provide drinking water for more than 111 million citizens, more than one-in-three Americans. Failing to protect these streams from pollution or destruction could ruin drinking water supplies and burden our counties and communities with higher drinking water treatment costs.

In 1993, a parasite outbreak in Milwaukee killed more than 100 people and sickened 400,000. To address the largest waterborne disease outbreak in modern U.S. history, I wrote the *Danger on Tap* report that revealed widespread illness and some deaths flow from uncontrolled releases into drinking water sources. Fortunately, the 1996 Safe Drinking Water Amendments addressed *Cryptosporidium*, but the Supreme Court rulings could allow livestock feedlots, slaughterhouses, and sewage plants to discharge dangerous pollutants directly into drinking water source streams without a permit.

- Maintaining Drinking Water Supplies – With large parts of the country struggling with low drinking water supplies, headwater stream systems play a crucial role to ensure water flows in downstream rivers and streams and recharge groundwater

supplies. Altering these streams in ways that increase runoff rather than allowing water to soak into the ground can result in less groundwater recharge and less water in streams during drier seasons. Protecting our headwater streams is a critical requirement for addressing droughts.

- Protecting Water Quality – Intact small streams and wetlands act like natural filters to cleanse and protect water quality. Their ability to trap sediments suffers as the landscape is altered, resulting in larger quantities of sediment and pollutants flowing downstream, where it can fill reservoirs and navigation channels, damage fisheries, eliminate recreational spots and increase drinking water filtration costs.

For instance, in our county University of Wisconsin studies show that more than 20% of the phosphorous and nitrogen going in Lake Mendota each year come from less than 1% of the land being developed. These pollutants cause excess weed and algae blooms that close beaches and make swimming unsafe. This pollution comes from runoff from new development that is far worse per acre than runoff from farms and existing communities. That is why we must protect the headwaters of streams and wetlands so we can control this pollution source.

Healthy small streams also have the capacity to capture nutrients and filter the water, which would otherwise harm downstream water quality and increase drinking water treatment costs.

- Reducing Flooding Risk - This is of particular concern with hundreds of counties now suffering from flooding from torrential rains. Flood damage costs the nation an average of \$9.6 billion a year according to the U.S. Department of Commerce-NOAA, up from just \$2 billion a few years ago. This flooding causes significant loss of life and property, and is likely to increase due to climate change and increased floodplain development. The National Flood Insurance Program awarded nearly \$16 billion in flood claims in 2005 alone, according to FEMA. The flood costs to county and local governments are usually not fully paid for.

Small streams and wetlands provide natural flood control, as they can absorb significant amounts of rainwater, runoff and snowmelt and release it slowly to reduce flooding. The EPA estimates that an acre of wetlands can store 1 – 1.5 million gallons of floodwaters.

Isolated wetlands act like teacups to store floodwater while bottomland wetlands or more like linear sponges to soak up floodwater.

My 1999 study *Permitting Disaster in the Upper Mississippi River Basin* shows that states with the worst wetland loss had the worst flood damage in the 1993 Mississippi River flood. Missouri, Illinois, and Iowa have drained more than 85-89% of their original wetlands, according to the U.S. Fish and Wildlife Service. These three states made up two-thirds or almost \$12 billion of the \$15.7 billion total costs estimated by the National Weather Service from the Midwest 1993

flood. The other six states all had more than 50% of their wetlands remaining and made up less than \$4 billion of the total costs. We ran a regression analysis of this data that showed that 80% of the variation in flood costs can be explained by wetland destruction in the state. A USDA study estimated that restoring wetlands could reduce a 100 year flood by 10% alone, and by up to 39% combined with conservation tillage and Conservation Reserve Program lands.

When these natural wetlands are filled and eliminated, the runoff can exceed the absorption capacity of small streams. The result is larger is often larger and more frequent flooding downstream. Another study from the Illinois Water Survey showed that areas with more wetlands had less intense flooding.

These studies show a compelling reason to protect isolated wetlands to protect us from flooding.

If these headwaters and wetlands are no longer protected, communities like mine will face higher costs to provide safe drinking water and to control and repair damage from flooding. In addition, our constituents could lose swimming, fishing and other recreational opportunities which contribute to quality-of-life benefits that are vitally important but difficult to quantify.

For our county, clean water is a major economic driver as we have a world class sport fishery, sailing and boating lakes, and we are one of the top Ironman triathlon venues in the world because of our clean lakes. These events bring million of dollars of tourism into our county. But recent beach closings have put this economic engine at risk and we have launched a major effort to continue progress to clean up the lakes.

Trouble on the Horizon

But the current clean water chaos is not acceptable. Thousands of water polluting facilities have permits to dump into intermittent and ephemeral waters and headwater streams, the waters most at risk based on some interpretations of Supreme Court decisions. In Wisconsin alone, EPA data shows at least 212 individual NPDES permits regulate pollution discharges into headwater streams and another 191 individual NPDES permits regulate discharges into intermittent and ephemeral streams.

If left without Clean Water Act protections, polluters could dump animal waste, oil, other pollutants, or fill material into our streams and wetlands without a permit. By not regulating pollution discharges into these streams, we are effectively encouraging more pollution dischargers to locate in these areas to escape regulation. That would force counties like mine to spend more tax money to achieve more stringent discharge limits, imposing greater unfunded mandates on our communities, to assure that receiving waters meet water quality standards.

County Concerns Addressed

Some county officials are understandably concerned about unnecessary delays in Clean Water Act permitting. Following the *Rapanos* ruling, the EPA and Corps of Engineers adopted complex new guidance for determining whether waters are within the scope of the Clean Water Act. Because of the uncertainty about which waters are protected, Corps staff must complete a lengthy jurisdictional determination form for the water in question. This often leads to long delays in the permitting process before the actual Clean Water Act permits are considered.

The solution to this problem is for Congress to clarify which waters are protected. The current chaos does not protect historic waters and is not a reasonable solution. The current chaos has also created a need to increase Army Corp staff and funding to maintain past permit processing rates. The most cost-effective way to address this issue is Congressional clarification, not additional appropriations.

Some have suggested that no federal action is needed, but that each state should adopt laws as it sees fit to fill the gaps left by these Supreme Court decisions. A few states like Wisconsin have passed laws restoring protections to isolated wetlands after the *SWANCC* decision. Unfortunately, Wisconsin's *SWANCC* fix does not protect headwater streams. I agree with Wisconsin Governor Jim Doyle, who wrote in support of the Clean Water Restoration Act:

“The Clean Water Act was meant to prevent a state-by-state approach, because all water flows downstream and the discharges in one state can significantly hamper water quality protection in another. Having a basic federal standard is essential for safeguarding economic values such as public water supplies, fisheries, and recreation—the Great Lakes and the Mississippi River, which border Wisconsin, are prime examples of how one state alone cannot protect water quality.”

When you drink water in any state, you should know that livestock feedlots and slaughterhouses are not dumping deadly pathogens into your drinking water. We need a national solution.

Some have argued that the Clean Water Restoration Act somehow represents a vast expansion of Clean Water Act protections, but the facts show otherwise. It deletes the term “navigable waters,” which was defined as the “waters of the United States, including the territorial seas.” And it codifies the rules defining waters of the United States that were in place for decades. This change in the law would take us back to where the Clean Water Act was before the *SWANCC* and *Rapanos* decisions. It would restore the law's scope, not expand it.

Some preposterous concerns are that this will mean roadside ditch and rain gutter regulation. The rain gutter on my house was not regulated by the Clean Water Act before

these court decisions, and I am confident that it won't be regulated after the Clean Water Restoration Act is enacted. By the way, my gutters flow to a rain barrel and raingardens allowing the water to soak into the ground.

There is some county concern over ditches, some of which are natural streams that have been straightened and deepened to speed the flow of water. But our county Highway and Land and Water Departments heads tell me we maintain most road ditches without requiring permits. If permits are needed on larger projects, they are usually general permits that are easily obtained. Some larger ditches often connect to rivers and need Clean Water Act protections.

The need to protect larger ditches was illustrated by a case in our county where cow manure spilled into a drainage ditch then flowed into the West Branch of the Sugar River, killing hundreds of trout and other fish. This stream was a top trout stream and the first water body in Wisconsin to be removed from the 303(d) list by implementing voluntary conservation practices and habitat improvement to address non-point pollution. The county, farmers and conservation groups spent hundreds of thousands of dollars and hours to restore this trout stream. If the current chaos is allowed to continue, we might not be able to protect streams like this.

Another example is a recent criminal enforcement case conducted by the EPA, the Missouri Department of Natural Resources and the Missouri Department of Conservation. Last January these agencies investigated a situation in Hermondale, Missouri, involving the discharge of oil and other pollutants to a ditch by a biodiesel plant. According to the EPA, this discharge was responsible for killing approximately 100,000 fish downstream. A criminal prosecution is ongoing but measures are needed to ensure that these pollution spills are not allowed because of the current Supreme Court decision.

These cases illustrate the need for Congress to protect all waters of the U.S. Otherwise polluters may be able to discharge to small streams with impunity. The current chaos puts almost 60% of the nation's streams at risk.

Finally, some counties have concerns about state assumption and funding for clean water programs. Our county has taken responsibility for a regional stormwater permit for 14 communities and I understand the Clean Water Act allows local governments to assume parts of the program. Our county has also funded a Land and Water Legacy Fund of more than \$2.5 million per year to clean up storm sewer outfalls, protect buffer strips on farm fields, and restore wetlands. This is in spite of state and federal budget cuts for clean water funding. I know you support restoring cuts to the Clean Water and Safe Drinking Water SRFs.

However, these issues pale when compared to the scope of the Clean Water Act. Unless the Clean Water Restoration Act is passed, almost 60% of the nation's streams, 20% of our wetlands and drinking water sources serving almost one-third of the nation will lack adequate protection. Your first priority should be to restore that protection, then get

greater funding and expand partnerships with counties, states, and other local governments.

Conclusion

In conclusion, as a county official with 20 years experience in clean water protection and programs, I urge you to pass the Clean Water Restoration Act to protect our drinking water from uncontrolled pollution, protect isolated wetlands to reduce flooding, and protect headwater streams to make our waters safe for drinking, fishing and swimming.

Thank you for all you do to protect our safety and clean water. I will be happy to try to answer any questions your might have.

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