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USEPA Headquarters
William Jefferson Clinton Building
Mrs. Gina McCarthy, Administrator
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

State of Rhode Island
Department of Environmental Management
Ms. Janet Coit, Director RI DEM
235 Promenade Street
Providence, RI 02908

State of Connecticut
Department of Energy and Environmental Protection
Mr. Robert Klee, Commissioner
79 Elm Street
Hartford, CT 06106

U.S. Army Corps of Engineers
ROBERT J. **DESISTA** . Deputy Chief, Regulatory Division
New England District
696 Virginia Road
Concord, MA 01742-2751

Department of Consumer Protection
Mr. Jonathan Harris, Commissioner
165 Capitol Ave
Hartford, CT 06106-1630

Dear Administrator McCarthy, Director Coit, Commissioner Klee and Deputy Chief DeSista,

I would like to say first thank you in advance and please I respectfully request you to take the time to watch the video that I have enclosed to the very end. You will see a Connecticut licensed professional engineer Mr. Raymond Nelson and his client altering the course and re-

directing the flow of water, legally defined as “waters” in both states Rhode Island and Connecticut. You have to wait to the very end of the video where neither they nor I expected to run into anyone on this particular day and I believe they were as shocked as I on April 8, 2016 when they were physically “caught” in the act in the State of Rhode Island trying to alter the flow by displacing large rocks and then taking leaves and placing all around the rocks to make it look like the rocks had been there for years....my thoughts as to why Mr. Rawson and his engineer Mr. Raymond Nelson were on the Rhode Island side up by the culvert that discharges a large amount of water into this channel.

This video supports my complaint that Mr. Allan Rawson and his Connecticut Licensed Engineer were altering and re-routing the water flow of this stream channel collectively on April 8, 2016 all without proper permits from the required agencies. Mr. Allan Rawson did not utilize large equipment, nor did he direct someone else to do this illegal activity, he did it himself with who he thought to be the only witness his Connecticut Licensed Engineer Mr. Raymond Nelson and they cannot deny where I was confronted by them, or I should say I walked right into them with my video recording device and shared with the both men that I was recording their illegal acts and as you can clearly see in the video Mr. Allan Rawson simply smiles and agrees he was and had already altered the flow of this stream channel. This trail is known as the “Star Trail” and is subject of controversy before the Town of Thompson Inland Wetlands Watercourse Commission at this time.

This particular stream-channel runs intermittently I understand however it is running more than it is not. I have several videos during the last year to support this statement that can be provided to your agency in support of my position.

In doing some research this is what I have found:

Under both the Army Corps of Engineers and Environmental Protection Agency regulations, a body of water need not, itself, be navigable in order to be one of the waters of the United States under [33 U.S.C.S. § 1362\(7\)](#). Even wetlands can come within that concept.

The Clean Water Act (CWA), [33 U.S.C.S. §§ 1251-1387](#), was enacted by Congress in order to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. [33 U.S.C.S. § 1251\(a\)](#). In order to achieve its objectives, Congress outlawed the unauthorized discharge of any pollutant by any person. [33 U.S.C.S. § 1311\(a\)](#). That, in turn, means that an individual not add any pollutant to navigable waters, [33 U.S.C.S. § 1362\(12\)](#), [\(16\)](#), which means the waters of the United States, [33 U.S.C.S. § 1362\(7\)](#). As used in the CWA, "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sledge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. [33 U.S.C.S. § 1362\(6\)](#).

In *Headwaters*, the United States Court of Appeals for the Ninth Circuit answered in the affirmative the question of whether a seasonally intermittent stream which ultimately empties into a river that is a water of the United States can, itself, be a water of the United States. In *Headwaters*, the Ninth Circuit held that even if the alleged polluter succeeds, at certain times, in preventing the canals from exchanging any water with the local streams and lakes, that does not prevent the canals from being "waters of the United States" for which a permit is necessary. Even tributaries that flow intermittently are "waters of the United States." In so holding, the Ninth Circuit relied upon the following reflection by the United States Court of Appeals for the Eleventh Circuit: There is no reason to suspect that Congress intended to exclude from "waters of the United States" tributaries that flow only intermittently. Pollutants need not reach interstate bodies of water immediately or continuously in order to inflict serious environmental damage. Rather, as long as the tributary would flow into the navigable body of water during significant rainfall, it is capable of spreading environmental damage and is thus a "water of the United States" under the Clean Water Act, [33 U.S.C.S. §§ 1251-1387](#).

In *Rapanos*, the United States Supreme Court dealt with the reach of the Clean Water Act, [33 U.S.C.S. §§ 1251-1387](#), over wetlands, but in so doing addressed itself to the question of what could be a tributary. A four justice plurality ultimately declared that on its only plausible interpretation, the phrase "the waters of the United States" includes only those relatively permanent, standing or continuously flowing bodies of water forming geographic features that are described in ordinary parlance as streams, oceans, rivers, and lakes. The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. Nevertheless, that absolute sounding statement must be taken in the context of the plurality's prefatory definitional statement that by describing "waters" as "relatively permanent," it did not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought. The four justice plurality also did not necessarily exclude seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months. The four dissenting justices did agree that, common sense and common usage demonstrate that intermittent streams, like perennial streams, are still streams.

Justice Kennedy's opinion in *Rapanos* constituted the controlling rule of law and did not denigrate or even undercut the concept that a seasonal stream could be a water of the United States. Justice Kennedy stated that the dissent was correct to observe that an intermittent flow can constitute a stream, in the sense of a current or course of water or other fluid, flowing on the earth, while it is flowing. It follows that the Army Corps of Engineers can reasonably interpret the Clean Water Act, [33 U.S.C.S. §§ 1251-1387](#), to cover the paths of such impermanent streams. In fact, Justice Kennedy considered the plurality's general principle to be inadequate. As he said, the plurality's first requirement--permanent standing water or continuous flow, at least for a period of "some months"--makes little practical sense in a statute concerned with downstream water quality. The merest trickle, if continuous, would count as a "water" subject to

federal regulation, while torrents thundering at irregular intervals through otherwise dry channels would not. Justice Kennedy went on to hold that what is required is a showing of a "significant nexus" between wetlands and navigable waters, and declared that absent more specific regulations, the nexus must be established by the Corps on a case-by-case basis when it seeks to regulate wetlands based on adjacency to non-navigable tributaries.

The first thing that is apparent is that under both Corps and EPA regulations,⁷ a body of water need not, itself, be navigable in order to be one of the waters of the United States. Even wetlands can come within that concept. See, e.g., [United States v. Riverside Bayview Homes, Inc.](#), 474 U.S. 121, 131-35, 106 S. Ct. 455, 461-63, 88 L. Ed. 2d 419 (1985). The Corps has issued regulations which define waters of the United States to mean:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) All interstate waters including interstate wetlands; (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams) . . . (5) Tributaries of waters identified in paragraphs (a)(1)-(4) of this section . . . [33 C.F.R. § 328.3\(a\)](#). EPA regulations are to the same effect. See [40 C.F.R. § 122.2](#) (definition of waters of the United States). [1] [2]

I am respectfully requesting that you accept this letter with the attachments as a formal complaint against Mr. Allan Rawson for altering the flow of waters in both states Connecticut and Rhode Island violating both state and federal laws. In addition I would like the State of Connecticut and Rhode Island to investigate Mr. Raymond Nelson where he is licensed and participated in and witnessed this activity in both states he is a licensed engineer and should be held to a higher level of accountability.

Please contact me to discuss. Please notify me by *email* at the above address upon your receipt of this complaint with the video recording of Mr. Allan Rawson and his engineer Raymond Nelson violating the Clean Water Act, Wetlands Act, and other in both Connecticut and Massachusetts. I would respectfully request to be copied on any and all investigations surrounding my complaint and interoffice communications.

Very truly yours,

Robert K. Mann,
Concerned Citizen-Thompson Resident

Attachments: Video recording of illegal activity (Rawson and Nelson participating....have to watch video to the very end.....to see it was shocking)

References

[1] **JOHN A. RAPANOS, et ux., et al., Petitioners v. UNITED STATES JUNE CARABELL, et al., Petitioners v. UNITED STATES ARMY CORPS OF ENGINEERS, et al. (No. 04-1034), (No. 04-1384) SUPREME COURT OF THE UNITED STATES 547 U.S. 715; 126 S. Ct. 2208; 165 L. Ed. 2d 159; 2006 U.S. LEXIS 4887; 74 U.S.L.W. 4365; 62 ERC (BNA) 1481; 19 Fla. L. Weekly Fed. S 275 February 21, 2006, Argued**

[2] **HEADWATERS, INC., an Oregon not for profit corporation; OREGON NATURAL RESOURCES COUNCIL (ONRC) ACTION, an Oregon not for profit corporation, Plaintiffs-Appellants, v. TALENT IRRIGATION DISTRICT, an Oregon municipal corporation, Defendant-Appellee. No. 99-35373 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT 243 F.3d 526; 2001 U.S. App. LEXIS 3718; 52 ERC (BNA) 1001; 2001 Cal. Daily Op. Service 2029; 2001 Daily Journal DAR 2585; 31 ELR 20535 August 8, 2000, Argued and Submitted, Pasadena, California March 12, 2001, Filed**