Turning Tides: Policy, Ethics, and the Promise of Clean Water

A Policy Briefing on the State of the Waters of the United States

Center for Earth Ethics

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Credits

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Executive Summary

The United States stands at a pivotal moment in the history of clean water protection. More than fifty years after the Clean Water Act established the national goal of making all waters fishable and swimmable, recent legal decisions and rulemaking have dramatically weakened the Act by narrowing the definition of "Waters of the United States" (WOTUS). This redefinition threatens to remove federal safeguards from more than 80 percent of the nation's wetlands and millions of miles of creeks and streams. This rollback comes amid persistent water pollution, escalating climate-driven risks, and ongoing environmental injustice, raising the urgent question: *Can we afford to weaken the legal protections that sustain life itself?*

This policy note argues that the crisis is not only legal or scientific—it reflects a deeper philosophical struggle over how society values its relationship to the rest of nature. By tracing the history of the Clean Water Act, the evolving WOTUS debate, and emerging ethical frameworks such as the Rights of Nature, it shows how recent court decisions have weakened federal protections while a new consciousness around water, stewardship, and ecological interdependence is beginning to emerge.

Even in a period of federal retrenchment, history suggests that water protections can be rebuilt. Communities, faith leaders, environmental justice advocates, and watershed organizations are already building coalitions at the local and state levels, laying the groundwork for a renewed movement grounded in both legal action and a broader public ethic that recognizes water as the basis of all life.

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The State of the Waters of the United States

On October 18, 1972, the 92nd Congress overrode President Richard Nixon's veto and passed the Clean Water Act (CWA), introducing an acronym that would be fought over for the next 50 plus years. The acronym—WOTUS—*stands for* Waters of the United States, but what it *means* is another matter altogether. Its definition has been rewritten or challenged by virtually every recent presidential administration.

Most recently, in November 2025, the EPA and the Army Corps of Engineers released a draft rule that would considerably narrow the definition of WOTUS, removing 80 percent of the nation's wetlands and millions of miles of creeks and streams from clean water protections. The final rule is expected by the end of 2026. While those following the matter closely do not anticipate a positive environmental outcome, this does not mean that we should throw up our hands. If history has taught us anything, it is that policies can and do shift, and the health of waterways can and do improve. After all, in the years preceding the passage of the Act, American waterways were noisome, neglected, and—in the case of Ohio's Cuyahoga River—combustible.

Just as our current legal and ethical frameworks have undergirded efforts to weaken the CWA, so too must those of us who care about the future of American waterways explore alternative frameworks like the Rights of Nature. In the face of federal retrenchment, we can blend this moral and ethical work with actions to protect water at the local and state levels. But first, let's remember how we arrived here.

New Legislation, A Shifting Worldview

To understand how we came to this moment—and what is at stake—we must return to the conditions that gave rise to the Clean Water Act itself. By the early 1970s, America's waterways were in a shameful, polluted condition. Many were harmful to human health; some were devoid of aquatic life of any kind. In 1969, Cleveland's Cuyahoga River caught fire for what was estimated to be at least the twelfth time.[1] In 1965, President Lyndon B. Johnson famously declared the Potomac River a "national disgrace." In 1970, *The New York Times* followed up, calling the river "a stomach-turning miasma."[2]

"By the early 1970s, America's waterways were in a shameful, polluted condition. ... In 1969, Cleveland's Cuyahoga River caught fire for what was estimated to be at least the twelfth time."

The immediate causes of this pollution were clear: industrial effluent, oil spills, untreated sewage, widespread dumping, and urban and polluted stormwater runoff.[3] Yet the deeper roots of this widespread degradation stemmed from a philosophical worldview that fundamentally separated humanity from—and placed it above—the rest of nature (in contrast to Indigenous cultures that are rooted in a deep sense of interconnectedness between humans and the natural world.)[4] This perspective was coupled with post-World War II beliefs that technology would yield unending progress and trust in economic models that externalized the long-term costs of pollution and environmental degradation. This mindset led the American public to turn a blind eye to environmental harms—until they simply could not be ignored any longer.

Books like Rachel Carson's *Silent Spring* (1962) forced Americans to acknowledge the tremendous damage that had been inflicted on the nation's waters, air, soils, and wildlife.[5] Essays like Lynn White's "The Historical Roots of Our Ecological Crisis" (1967) and Christopher O. Stone's "Should Trees Have Standing?" (1972) raised important questions about how the Western mindset yielded such a degraded state of the natural world and how philosophical and legal frameworks might shift to confer a broader set of rights to nature.[6]

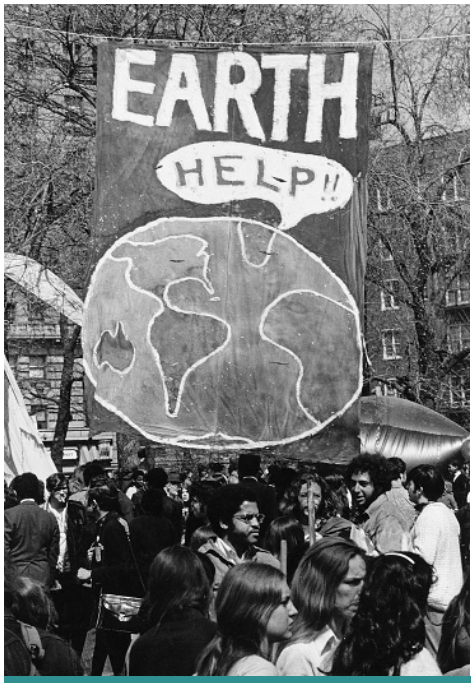
In the face of the appalling conditions in our nation's rivers and coastlines, this shifting consciousness helped drive a surge in the U.S. environmental movement and galvanized passage of the Clean Water Act in 1972. President Nixon, who thought the Act's price tag of $24 billion was too onerous, vetoed the bill,[7] prompting an impassioned reply from Senator Edmund Muskie (D-Maine):

> Can we afford clean water? Can we afford rivers and lakes and streams and oceans which continue to make life possible on this planet? Can we afford life itself?[8]

Republican Senator Howard Baker (R-Tennessee) agreed with Senator Muskie:

> As I have talked with thousands of Tennesseans, I have found that the kind of natural environment we bequeath to our children and grandchildren is of paramount importance. If we cannot swim in our lakes and rivers, if we cannot breathe the air God has given us, what other comforts can life offer us?[9]

Congress responded to these compelling—and bipartisan—arguments and overwhelmingly overrode President Nixon's veto. The Clean Water Act was enshrined into law, with the ambitious goal of making all surface waters in the United States "fishable and swimmable" by 1983 and eliminating all pollution discharge into them by 1985.[10]



The first Earth Day on April 22, 1970 was a watershed moment in this era. It was a huge public event that galvanized 20 million people—or 10 percent of the U.S. population—to participate in actions to raise awareness of environmental degradation and pollution. Many credit Earth Day with being a contributing factor to the formation of the EPA later that year.

It is critical to recognize that the roots of the environmental movement also trace back to earlier civil rights campaigns led by Black and Brown Americans, including farmworkers organizing to prevent exposure to toxic pesticides, the 1968 Memphis Sanitation Strike protesting working conditions for sanitation workers, and the 1969 Young Lords' "Garbage Offensive" protesting the lack of adequate sanitation services in East Harlem.

A Clean Water Act Primer

To understand both the promise of the Clean Water Act and the stakes of current debates, it is helpful to briefly examine the history and structure of the law. The Clean Water Act, passed as an amendment to the Federal Water Pollution Control Act of 1948,[11] is a cornerstone of U.S. environmental legislation.[12] It was enacted during a wave of federal environmental lawmaking in the late 1960s and 1970s that included the Wild and Scenic Rivers Act (1968), the National Environmental Protection Act (1970), the Clean Air Act (1970), and the Endangered Species Act (1973), among other major environmental laws.[13] New administrative structures were developed at this time, including the creation of the Environmental Protection Agency in 1970.

The CWA opens by stating its objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (CWA § 101) It sets forth the national goal to eliminate pollution discharge into navigable waters and later defines "navigable waters" as "the Waters of the United States" (CWA § 502), or WOTUS.

Fire on the Cuyahoga River

Firemen stand on a bridge over the Cuyahoga River to spray water on the tug *Arizona*, as a fire, started in an oil slick on the river, sweeps the docks at the Great Lakes Towing Company site in Cleveland, Ohio, on November 1, 1952. The blaze destroyed three tugs, three buildings, and the ship repair yards.

ABOVE LEFT: Peter L. Gould/FPG/Archive Photos/Getty Images

ABOVE: Bettmann Archive/Getty Images

The Clean Water Act

- Sets water quality standards [14]
- Requires permits for the discharge of pollutants and establishes the National Pollution Discharge Elimination System (NPDES) based on best available—and economically achievable—technologies[15]
- Funds wastewater treatment plants[16]
- Addresses nonpoint sources of pollution (strengthened in the 1987 Amendment to the CWA)[17]
- Protects wetlands and small streams from infill[18]

The key takeaway is that the above protections apply only to water bodies defined as WOTUS.

Successes and Unmet Goals of the Clean Water Act

With this framework in mind, we can better assess how the law has performed over the past five decades. Since the early 1970s, the CWA has been credited with preventing 700 billion pounds of toxic pollutants from entering waterways annually and investing $680 billion in approximately 35,000 wastewater treatment projects, according to the National Wildlife Federation (NWF).[19] The CWA has also led to oversight of 200,000 point source polluters, including sewage treatment facilities, oil refineries and construction sites.

Furthermore, the number of waters meeting water quality standards has doubled since the law's passage, according to NWF, and rivers like the Potomac, the Cuyahoga, and many other waterbodies, have transformed from sources of revulsion and embarrassment into cherished community, scenic, and recreational assets.[20] The EPA maintains a website of success stories in reducing nonpoint sources of pollution thanks, at least in part, to funding provided through the Act.[21]

Despite these achievements, the full vision of the CWA remains unrealized.[22] Clearly, its aspirational goals of achieving fishable and swimmable waterways by 1983 and eliminating all pollution discharges by 1985 have not been achieved. Indeed we are far behind: more than half of surveyed U.S. waterways have been determined to be "impaired"[23] and roughly half have never been assessed. This is a huge gap between the CWA's vision and its real-world impacts.

While significant progress has been made in reducing point sources (i.e., from a pipe) of pollution, nonpoint sources of pollution are harder to control as they emanate from dispersed runoff from farms, roads, parking lots, roofs, golf courses and lawns, etc. Today, nonpoint pollution is the largest source of water pollution. Agricultural runoff into the Mississippi River is one of the largest contributors to the seasonally occurring hypoxic—or "dead"—zones in the Gulf of Mexico. In 2017, one of its largest ever dead zones was measured to be roughly the size of New Jersey.[24] This led to major fish and shellfish die-offs, imperilling both livelihoods dependent on the fishing industry, as well as community and recreational enjoyment of the Gulf.[25]

In addition, the CWA has not prevented the catastrophic loss of wetlands, despite their enormous public benefits, including flood protection, carbon sequestration, and water cleansing. According to the Association of State Floodplain Managers, a scientific and educational nonprofit organization dedicated to reducing flood losses, the continental U.S. has lost more than 50 percent of its wetlands since the 1780s.[26] And the losses continue: U.S. coastal wetlands shrank by roughly 18,000 acres per year between 2009 and 2019, indicating that although the rate of decline has slowed, significant wetland loss is ongoing.[27]

Current efforts to weaken the CWA are, therefore, undermining protections that only partially achieved its original vision. Furthermore, we are facing ever greater threats than in 1972 due to climate change. So why and how are we weakening the nation's landmark water protection law at this moment? And what does the definition of WOTUS have to do with it?

WOTUS and The Clean Water Act

At the center of the current debate lies a deceptively simple question: which waters does the law actually protect? As noted above, the CWA defines its scope to cover "navigable waters," which it refers to as "waters of the United States." However, the legislation never defines what WOTUS itself means. Whether or not a particular water body qualifies as WOTUS determines if property owners must secure federal permits to fill or discharge pollutants into waters on their land. The definition of WOTUS is, therefore, at the heart of the current environmental fight over the CWA.

Defining WOTUS: A Brief History

The definition of WOTUS has been debated since the CWA was enacted and has oscillated considerably.[28] Multiple U.S. Supreme Court cases have considered the matter over the past 50 years, and the EPA and the Army Corps of Engineers have revised regulations based on these rulings. These actions have taken up issues such as what is meant by the term "navigable waters," and by what standards adjacent waterbodies might be connected to one. In addition, courts have wrestled with the question of whether habitat protection for wildlife should factor into a WOTUS definition. While a broad conception of the term encompassing dispersed wetlands and ephemeral streams was upheld during the CWA's first 30 years, since then the definition has been acutely narrowed.[29]

Case law and regulations in the 1970s, 1980s, and 1990s generally established broad interpretations of the meaning of WOTUS to extend beyond the traditional definition of "navigable" to include protections for waters that are ecologically or hydrologically connected to broader, ship-bearing waterways. In addition, the CWA protected waterbodies that provide habitat for wildlife, as under the Migratory Bird Rule of 1985.

However, beginning in the 2000s the tide began to turn. The Supreme Court removed protections for migratory birds in 2001. This trend was reinforced in 2006 in *Rapanos v. United States*, a split 4-1-4 ruling which created two competing standards for determining whether or not a waterbody is WOTUS:

1. "relatively permanent" with a direct connection to traditional navigable waters (provided in a plurality opinion written by Justice Antonin Scalia)

2. "significant nexus" to navigable waters (a concurring opinion issued by Justice Anthony Kennedy), recognizing that ephemeral or geographically separated wetlands and streams are hydrologically connected to larger waterbodies and that they provide critical ecosystem services to them.

Post-*Rapanos*, a brief broadening of the WOTUS definition came in 2015, when the Obama Administration issued a "Clean Water Rule" that aimed to provide clarity and broaden protections.[30] The rule protected bodies of water that affected the quality of navigable waters, including tributaries, adjacent wetlands with occasional surface or shallow subsurface connections, and ephemeral streams.

This expansion was short-lived. In 2019, the Trump Administration rescinded the Obama-era rule.[31] The 2023 Supreme Court decision—*Sackett v. E.P.A.*—issued a death knell for the expansive view of WOTUS.[32] The majority opinion, written by Justice Samuel Alito, states that wetlands, to be considered WOTUS, must have a continuous surface flow, making them indistinguishable from traditional navigable waterways. The *Sackett* decision abolished the "significant nexus" test in determining WOTUS, leaving only the "relatively permanent" standard, which excludes protection for ephemeral streams and creeks.

This shift has accelerated. Following *Sackett*, the EPA and Army Corps of Engineers released a draft rule on November 17, 2025 that further limited federal protection. This rule proposes to remove interstate waterways from coverage and defines "'relatively permanent' to mean 'standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season.'"[33] The meaning of the term "wet season" was left vague and without a clear scientific basis.

At the time of this publication, we are awaiting a summary of the comments and the publication of the final rule, which is expected before the end of 2026. All indicators are that, given the Trump Administration's strong deregulatory bent, the draft rule will stand, with perhaps only minor modifications.

Impacts of a Narrowed Definition of WOTUS in the Face of Climate Change

Together, the case law and regulations promulgated over the past 20 years represent a major reversal on the CWA's promises to ensure fishable and swimmable waters and "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." This narrowing of WOTUS is misaligned with public opinion, with nearly all voters (96 percent) saying that protecting the health and safety of drinking water and the water in our nation's lakes, streams and rivers is important.[34]

However, with the *Sackett* decision and the subsequent draft rule, the federal government seems poised to remove protections from more than 80 percent of the nation's remaining wetlands and more than 8 million miles of U.S. streams, according to a detailed analysis by Natural Resources Defense Council.[35] This dramatic rollback threatens ecosystems, livelihoods, and the ecological services these waters provide. One acre of wetland can hold one million gallons of water; therefore, the filling and development of wetlands reduces their natural capacity to store and slow rainwater and snowmelt.[36] In addition, filling and developing over ephemeral streams contributes to flooding, a fact recognized by a 2008 EPA report.[37] Without protections under the law, water quality and community resilience will be imperiled, leaving municipalities and states to consider engineered—and highly expensive—interventions to improve drinking water quality, guard against inland flooding and sea level rise, as well as provide other services previously provided by nature-based systems.

The consequences of the legal narrowing of WOTUS are amplified by the threat of climate change. Floods are the nation's most frequent and costly natural disasters[38] and the risk of flooding is increasing due to land use and climate change.[39] According to a 2024 Congressional Budget Office report,[40] flooding averaged $46 billion per year over the prior decade (2013-2023), a figure that they acknowledged would be "a quarter to a third greater in 2050 because of increases in flood risk due to climate change."[41]

Furthermore, the destruction of wetlands contributes to climate change because they are vast carbon sinks[42] that, if destroyed, would release stored carbon into the atmosphere—carbon that took hundreds or thousands of years to accumulate.[43]

The current federal administration does have a plan to combat these risks. In fact, the second Trump administration has made drastic cuts to staff at regulatory agencies[44] and programs, notably including its environmental justice office, and has dramatically curtailed enforcement of environmental laws.[45]

The draft rule does not provide clarity for property owners and regulators because it introduces a new, inadequately-defined term: "wet season." This lack of clarity will lead to further uncertainty when property owners and regulators attempt to apply it in real-world scenarios.

The impacts of this changed definition of WOTUS on American waterways will diverge geographically based on local hydrological conditions and differing state protections. In the water-abundant eastern U.S., many waterways maintain continuous flow throughout the year and will retain CWA protections. However, in the arid West, water flows vary considerably and may include periods of no flow, removing them from protection under the "relatively permanent" standard. Furthermore, many Western states have weaker state-level protections than Eastern states, which will leave western wetlands and ephemeral streams vulnerable from this federal roll-back. This dramatic shrinking of federal protection will lead to a patchwork of state laws, with some offering greater protection than others. Since the proposed 2025 rule also removes protections for interstate waterways, states with high levels of protection will be unable to stop polluted water from less protected states from entering their jurisdictions.

Key Moments in the WOTUS Debate

1972 **Clean Water Act**
Protects "navigable waters," defined as "Waters of the United States."[46]

1975 ***NRDC v. Callaway***
Following a narrow interpretation of "navigable waters" by the Army Corps, the Supreme Court ruled that the agency's jurisdiction extends more broadly under the Commerce Clause. It held that "navigable waters" are not limited to traditional tests of navigability and require a broader interpretation of wetlands and waterway protection.[47]

1985 ***United States v. Riverside Bayview Homes***
A unanimous Supreme Court found that wetlands abutting Lake St. Clair in Michigan fall within the Corps' jurisdiction.[48]

1985 **Migratory Bird Rule**
The EPA's general counsel clarified that use of an isolated water body by migratory birds was sufficient to bring it within WOTUS jurisdiction.[49]

2001 ***Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers***
The Supreme Court held that the Migratory Bird Rule did not extend federal protection to isolated ponds, limiting WOTUS jurisdiction.[50]

2006 ***Rapanos v. United States***
A split 4-1-4 decision produced two competing standards for WOTUS. The plurality endorsed the "relatively permanent" standard, while Justice Kennedy advanced the "significant nexus" test.[51]

2015 **Obama Clean Water Rule**
The Obama administration finalized a rule that expanded protections for ephemeral streams and wetlands, relying on Justice Kennedy's "significant nexus" test.[52]

2019 **Rescission of Clean Water Rule**
The first Trump Administration repealed the Clean Water Rule.[53]

2023 ***Sackett v. EPA***
The Supreme Court invalidated the "significant nexus" test, narrowing the scope of the Clean Water Act and limiting federal protection for many wetlands and ephemeral streams.[54]

2025 **Proposed Rulemaking**
On November 17, the EPA and Army Corps of Engineers released a draft rule further limiting federal protection and introducing a new poorly-defined term: "wet season." A final rule is expected by the end of 2026.[55]

A kayker on the Bronx River, following decades of community-led restoration. May 2023

Local Voices Weigh In on the 2025 WOTUS Rule

Public comments on the November 2025 draft rule closed on January 5, 2026. The agency received approximately 220,000 comments from groups and individuals.[56]

Arguments in favor of the draft rule contend that an overly broad definition of WOTUS allows federal overreach into local land-use decisions and constrains economic development. They support narrowing the definition of WOTUS to traditionally navigable waterways and waters with a "relatively permanent" and "continuous surface connection" to them. They note that the changing definition of WOTUS has led to uncertainty for property owners and confusion among regulators who lack clear methods for determining what waters do and do not fall under the term. They point to project delays from a lack of clarity on what constitutes allowable development and increased costs as they must modify development plans to avoid WOTUS or provide mitigation measures. However, these arguments tend to ignore the benefits these waters provide, including the risks of flooding and exposure to polluted waters. Nor do they account for the exorbitant costs of providing these services through engineered systems once natural systems—rivers, wetlands—that provide these services for free are destroyed.

Conversely, environmental advocates argue that a narrow definition based on "relatively permanent" waters with a "continuous surface connection" ignores the science of watershed function. They point out that ephemeral streams and geographically separated wetlands provide essential ecosystem services, including subsurface recharge to groundwater, rivers and streams[57] and significant flow to U.S. rivers.[58] They further warn that without a broader definition grounded in a scientific understanding of how healthy rivers and watersheds function, communities will face greater risk from flooding and polluted waters.[59] Some center environmental justice[60]—which EPA defined as the "fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies"[61]—and note that the burdens of weakened water protections will fall disproportionately on communities of color. Others raise the simple truth that water is the source of all life on this planet and deserves special protection and respect.

Commenters offered criticisms that were rooted in science; based on economic costs and benefits; and built on ethics, values, and faith.[62]

Lack of Scientific Basis, Ignorance of Ecosystem Services

Thousands of comments from diverse groups across the country offered scientific arguments that protecting wetlands and ephemeral rivers and streams provide numerous ecological benefits, including improving water quality, flood protection, nutrient and sediment management, habitat for wildlife, recharging water sources for agriculture and drinking water, and sequestering and storing carbon, which is the leading driver of climate change. Several commenters drew attention back to the original intent of the law and how the draft rule undermines it.

The Restore the Mississippi River Delta Coalition (comprising the Environmental Defense Fund, National Audubon Society, the National Wildlife Federation, and Pontchartrain Conservancy) highlighted the discrepancy between the scientific consensus on how to meet CWA goals and what the draft rule proposes:

> [W]e urge the EPA and the Department of the Army to address the fundamental flaws in the proposed rule by grounding it in the best-available science and aligning it with the intent of the CWA. *Sackett* does not require arbitrary requirements such as "wet season" surface connection, and the rule disregards decades of science showing that even smaller, intermittent wetlands provide outsized ecological and hydrological benefits. Rather than aligning with the CWA's intent to safeguard the nation's waters, this approach would accelerate catastrophic land loss, weaken community resilience, and undermine decades of coordinated restoration.[63]

Similarly, 293 Americans concerned with rivers in the Northeast, particularly in the Adirondacks, signed a letter stating that the proposed rule ignores both the CWA's intent and the best available science to achieve its goals:

> This redefinition represents the narrowest interpretation of WOTUS since the Supreme Court's decision in *Sackett v. EPA* (2023) and runs counter to decades of well-documented science on hydrologic connections. Even intermittent waters and wetlands not adjacent to traditionally defined navigable waterways play essential roles in flood mitigation, water and nutrient cycling, groundwater recharge, sediment, excess nutrient, and pollutant trapping, and habitat connectivity for fish, birds, and other wildlife. Removing these waters from federal protection undermines the Clean Water Act's purpose to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (CWA 1972).[64]

Broad-based networks and organizations representing thousands of individuals commented on the proposed rule and appealed to scientific reasoning. The Pennsylvania Chapter of Trout Unlimited, which consists of 12,000 members, submitted comments stating, "Intermittent and ephemeral streams are the capillaries of watersheds.[65] They help move nutrients downstream. They can be important food sources for fish, and they have a profound effect on drinking water."[66] A letter signed by 24,554 Americans (organized by the Environment America Research and Policy Center and Environmental Action) noted that "[w]etlands are some of our nation's most unique, biologically diverse ecosystems. They provide critical habitat for fish, waterfowl and other wildlife. Wetlands also filter out pollutants to keep our rivers cleaner and help protect our communities from flooding."[67]

At What Cost?

Several comments focused on the short-term economic value of allowing leniency to fill in wetlands and ephemeral stream beds for development. However, critics pointed to the risks and costs of water pollution, flooding, and diminished outdoor recreation. Commenters also argued that weakening the CWA essentially privatizes benefits to local land owners while shifting the risks and costs of polluted water, sedimentation, and flooding to the public sector.

Supporters of the proposed rules included housing development groups like Southern View Development / CTL Southern Construction (Tennessee), Avimor Development (Idaho), and Gradison Land Development (Indiana), which cited the high costs of mitigation ($1 million for Southern View Development), years of delay (more than two years in the case of Avimor), and that these regulatory hurdles end up driving up the cost of construction, making housing less affordable.[68]

> **"Intermittent and ephemeral streams are the capillaries of watersheds."**

In addition, state farm bureaus submitted comments representing the agricultural sector. The North Carolina Farm Bureau summed up the concerns of many: "Farmers and landowners need a legally durable rule that injects clarity, consistency, and certainty into the regulatory process and does not leave farmers and ranchers guessing what parts of their property are subject to regulation."[69]

Critics of the proposed changes called for a more holistic assessment of the costs and benefits of water protection. A letter from 109 people in the Lake Houston area noted the recurring costs of losses to wetland storage and sediment-management capacity:

> Sedimentation has already measurably reduced the effective storage and conveyance capacity of Lake Houston. Maintaining that capacity has required repeated large-scale dredging projects costing hundreds of millions of dollars, funded largely by federal and state appropriations.... Upstream wetland loss increases the frequency and scale of these dredging needs. Each acre of wetland lost upstream effectively shifts long-term sediment-management costs from private land conversion decisions to the public. The proposed WOTUS definition does not quantify or even acknowledge this cost transfer.[70]

An Environmental Defense Fund-sponsored letter, signed by 392 people, notes the value of wetlands, stating that they "save far more in taxpayer dollars than traditional water treatment," reduce the cost of responding to flooding disasters, and that

> **"While economic arguments often dominate policy debates, they are not the only, or even the most fundamental, way to understand what is at stake."**

"[m]any homes that experience flooding were built on former wetlands .... Allowing them to be developed without mitigation leads to more costs to taxpayers, devastating property losses, threatens clean water and makes water bills more expensive."[71]

The Association of Floodplain Managers, representing more than 7,000 members, agrees, stating that "[f]loods are the nation's most frequent and costly natural disasters." They continue:

> [b]y removing the application of dredge and fill Section 404 and the related Section 401 state certification protections of many wetlands, it is most assured that many wetlands will be filled by developers for building into and paving over natural wetland areas, thus constricting or redirecting floodwaters to other properties and significantly increasing flood risks and costs in adjacent areas, as well as to the new buildings in large floods.[72]

And wetlands and waterways are beautiful places where people love to recreate—and where local economies can benefit from the businesses that are associated with these activities. The Pennsylvania Chapter of Trout Unlimited asserts that "ephemeral headwater streams ... help support a $18.9 billion outdoor recreation economy in Pennsylvania."[73]

While economic arguments often dominate policy debates, they are not the only, or even the most fundamental, way to understand what is at stake. There are also deeper values and connections that animate why we care for nature and water.

Moral and Justice-Based Arguments

Faith-based groups rooted their comments in justice and ethics. A letter from 4,169 leaders of Black churches pointed to the environmental justice implications of a weakened CWA:

> History has taught us that it is low-income communities and communities of color who will disproportionately pay the cost of pollution. To be faithful stewards of God's earth and to protect human health, we need protections for clean water.[74]

The Association of Floodplain Managers noted a broader framing of the value of waters, stating that they "help to sustain a web of life far beyond their immediate locales."[75]

Similarly, a small Alaskan outdoor tourism business owner noted that "rivers are a key factor for our economy," but went further. The heart of the matter, they insisted, was kinship with the natural world and water's intrinsic value:

> Most importantly, the rivers are home to numerous fish species, beavers, river otters, moose, caribou and bear. The rivers are a precious resource for food source and also inspiration. Protect our waterways from any poor changes made [by the] Trump Administration that are short sighted with long term devastation to the most valuable resource, clean water![76]

We know far more now about the scientific and economic bases for protecting and restoring our water systems than we did in 1972 when the CWA was enacted—and climate change has imposed a new layer of concern and responsibility. How do we fully account for the value of clean water, or a healthy river or a beautiful wetland? Is it actually possible to put a monetary value on the source of life itself?

The *Sackett* decision abolished the use of the "significant nexus" test in determining WOTUS, leaving only the "relatively permanent" standard, which excludes protection for ephemeral streams and creeks.

A Deepening Consciousness: Earth Ethics & the Rights of Nature

If existing legal and economic frameworks are proving insufficient to protect our waters, a deeper question emerges: Do we need to rethink the very foundation of how we value nature? One avenue to consider is adopting an alternate vision of humanity's relationship to the natural world, one that rejects the extractive and anthropocentric worldview that has dominated Western thought in favor of one that embraces the interconnectedness between humanity and the natural world. Many public comments on the proposed WOTUS rule resonate with recent philosophical, faith-based, ethical—and even legal—conversations about why and how to provide protections for the Earth, its waters, and the networks of life they sustain.

This rethinking is not happening in isolation. Around the world, parallel conversations are emerging that challenge dominant environmental paradigms.

In 2015, Pope Francis issued a seminal encyclical *Laudato Si': On Care for our Common Home*.[77] In *Laudato Si',* Pope Francis issued a clarion call about the degraded state of the Earth and a call to action for all of humanity, especially the industrialized West, to dramatically shift its relationship with the natural world. He rejected consumerism and economic models based on short-term growth, and affirmed that what we need is "a new way of thinking about human beings, life, society and our relationship with nature." The Pope's encyclical is credited with a surge in environmental activism within the 1.4 billion-member Catholic church. It has also provided critical support for the 2015 Paris Climate Accords—a groundbreaking international treaty on climate change with a goal of limiting global average temperatures to "1.5°C above pre-industrial levels."[78]

A Global Ethical Stocktake

Ten years after *Laudato Si'* and the Paris Climate Accords, advocates, policymakers and scientists conducted a stocktake of climate progress and found that we are not on track to limit global temperature rise to 1.5°C. Subsequently, the Brazilian government, host of the 2025 United Nations Climate Change Conference, issued a call for a Global *Ethical* Stocktake.[80]

The Global Ethical Stocktake was a series of dialogues held in the lead-up to COP30 in Brazil. Participants reflected on deeper values that should guide climate action, asking: *If we already know what needs to be done to tackle the climate crisis, why are we not doing it?*

Karenna Gore, founder and executive director of the Center for Earth Ethics, co-led the North American Dialogue on September 19, 2025 in New York City, and supported several self-organized dialogues around the country.[81] Testimonies from scientists, philosophers, and activists offered insights into other ways to perceive and value the natural world. They made the case for constructing new narratives about the deep importance of the natural world—beyond commodification—for human and planetary flourishing. A recurring theme from the Global Ethical Stocktake was the need to both recognize the interconnectedness between humans and the natural world and create new stories that convey the depth of that connection.

At the August 2025 Global Ethical Stocktake dialogue in New Orleans, which coincided with the 20th anniversary of Hurricane Katrina, Bette Billiot (United Houma Nation Tribe of Louisiana) reflected:

> Our cultures teach us that water is sacred, the land is living, and that we are not separate from creation, but a part of it. For generations, Indigenous tribes lived as good stewards of these lands and waters, guided by values and reciprocity, respect and care. We understand that our survival depended on living in balance with the Earth. The very ground we stand on was a gift of the Mississippi River, which for thousands of years carried sediments to build the delta and give rise to our wetlands. This was our home, our protector, and the source of our lifeways. But in the last century, greed has shifted us from stewardship into exploitation. Levees stop the river from feeding the land, canals and pipelines slice through our wetlands. The waters have become sick.[82]


Dr. David Suzuki and Dr. Robin Wall Kimmerer speak at the Global Ethical Stocktake in New York City.

Dr. David Suzuki, a Canadian geneticist, broadcaster and former anchorman of "The Nature of Things with David Suzuki" who participated in the North American Dialogue, stated:

> We are air-breathing terrestrial mammals, subject to nature's laws, like all other life forms, [and] to live a healthy, happy life, we must have clean air, pure water, rich soil, and food and energy from the sun. Those fundamental needs are not made by human technology, the economy or factories, they are cleansed, recycled and regenerated by our biological kin, plants and animals.[83]

Rev. Fletcher Harper of GreenFaith advocated for fresh storytelling about the reasons for protecting the Earth. He implored that we must "stop believing that tightly controlled rationality will be the initiating and driving force behind the change that we need, and instead, together, continually commit to expressing things that are deeper and more beautiful."[84]

Dr. Robin Wall Kimmerer—Potawatomi writer, poet and scientist—echoed these comments:

> I think a missing piece is that we do not have a compelling story, a story that inspires change, a story that connects us to something greater than our narrow short-term self-interests. We need a beautiful story that values planet over profits and reciprocity over extraction; a missing piece is the coupling of science and spirit that expands our thinking beyond knowledge to wisdom.[85]

An Alternative Approach: The Rights of Nature

The Rights of Nature movement, a nascent system of jurisprudence, offers an avenue for shifting the narrative about humanity's relationship with nature.[86] This framework views nature as a rights-bearing entity, and affords it the standing of "personhood" in courts. The Rights of Nature would move the legal framework from a regulatory stance, where property owners petition the government for permission (or permits) to pollute, to a rights-based approach that endows protection to natural entities. Waterways, mountains, forests, ecosystems and the Earth itself are not commodities or property to be exploited, but living beings and relatives with agency, intrinsic value, and inherent rights. It is a corrective to the dualistic, mechanistic worldview of nature and humanity's relationship to it.

The Rights of Nature framework offers a counterpoint to recent court action (including *Citizens United v. FEC*) that grants corporations protections like free speech that the U.S. government confers to human beings.[87] The Rights of Nature challenges us to think: If a nonhuman—and nonliving—entity such as a corporation can be granted legal personhood, why not a river?

The Rights of Nature legal framework has been adopted in limited places around the world. Ecuador led the way, enshrining the Rights of Nature into its constitution in 2008. In 2017,

While the Rights of Nature has struggled to gain traction in the U.S., it has, on occasion, found high-level champions. In 1972, the Supreme Court heard the case *Sierra Club v. Morton*. The case itself was dismissed after a majority found that the Sierra Club lacked standing. However, Associate Justice William O. Douglas offered this dissent citing Stone's *Should Trees Have Standing?*:

> A ship has a legal personality, a fiction found useful for maritime purposes. ... The ordinary corporation is a "person" for purposes of the adjudicatory processes. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes—fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it.[92]

New Zealand's parliament finalized the Te Awa Tupua Act and appointed two guardians of the Whanganui River: the Maori people and the national government. Numerous other Rights of Nature provisions have been enshrined into law from Bangladesh to Bolivia to Uganda.[88]

Efforts have been less successful in the U.S. where courts have consistently overturned local efforts to adopt Rights of Nature legislation. The Florida state legislature passed a "preemption law" in November 2020 that bans local Rights of Nature efforts in the state.[89] This followed an earlier referendum in which nearly 90 percent of residents in Orlando's Orange County voted to amend the county charter to assert that its waterways should have the "right to exist, flow, to be protected against pollution and to maintain a healthy ecosystem."

After the preemption law passed, in 2022 a Circuit Judge for the Ninth Judicial Circuit Court struck down the Orange County Rights of Nature charter amendment.[90]

In 2019 the Lake Erie Bill of Rights (LEBOR) was incorporated into the Toledo, Ohio municipal charter. LEBOR granted Lake Erie and its watershed the rights to exist, flourish and naturally evolve. However, in 2020 a federal judge deemed it unconstitutional.[91] In November 2025, the Tribal Council of the Colorado River Indian Tribes voted to recognize the Colorado River as a living entity with personhood rights along 100 miles that flows through Tribal lands. This case has yet to be tested in the courts.

"In November 2025, the Tribal Council of the Colorado River Indian Tribes voted to recognize the Colorado River as a living entity with personhood rights..."

Yenny Vega Cárdenas—lawyer, and president and co-founder of the International Observatory of the Rights of Nature—addressed Rights of Nature at the Global Ethical Stocktake's North American Dialogue:

> We still treat Mother Earth, the source of all life, as an object that we can just destroy and not a subject that we should respect, honor, and be grateful for. So to transform this reality, we must awaken, we must shift our perspective and recognize our planet as rivers, forests, and oceans as living beings that deserve respect, gratitude, and rights.[93]

Ms. Vega Cárdenas noted the case of the Magpie River in Canada, which was granted legal personhood in 2021 by the Innu Council of Ekuanitshit and the regional municipal council of Minganie.[94] This partnership between a municipality and a First Nation reflects that the movement for the Rights of Nature for the Magpie River aligns with the traditional Indigenous worldviews that see nature as animate rather than as property.[95]

People are getting involved with their local waterway or watershed organization through river clean-ups, habitat restoration and recreation.

Local, State, and Community Action

While these philosophical shifts are essential, they must ultimately translate into action within existing political and legal systems. Given the reality of American jurisprudence and the likelihood of an unfavorable WOTUS ruling, communities, municipalities, and states are taking action to protect waters. Rev. Dr. Ben Chavis, a visionary pioneer of the environmental justice movement who participated in an October 2025 Global Ethical Stocktake dialogue in Mississippi, issued a call to action:

> We have to make sure that our world view is not contaminated, because in truth, our world view is polluted and that is why we tolerate the pollution of the Earth, the pollution of the climate, and pollution of our water, the pollution of our food. So we've got work to do, but I'm thankful we have the opportunity to fight back, and not just to fight back, but to fight back and to win.[96]

Individuals and communities can—and already do—fight back and win protections for our local and national waterways. Although the current Congress does not favor strengthening the Clean Water Act, 16 Senate Democrats have opposed the unraveling of CWA protections.[97] The 2026 midterms will determine the balance of power in Congress and whether reforms to the CWA are possible in the short-term. Meanwhile, individuals and groups at the local, watershed and statewide levels are taking action to rebuild a broad movement for environmental protections.

Thinking Globally, Acting Locally

While the scale of environmental rollbacks is unprecedented, individuals can take action to maintain a sense of agency and live in accordance with their values. People are getting involved with their local waterway or watershed organization through river clean-ups, habitat restoration and recreation.[98] Community science projects that collect and share water quality data help fill the gap as federal enforcement programs are curtailed. Being in touch with one's bioregion provides a sense of strength and motivation to protect it, and helps form a movement of water protectors who will call for stronger protections at broader scales. These efforts—local, state, and grassroots—offer a path forward even in the face of federal retrenchment.

States Step Up

States can enshrine strong water protections that supersede federal level. Both New Jersey and Michigan have state-level wetland protections that exceed federal standards that will remain in place regardless of efforts to weaken the CWA.[99] Lawyers for Good Government's "Wetlands Dashboard" compiles water protections across all 50 states.[100] Although state-by-state water laws create a patchwork of protection and will lead to lawsuits for pollution that crosses state boundaries, this is still a valuable route to pursue in the short-term.

States can also provide water protections through capital investments in clean water, land conservation, and habitat restoration. States can establish conservation funds through appropriations or voter-approved bond measures. Dedicated revenue streams, such as taxes on real estate transactions, and license plate and vehicle registrations, are the most durable method to ensure ongoing investment.[101]

Advocacy

Of course some states will need a push to strengthen their water protection laws. Groups are lobbying legislators and suing for enforcement, based on publicly-accessible information on CWA violations.[102] Water stewardship and faith-based groups are signing onto Clean Water for All's Protect Our Waters Campaign, which unites groups across the country to share information to strengthen local water protections.[103]

CONCLUSION

The results of past action show what is possible. More than 50 years after the passage of the Clean Water Act, its impact on the health of waters and communities has been dramatic. The Cuyahoga River is now on the road to recovery. In 1967, not a single fish could be found in the Cuyahoga River between Akron and Cleveland.[104] Today, more than 70 species of fish have been observed and a fish advisory on eating them has been lifted. The Potomac Conservancy recently awarded the Potomac a B on its report card of overall health, up from a D in 2011.[105]

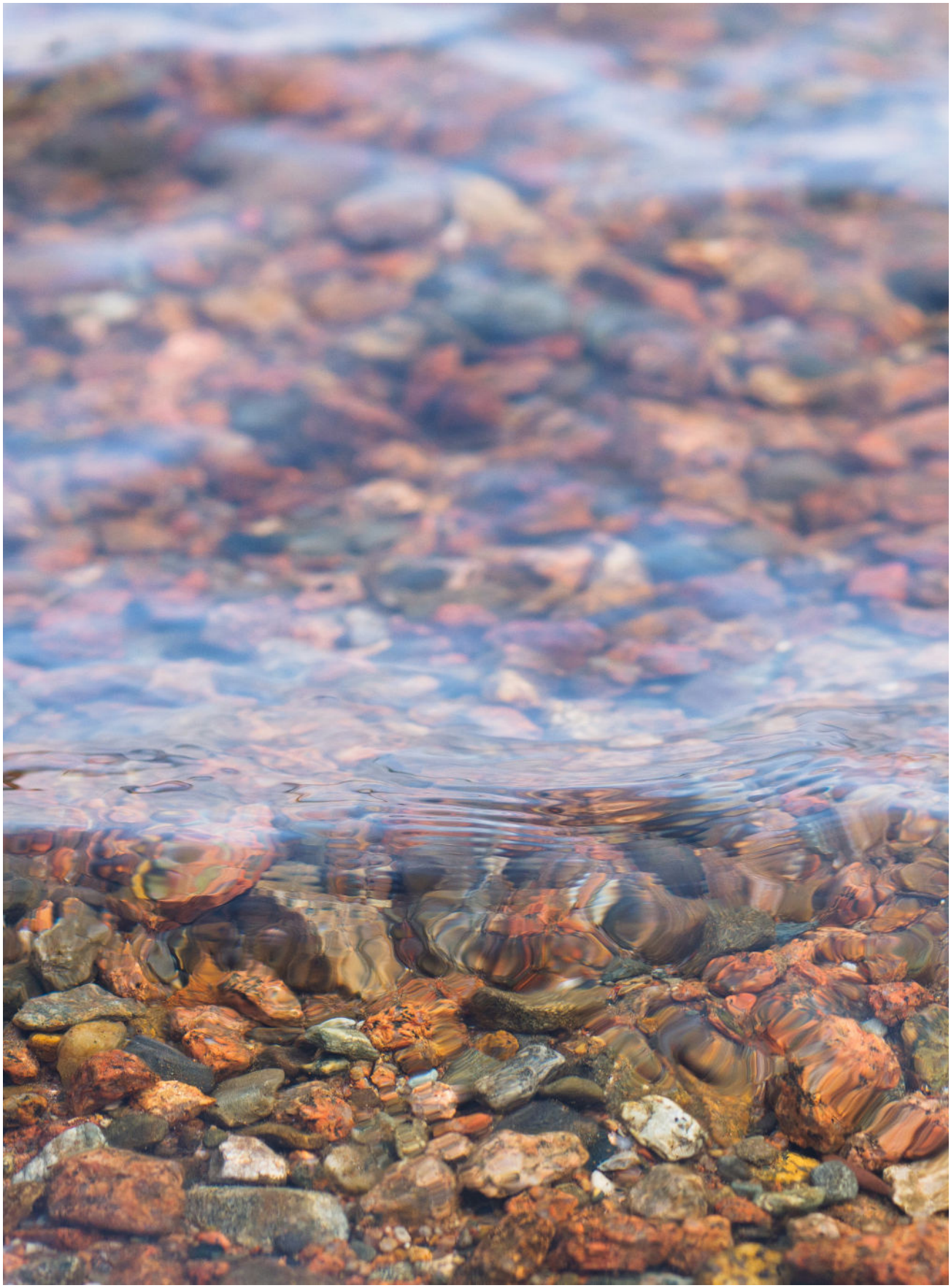
However, much work remains. A portion of the Cuyahoga River is still listed as a Great Lakes Area of Concern, although local groups believe that they will be able to remove the river from this list by 2030.[106] Meanwhile, in January 2026 an underground pipe collapsed near the Potomac River, resulting in more than 243 million gallons of untreated sewage being discharged into the river.[107]

We must regain an ambitious clean water agenda in this country. The CWA set forth sweeping goals: eliminating all pollution so that all U.S. waterways would be fishable and swimmable. More than 50 years later, we are far from achieving that goal, and the narrowing of WOTUS means that work will be harder.

Economic arguments have long been cited as the reason why we cannot protect nature and water. When President Nixon cited high costs to justify his veto, and Senator Muskie asked, "can we afford life itself?," the Senator went on to answer his own question:

> Those questions were never asked as we destroyed the waters of our Nation, and they deserve no answers as we finally move to restore and renew them.[108]

To ensure clean water for all living beings and future generations, we need to strengthen local and state protections, while looking for opportunities to rebuild the Clean Water Act as a bulwark against pollution and depletion nationwide. This will be powered by a movement of people who steward their local waterways. From the Bronx River to the Colorado River, community action is adding up to a movement of water protectors who demand strong state and federal action. In the long term, a deeper level of work is in order: a shift in worldview that recognizes nature's intrinsic value—a fundamental reimagination of how to order humanity's relationship with water and nature, the basis of all life on planet Earth. ■



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62 For space, I do not address the many comments that addressed the truncated comment period, which was only 45 days and spanned the winter holidays. Comments on this matter emanated from sources ranging from Trout Unlimited and Theodore Roosevelt Conservation Partnership to the Climate Justice Alliance and Indigenous communities, including the Keweenaw Bay Indian Community (Michigan), Leech Lake Band of Ojibwe (Minnesota), and the Pueblo of Sandia (New Mexico). (See "Comment submitted by Climate Justice Alliance (CJA)," Regulations.gov (December 12, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0182 "Comment submitted by Natural Resources Department, Keweenaw Bay Indian Community (KBIC)," Regulations.gov (December 18, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0227; Comment submitted by Leech Lake Band of Ojibwe," Regulations.gov (December 18, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0224 and "Comment submitted by Pueblo of Sandia," Regulations.gov (December 18, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0236.) Florida's St. Mary's Riverkeeper's letter noted that this abridged time period resulted in far fewer comments than in past comment periods for WOTUS rulemakings. The 2015 comment period was 90 days and generated more than a million comments, and the 2019 comment period was 60 days generating 650,000 comments. The St. Mary's Riverkeeper stated, "[g]iven this history, the current truncated comment period is unreasonable and undermines the transparency, deliberation, and public participation required under the Administrative Procedure Act," a point reinforced by the Pueblo of Sandia who added that consulting with tribal governments is an important step in the process of proposing regulations that can impact the tribe. "Updated Definition of ''Waters of the United States," Regulations.gov (November 20, 2025), https://www.regulations.gov/document/EPA-HQ-OW-2025-0322-0001/comment?filter=St.%20Mary%E2%80%99s%20Riverkeeper.

63 "Comment submitted by Restore the Mississippi River Delta Coalition," Regulations.gov (December 30, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0332

64 Mass Comment Campaign sponsoring organization unknown," Regulations.gov (January 7, 2026), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0565

65 Comment submitted by Pennsylvania Council of Trout Unlimited (TU)," Regulations.gov (January 14, 2026), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-1568

66 The Pennsylvania Chapter of Trout Unlimited also noted "Pennsylvania has 86,000 miles of flowing water. The state has documented over 16,000 miles of wild trout streams, small headwaters that have the cold, clean water native trout need to survive. Pennsylvania's larger watersheds rely on ephemeral headwater streams for about 41% to 66% percent of overall flow depending on the basin." Comment submitted by Pennsylvania Council of Trout Unlimited (TU)." Another chapter of Trout Unlimited from northern Idaho with 275 members stated that the *Sackett* decision "ignores the scientifically well established fact that subsurface flows from wetlands and riparian areas adjacent to waterways contribute to and significantly affect (usually beneficially) surface flows in waters defined as jurisdictional." See "Comment submitted by Pennsylvania Council of Trout Unlimited (TU)," Regulations.gov (January 14, 2026), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-1568

67 Mass Comment Campaign sponsored by Environment America Research & Policy Center," Regulations.gov (January 5, 2026). https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0357, and Mass Comment Campaign sponsored by Environmental Action," Regulations.gov (January 6, 2026), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0544

68 Comment submitted by Southern View Development / CTL Southern Construction," Regulations.gov (December 1, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0160 Comment submitted by Avimor Development," Regulations.gov (December 30, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0307 and "Comment submitted by Gradison Land Development, Inc.," Regulations.gov (November 26, 2025), https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0141

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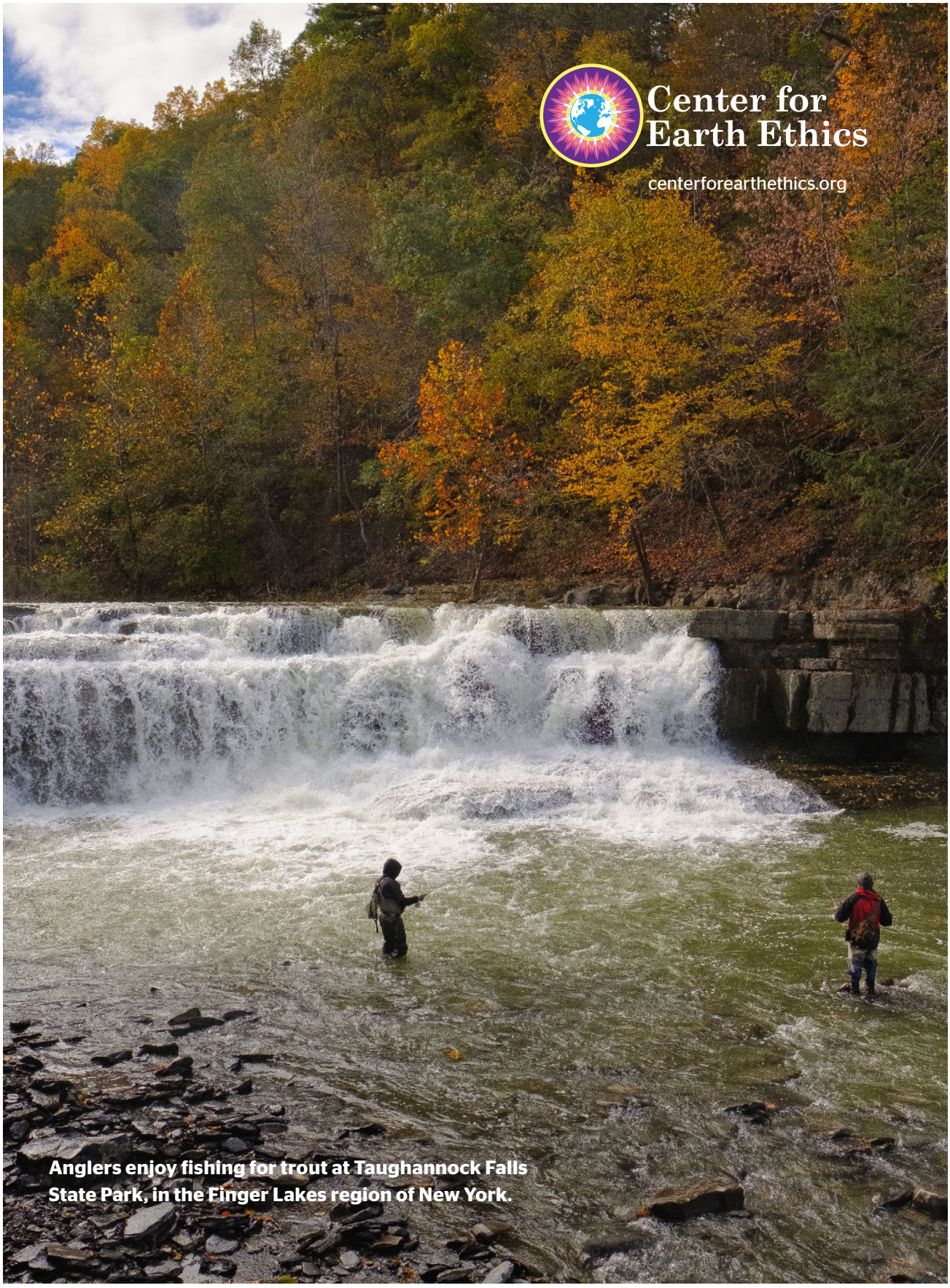

Anglers enjoy fishing for trout at Taughannock Falls State Park, in the Finger Lakes region of New York.