



ARIZONA RIPARIAN COUNCIL

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Congressman David Schweikert
U.S. House of Representatives
Via email: Kelly.roberson@mail.house.gov

Dear Congressman Schweikert:

We write to express concerns about challenges to the final Clean Water Rule (“Rule”) that the EPA published on June 29, 2015, for implementation of the Clean Water Act.

The Arizona Riparian Council (Council) was formed in 1986 as a result of the increasing concern over the rate of loss of Arizona's riparian areas. It is estimated that less than 10% of Arizona's original riparian acreage remains in its natural form. These habitats are considered Arizona's rarest natural communities. Our Council members include scientists, regulators involved in streamside activities, management, and studies, and citizens who are interested in, care about, and understand riparian areas in Arizona. Our members reside or work in all the Congressional districts of Arizona. The mission of the Council is to provide for the exchange of information on the status, protection, and management of riparian systems in Arizona.

The Council previously submitted detailed comments to the EPA about the Rule when it was first proposed. The following information highlights some of the major points that we ask you to consider in the ongoing discussions about the Rule (which was suspended in 13 Western states on August 28, 2015 by a federal district court in North Dakota).

The biological, physical, and chemical integrity of Arizona's streams is nearly entirely dependent upon the provisions of the Clean Water Act. This dependency is due to the Arizona Legislature's repeated rejection over many years of any attempts to protect riparian areas or the waters they need to exist. In Arizona, state and county regulations cannot exceed the requirements of the Clean Water Act (ARS 41-1052(D)9, 49-104(A)(17), 49-203(A)(2) and 49-371(B)). So, Arizona's streams and watercourses depend entirely upon the Act's jurisdiction to assure regulation of discharges of sediments and pollutants.

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Specifically, the Rule defines the jurisdictional waters covered by the Act and plays a crucial role in protecting waters in the country and in Arizona. The Rule defines tributaries and adjacent wetlands. Both of these water types are found in Arizona. Tributaries and wetlands play important roles in the health of Arizona's riparian areas. To assure that Arizona's larger streams maintain their biological, physical, and chemical integrity it is important that the jurisdiction extend to the unnamed tributaries that feed into them. We will not have clean segments downstream if the upstream reaches and tributaries are allowed to be contaminated.

Many of Arizona's streams have been converted from perennial water courses to intermittent or ephemeral water ways. Often, groundwater diversion and pumping slowly dry up a stream. Yet, these streams, large and small, still are part of the interconnectedness of Arizona's riverine system. This situation of the drying of streams is mainly due to uncontrolled or poorly regulated groundwater pumping that dries up our streams. Nonetheless, flows in these streams still contribute to the physical, biological and chemical integrity of downstream waters. And they are capable of delivering contaminated waters when they do flow. In your work as a Congressman, you probably know of specific examples from your district where water quality and uses downstream have already been impaired by discharges to small, dry streambeds. It is important that waterways that meet the EPA definition of a tributary remain jurisdictional waters under the Clean Water Act.

Because of the dynamic nature of streams it is difficult to precisely quantify the extent of perennial, intermittent, and ephemeral waterways in Arizona. For example, Arizona's irregular rainfalls can shift a stream from one category to another during the course of a year. It is estimated from US Geological Survey data that 96% of the streams in Arizona are either ephemeral (that is, flowing in direct response to precipitation) or intermittent (flowing only seasonally). The Council believes that regulatory jurisdiction of these streams is essential to assure the health of their associated riparian areas and the waters into which these streams flow. Examples of the kinds of species supported by ephemeral and intermittent streams include leopard frogs, flycatchers and many other international migratory bird species.

The Rule's requirement for tributaries to have a significant nexus to waters of the United States assures that the Rule is not overly broad. It offers ranchers and farmers some assurance that ditches that are not connected to waters of the United States will not be regulated under the Rule. It also assures the general public that arroyos showing specified signs of a significant nexus will be regulated for purposes of controlling discharges of pollutants.

Having clean water is important for sustaining riparian areas with their associated fish and wildlife, and for Arizona citizens who use the waters for growing crops, watering livestock, recreation, manufacturing, and household drinking and bathing. In fact, healthy riparian areas can mitigate and lessen pollution that finds its way to the stream. Much of the water in streams is first filtered by riparian areas before being withdrawn and delivered for human uses. That is why this rule is so important.

In summary, the Council urges the adoption of a jurisdictional rule that achieves the protection of Arizona's waterways.

We ask that you please review the comments that the Council submitted in 2003 during the early comment period on this Rule. Our comments can be downloaded from <https://azriparian.org/docs/arc/issues/cwaletter.pdf>. Those comments are highly relevant to the current discussion and provide specific examples how the Rule will apply to Arizona's tributaries and isolated wetlands.

This is an issue that our Council is closely tracking. Please let us know if you have questions about riparian areas in Arizona or how the Council can assist you in the important deliberations. The resources listed below also provide additional information.

Can we count on your support for a Clean Water Rule that assures healthy waters in Arizona?

Sincerely,

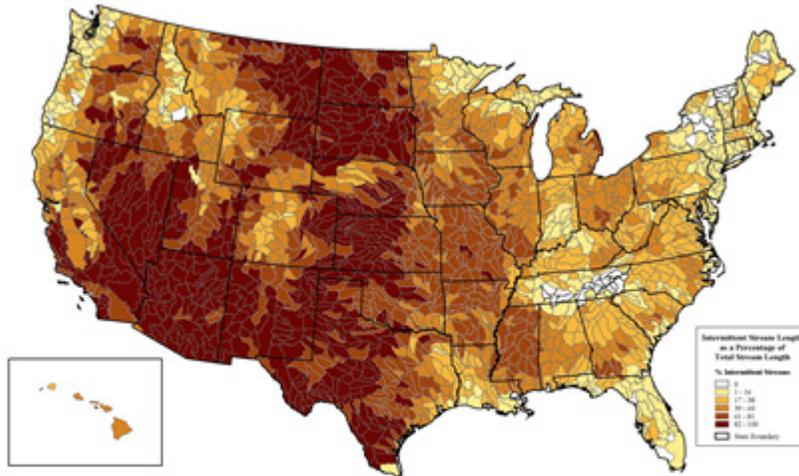


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Resources

Educational fact sheets concerning the importance of Arizona riparian areas:
<https://azriparian.org/resources/education/>

Percentage of Intermittent Stream Length by Watershed



In Arizona, 96% of streams are either intermittent or ephemeral. Will most of Arizona's streams lose Clean Water Act protections?

Source Data:

- NHD from Reach Address Database (RAD) at 1:100,000 scale using 8 digit 10' C watersheds.
- Intermittent and ephemeral streams grouped together.

Caveat:

- NHD data generally does not capture streams under one mile in length.

