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"Status of the Nation's Waters, including Wetlands, Under the Jurisdiction of the Federal Water Pollution Control Act."

Full Committee U.S. House Transportation and Infrastructure

Montana Governor Brian Schweitzer

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The Clean Water Act has been a tremendous success in cleaning up and protecting Montana's and the nation's lakes, rivers, trout streams, and wetlands. We urge you to support the Clean Water Authority Restoration Act, a bill that was introduced in the last Congress that is expected to be reintroduced soon, in order to ensure that the Act continues to safeguard all of the State's waters that have been historically protected by this important law.

The State of Montana contains hundreds of thousands of acres of water resources including streams, rivers, lakes and wetlands. Water is one of Montana's greatest resources. Therefore, we are very concerned about any possible loss of Clean Water Act jurisdiction over these waters since they provide drinking water, revenue, wildlife habitat and aesthetic beauty for the enjoyment of everyone living in or visiting the "Last Best Place."

In recent years, long-settled Clean Water Act principles have been undermined by two narrowly divided U.S. Supreme decisions that have unreasonably questioned whether Congress intended the law to protect certain streams, rivers, wetlands and other waters that are not "navigable in fact" but that have, in fact, been covered by the federal law for over 30 years.

These decisions, in the SWANCC case in 2001 and the 2006 Rapanos-Carabell cases, have opened the door for polluting industries to begin an on-going campaign to erase decades of progress in cleaning up the nation's rivers, lakes, streams, ponds, wetlands and coastal waters by working to eliminate Clean Water Act protections for the majority of the nation's streams, rivers, and wetlands.

The waters in Montana most at risk of now losing federal Clean Water Act protections include creeks, small streams, seasonal rivers and waters, and depressional wetlands, fens, wet meadows, and slope wetlands. These waters in Montana are critical to our rural economy. Farmers and ranchers alike rely on access to clean water and on-going

drought conditions of the past several years have heightened our awareness of their needs. Tourism is also very significant to Montana and supports an important recreational component of our economy. Just last week, some Montana rivers and streams were being closed to fishing due to low flows and high water temperature which threaten aquatic life. These streams also provide many critical functions to our urban residents. For example, more than 340,000 Montanans rely on public drinking water systems that get some or all of their water from intermittent or headwater streams.

Of Montana's 192,198 total stream miles, we estimate that 136,002 miles are intermittent or headwater streams – 71% percent of all stream miles in the State. If the scope of "waters of the United States" were reduced to only those streams that have perennial flow or are traditionally navigable, Montana would lose federal Clean Water Act support over the majority of stream miles in the state.

All ephemeral, intermittent and perennial streams within Montana are tributaries to three federally navigable waterways in Montana – the Missouri, Yellowstone and Kootenai or are tributaries to interstate navigable waters such as the Clark Fork. We believe that all upstream tributaries to these waters along with wetlands are an integral part of our nation's watersheds and thus affect the health of all waters of the United States.

With respect to wetlands, we estimate that the State contains approximately 840,300 acres of wetlands, roughly 0.9 percent of the State. But while wetlands cover only a small part of Montana, the ecologic and economic importance of these waters far outweighs their relative size.

For example, certain depressional wetlands could be considered to be 'isolated' and thus outside the scope of the Clean Water Act based on the recent court decisions are located within a half mile of the Big Blackfoot River, a blue ribbon trout stream, drinking water source, tourist magnet and national treasure made famous by the movie "A River Runs Through It." Imagine a 50-gallon drum of PCB's or other highly mobile bioaccumulating pollutant, such as mercury, leaking into one of these depressional wetlands. There would be a high probability that a ground water to surface water connection exists to transport contaminate from the wetland into the Blackfoot River. This is an example of a hydrologic connection between 'isolated' waters and "waters of the United States." The isolated wetland needs to be protected to protect the river.

Other types of non-adjacent wetlands and waters in Montana that could be potentially affected by any limitation on the scope of jurisdictional waters include fens, wet meadows, seeps, slope wetlands, ponds and lakes. These unique ecosystems provide water to an otherwise arid and often harsh landscape. Wetland areas such as fens, wet meadows and ponds are critical to maintaining healthy species diversity and keeping species off the Federal threatened and endangered species list.

We believe that it is critical to retain Clean Water Act jurisdiction to regulate deposition or fill, discharge of pollutants and other deleterious activities even within so-called 'isolated' waters.

Passage of the Clean Water Authority Restoration Act is the best way to ensure that all of the water resources in Montana remain fully protected, reaffirm Congress' original intent to eliminate pollution at its source, and restore clarity and certainty to the law we and most other states rely upon to limit water pollution.

The bill reaffirms that the Act is intended to cover all of the waters of the United States. It does so by replacing the term 'navigable waters' and replaces it with the term 'waters of the United States.' This term is then defined based on the definition used by the U.S. EPA and Army Corps of Engineers in their Clean Water Act implementing regulations since the early 1970s. Finally, the bill bolsters Congress' authority to protect these categories of waters using all of its legislative authorities under the U.S. Constitution.

Again, we urge you to co-sponsor the Clean Water Authority Restoration Act to provide a clean and healthy future for Montana and the nation.