



June 2, 2025

Stacey Jensen  
Director  
Office of Water  
Oceans, Wetlands, and Communities Division  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Milton Boyd  
Acting Director  
Office of the Assistant Secretary of the Army  
for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310

Re: Federalism Consultation on Revised Definition of Waters of the United States

*Submitted via email to CWAwotus@epa.gov*

Dear Director Jensen and Acting Director Boyd:

The Association of Metropolitan Water Agencies (AMWA) is an organization representing the largest publicly owned drinking water utilities in the United States. AMWA appreciates the opportunity to comment on the Environmental Protection Agency’s (EPA) and the U.S. Army Corps of Engineers’ (USACE) joint Federalism Consultation for Revising the Definition of “Waters of the United States” (WOTUS). Fundamentally, any rulemaking to define WOTUS under the Clean Water Act (CWA) must explicitly consider the implications for drinking water sources. For the past several years, the association has consistently engaged with both agencies regarding WOTUS as we seek to develop a clear, implementable rule based on sound science.

It is paramount that the agencies provide continuity and predictability with a rule of this magnitude. A new definition for WOTUS will significantly impact the CWA and, by association, the Safe Drinking Water Act. This rule will be a pillar for determining regulatory and enforcement actions, and it is essential that clear and consistent mandates govern the protection of the nation’s drinking water sources. The recent Supreme Court ruling on *Sackett v. Environmental Protection Agency* (2023) (*Sackett*) provides EPA and USACE with the opportunity to ensure that the upcoming rule is legally defensible and will endure to provide the public with regulatory stability.

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AMWA supports streamlining the regulatory processes of applying for and gaining approval for projects that impact WOTUS. Policies and procedures should ensure that public time and funds are expended efficiently to meet public water supply needs. However, simplifying the regulatory process should not come at the cost of compromising the quality of the nation's source waters. With this in mind, AMWA encourages both EPA and USACE to weigh this balance carefully when defining which waters are "relatively permanent" or have "continuous surface connection." AMWA is pleased to submit the following comments for consideration.

### *Source Water Protection*

Protecting the source waters that drinking water utilities rely on for supply is a foremost concern for AMWA's members. Drinking water utilities' top priority is protecting public health, and a utility's ability to treat source waters is key to providing safe and reliable drinking water. It is essential that when developing a revised WOTUS rule, EPA and USACE are mindful of the rule's impact on source waters, particularly those used for drinking water, and as a result, finalize definitions of "relatively permanent" and "continuous surface connection" that are protective of these vital resources.

USGS estimates that surface water sources provided 61 percent of the total water withdrawn for public supply use in 2015<sup>1</sup>. These water sources are vulnerable to potential chemical and biological contamination. AMWA supports the protection, preservation, and restoration of the nation's surface water resources through comprehensive pollution control measures. It is generally most effective to control pollutants at their source, where they are highly concentrated, rather than remove them at the consumer's expense after entering a water body or supply source. This proactive approach supports the "polluter pays" principle and helps ensure that those who pollute our natural resources are not allowed to pass the cost of cleanup onto public drinking water utilities and their customers.

Wetlands have been a topic of interest in light of the *Sackett* decision. Wetlands are inseparably related to the supply of safe, high-quality drinking water, as they provide essential functions in local and regional hydrologic cycles that filter sediment, remove pollutants, recharge aquifers, control flooding, and reduce erosion. Water intake structures, reservoirs, and other facilities must often, by their nature, be located in or utilize wetland areas. Such use is appropriate with proper mitigation since water supplies provide essential public health, safety, and economic benefits. AMWA encourages both EPA and the USACE to consider these points when determining which wetlands should be considered jurisdictional under the new rule.

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<sup>1</sup> Dieter, C.A., Maupin, M.A., Caldwell, R.R., Harris, M.A., Ivahnenko, T.I., Lovelace, J.K., Barber, N.L., and Linsey, K.S., 2018, Estimated use of water in the United States in 2015: U.S. Geological Survey Circular 1441. Retrieved from <https://pubs.usgs.gov/circ/1441/circ1441.pdf>

### *Clear Exemptions for Water Infrastructure*

Any water infrastructure exclusion in a WOTUS rule should clearly encompass the full breadth of water utility operations and infrastructure to prevent confusion about what – if any – components are implicated under the rule, and it should be made clear that water supply infrastructure is not captured by the definition of a “jurisdictional ditch.” Specifically, routine operation and maintenance of drinking water infrastructure such as aqueducts, canals, impoundments, and treatment facilities should not be subject to regulation under a WOTUS rule, as these are critical for transporting and storing water to be used for drinking water, processing wastewater, and managing stormwater.

Current and past practice under the CWA has excluded water infrastructure components from jurisdiction under WOTUS once they are constructed. AMWA does not believe that it was Congress’ intent, nor that of EPA or USACE, to regulate these components as WOTUS under the CWA. AMWA stresses the importance that this historic regulatory standard be maintained and for these exemptions to be made explicit within the final rulemaking

Water infrastructure encompasses a broad range of structures, facilities, and activities, including, but not limited to green infrastructure (e.g., infiltration trenches, swales, artificial wetlands, etc.), ground-water recharge basins and percolation ponds, constructed wetlands, ground-water wells, water recycling facilities, and stormwater retention basins. Any exclusions for water infrastructure should be comprehensive and explicitly stated in order to prevent confusion as to what components are included.

EPA and USACE should also ensure that the new rule makes explicitly clear that transfers of water from one water body to another solely for the purposes of water supply and without intervening municipal, industrial, or agricultural use are excluded from jurisdiction under WOTUS. These transfers are an essential element of water resource management for local utilities. Therefore, it is necessary to make this exclusion apparent within any WOTUS rule so that EPA, USACE, and the public may avoid confusion as this practice is already in place within the National Pollutant Discharge Elimination System Water Transfers Rule. These exclusions will not compromise water quality but will ensure that public drinking water systems will not experience increased costs for permitting and compliance which by proxy avoids increasing costs to the consumer.

### *Conclusion*

The CWA plays a critical role in protecting the nation’s surface waters, which serve as the primary drinking water supply for millions of Americans. Water suppliers need strong protections against pollution and contamination events that can pose severe health risks to drinking water consumers. At the same time, CWA provisions should not interfere with the provision of the nation’s drinking water and water utility operations required under the SDWA. The balance between protecting water sources and allowing the efficient building, expansion, and operation of water infrastructure are key requirements for a final, implementable WOTUS rule.

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AMWA continues to support efforts to clarify the definition of WOTUS and its applicability under the CWA. The recommendations discussed in these comments are essential to ensure the most effective and efficient operations of critical drinking water infrastructure. AMWA urges EPA and USACE to take these additional steps to assure sound implementation of any final rule by ensuring that it is legally defensible and durable. A clear, final WOTUS rule, can effectively protect the environment, provide essential protections to the nation's drinking water supply, and assure the proper function of public water infrastructure.

AMWA sincerely appreciates the opportunity to comment. If you have any questions, please contact Erin Phillips ([phillips@amwa.net](mailto:phillips@amwa.net)), AMWA's Government Affairs Associate.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Dobbins". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Tom Dobbins  
Chief Executive Officer