



National Advocacy Center

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Submitted via email and to Docket ID No. EPA-HQ-OW-2025-0322 via regulations.gov and OW-Docket@epa.gov

Dear Ms. Jensen and Mr. Boyd,

On behalf of the National Wildlife Federation and affiliate partners from Alaska, Arkansas, California, Delaware, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Minnesota, Missouri, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, Texas, Vermont, Washington, and Wisconsin, along with our millions of members and supporters, we write in strong opposition to the Environmental Protection Agency's (EPA) and Army Corps of Engineers' (Corps) proposal to redefine the scope of waters federally covered under the Clean Water Act. While we recognize and value the need for durability and certainty in crafting a definition of "waters of the United States," this proposal will lead to greater regulatory uncertainty and confusion, as well as the unnecessary removal of protections for countless wetlands and streams. By abandoning science and common sense, this proposal recklessly targets waters upon which we all rely, potentially leaving more waters open to federally unregulated pollution and destruction than at any other time in history since the passage of the Clean Water Act in 1972.

The National Wildlife Federation represents seven million members and supporters—including millions of conservation-minded hunters, anglers, and outdoor enthusiasts—and 52 state and territorial affiliates. Conserving our Nation's wetlands, streams, and rivers for fish, wildlife, and communities is at the core of our mission.

Further Clarification of Sackett is Not Necessary

Basic federal Clean Water Act protections safeguard the health and safety of all Americans and ensure that wildlife has the water resources and aquatic habitat needed to thrive. The scope of waters receiving these protections has already been severely curtailed as a result of the 2023 Supreme Court decision in *Sackett v. EPA*, which removed protections for about two-thirds of the Nation's wetlands and up to 5 million miles of the nation's streams. This proposed rulemaking will unnecessarily erode those protections even further by imposing new and confusing standards that restrict protections in a manner not required by *Sackett* and in contravention of science and the purpose of the Clean Water Act to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. We urge the agencies to keep in place the conforming 2023 rule, which appropriately modifies the

long-standing, Reagan-era definition of waters of the United States with the findings by the Supreme Court in *Sackett v. EPA*.

Creates More Uncertainty and Harm

Not only is further clarification unnecessary, the proposed revision of the definition of "waters of the United States" will only exacerbate the harmful impacts of *Sackett* and create more regulatory confusion. By the agencies' own estimates, the combined impact of the Supreme Court's decision in *Sackett v. EPA* and this proposal would be to remove federal pollution control and destruction protections from over 80% of wetlands and millions of stream miles across the United States.¹

The proposal also introduces a new, confusing test for determining jurisdiction for streams and wetlands. The agencies propose using the concept of a "wet season" to determine jurisdiction; however, they do not define the term. The proposal would eliminate protections from ephemeral streams, which provide over 50% of the flow to our most treasured rivers used in drinking water supplies, and from some intermittent streams.² In our most arid states, up to 95% of streams are intermittent or ephemeral, and perennial streams are also shifting towards intermittent and ephemeral under current drought conditions. At least 117 million people - and probably far more - get their drinking water from sources fed by these streams.³

It is critical - and contemplated by *Sackett* - that many non-perennial streams, including intermittent streams, receive protection. As such, we strongly oppose any alternative that would limit protections to perennial streams only. However, the concept of "wet season" poses several challenges and is not required by *Sackett*. For one, there is no indication that any sort of test of periodic water presence applies to wetlands for them to have a "continuous surface connection." As to streams, information about flow rates and times is entirely missing or inadequate for many streams. Additionally, for many areas of the country, flow periods are not coterminous with a "wet season." This vague language will make it more difficult to implement and enforce the Clean Water Act.

We are already seeing the devastating impacts of prior efforts to weaken the Clean Water Act. In the last decade, we lost enough wetlands to cover the entire state of Rhode Island.⁴ This proposal threatens to continue that trend by removing federal oversight of anyone wishing to dump in, destroy, or pollute streams and wetlands.

Fails to Account for Impact on Communities, Wildlife, and the Economy

The proposal fails to quantify any of the potential impacts from this rule of losing protections for countless waters. The costs of these proposed rollbacks will be borne by the public in the form of less safe drinking water, increased flooding, increased wildfire risk, threats to core economic activities that provide jobs and stability to communities, and degraded and destroyed habitat for fish and wildlife, among other harms. Increased pollution in our waters will increase water treatment costs as drinking water suppliers that rely on surface water will have to pay more to clean incoming water to meet the needs of drinking water standards. This cost will ultimately be borne by ratepayers, many of whom are already struggling to pay their utility bills.

The value of wetlands and small streams to clean water is indisputable. Wetlands filter the water that eventually flows from our taps, provide immense flood storage and retention, recharge groundwater and streams during dry times, and provide valuable habitat for wildlife, among many other functions. The EPA itself equates the productivity of wetlands to that of coral reefs and rainforests.⁵ Wetlands denied protections by the proposal include seasonal wetlands like prairie potholes. Potholes provide important breeding and migration habitat for millions of waterfowl each year, including mallards, pintails, redheads, blue-winged teal, and snow geese. During wet years, 70% or more of North America's waterfowl production originates in this area. America's 47 million hunters and anglers depend on healthy wetlands, even so-called "isolated" wetlands, to pursue conservation, angling, and hunting traditions.

¹ https://www.epa.gov/system/files/documents/2025-11/11132.1-01-ow_wotus_nprm_ria_20251110_508.pdf

² <https://www.science.org/doi/10.1126/science.adg9430>

³ https://www.epa.gov/sites/default/files/2015-04/documents/2009_12_28_wetlands_science_surface_drinking_water_surface_drinking_water_study_summary.pdf

⁴ <https://www.fws.gov/project/2019-wetlands-status-and-trends-report>

⁵ <https://www.epa.gov/wetlands/why-are-wetlands-important>

Clean water fuels economies – communities and businesses cannot function without it, and decades have shown that economic growth is not only compatible with, but benefits from, these protections. The streams impacted sustain prized sport fisheries like trout and salmon, by providing important nursery habitat for spawning fish and delivering cool, clean water downstream. The economic benefits of hunting, fishing, and outdoor recreation – worth \$1.2 trillion annually – are especially pronounced in rural areas, where jobs and money brought in during fishing and hunting seasons can be enough to keep small businesses operational for the entire year.⁶

Abandons Cooperative Federalism:

The Clean Water Act is built on a strong model of cooperative federalism, but this model requires a robust and protective federal role. Each waterbody that is not federally protected must be either protected by states or Tribes or lose basic pollution and destruction protection. Many states simply do not have protections for at-risk waters – meaning that the waters are effectively left open for unregulated destruction or dumping without federal safeguards. Other states have protections but struggle with the resources to protect all their waters. And even states that do have strong protections and adequate resources are at the mercy of upstream states that may not. The proposed rule further abandons cooperative federalism by eliminating “interstate waters” as a category for protection. This is not required by Sackett yet ensures protections for many streams, lakes, and rivers that cross state lines.

Conclusion:

The bipartisan Clean Water Act was premised on science and is one of the greatest success stories of the conservation movement. By making clear that the jurisdiction of the Act “cannot be drawn in response to ecological concerns,” this proposal abandons the science and ecology that have been the foundation of decades of progress to protect and restore waters and wetlands that half a century ago were so polluted they caught fire.

Our groups oppose efforts to dramatically reduce the number and extent of streams, wetlands, and other waters subject to the pollution prevention, control, and cleanup requirements of the Clean Water Act. We hope the EPA and the Corps will take seriously their obligation under the law to protect waters, communities, and public health and maintain basic Clean Water Act protections for as many waters as the law allows.

We appreciate the opportunity to weigh in on this important matter.

Sincerely,

Arkansas Wildlife Federation
Conservation Coalition of Oklahoma
Conservation Coalition of Oklahoma
Conservation Federation of Missouri
Conservation Northwest
Delaware Nature Society
Environmental Advocates New York
Environmental League of Massachusetts
Iowa Wildlife Federation
Kansas Wildlife Federation
Kentucky Waterways Alliance
Louisiana Wildlife Federation
Minnesota Wildlife Federation
National Aquarium
National Wildlife Federation
Natural Resources Council of Maine
New Hampshire Audubon
North Dakota Wildlife Federation
PennFuture
Planning and Conservation League

⁶ The Bureau of Economic Analysis. 2023. <https://recreationroundtable.org/resources/national-recreation-data/>

Prairie Rivers Network
Southeast Alaska Conservation Council
Texas Conservation Alliance
Vermont Natural Resources Council
Wisconsin Wildlife Federation

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