



January 5, 2026

The Honorable Lee Zeldin  
Administrator  
U.S. Environmental Protection Agency (EPA)  
Office of Water, Oceans, Wetlands, and  
Communities Division  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

The Honorable Adam Telle  
Assistant Secretary  
U.S. Department of the Army  
Office of the Assistant Secretary of the  
Army for Civil Works  
108 Army Pentagon  
Washington, DC 20310

*Submitted electronically*

**Re: EPA-HQ-OW-2025-0322 Updated Definition of “Waters of the United States”**

Dear Administrator Zeldin and Assistant Secretary Telle:

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on the Environmental Protection Agency’s (EPA) and the U.S. Army Corps of Engineers’ (USACE) proposed rule revising the regulations defining the scope of “Waters of the U.S.” (WOTUS) subject to federal regulation under the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA). AMWA is an organization representing the largest publicly owned drinking water systems in the United States, and its membership serves more than 160 million people.

AMWA members rely on the CWA to protect watersheds and maintain high quality source water. 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. AMWA is pleased to submit the following comments for consideration.

*Regulatory Stability*

The definition of WOTUS has been subject to debate and revision for the past two decades. The recent Supreme Court ruling in the case of *Sackett v. Environmental Protection Agency* (2023) (*Sackett*) provides EPA and USACE with the opportunity to enhance regulatory stability through ensuring that guidance is legally defensible

**BOARD OF DIRECTORS**

**PRESIDENT**

Jeffrey Szabo  
Suffolk County Water  
Authority

Julie Anderson  
Denver Water

Shane Chapman  
Metropolitan Water District of  
Southern California

Rachel Murphy  
Contra Costa Water District

Kenneth Waldroup  
Cape Fear Public Utility  
Authority

**VICE PRESIDENT**

Calvin Farr  
Prince William Water

Verna Arnette  
Beaufort-Jasper Water & Sewer  
Authority

Alex Chen  
Seattle Public Utilities

Craig Palmer  
Erie Water Works

**TREASURER**

Lindsey Rechtin  
Northern Kentucky Water District

Cathy Bailey  
Greater Cincinnati Water Works

Randy E. Hayman  
Sewerage and Water Board of  
New Orleans

Will Pickering  
Pittsburgh Water

**SECRETARY**

Chris Browning  
Oklahoma City Water Utilities  
Trust

Tad Bohannon  
Central Arkansas Water

Matthew Jalbert  
Trinity River Authority of Texas

Shaun Pietig  
WaterOne

**EMERITUS**

John P. Sullivan, Jr.  
Boston Water and Sewer  
Commission

Jeff Brown  
Onondaga County Water  
Authority

Yann Le Gouellec  
Newport News Waterworks

Todd Swingle  
Toho Water

**CHIEF EXECUTIVE OFFICER**

Tom Dobbins

Spencer Bruce  
Louisville Water Company

Angela Licata  
New York City Department of  
Environmental Protection

Jeffrey Thompson  
Central Alabama Water

and enduring. AMWA supports EPA clearly and definitively providing definitions for “relatively permanent,” “continuous surface connection,” and other language outlined within the *Sackett* decision.

The agencies’ proposed rule defines “relatively permanent waters” as those that are standing or continuously flowing year-round or at least during the “wet season.” This rulemaking is the first time the “wet season” terminology has been used in a statutory guidance from EPA, and future clarification is needed to determine the usefulness of the term for relevant stakeholders. AMWA is concerned that the introduction of this new terminology could lead to inconsistent interpretation. Specifically, there is no consensus definition of “wet season” that scientists and practitioners using established hydrologic and earth science regularly reference. For example, under the Köppen climate classification<sup>1</sup>, a commonly used system that divides earth into five major climate regions by average temperature and precipitation, “wet seasons” occur only in tropical regions. Across the United States, only South Florida, Hawaii, Puerto Rico, and the remainder of the U.S. territories are tropical regions; therefore, using this common classification system, the agencies’ proposed use of the term “wet season” would either exclude all other regions of the country from having wet seasons, or introduce broad uncertainty across the vast major remainder of the nation as to what constitutes a wet season.

In the proposed rule, the agencies state their intention to use metrics from the Web-based Water-Budget Interactive Modeling Program (WebWIMP) as a primary source, but do not give reasoning for why this tool was selected or how the metrics from this tool should be used and referenced by stakeholders. While AMWA recognizes the agencies’ intent to provide a definition of WOTUS that can be flexible to the various regional environments across the United States and its territories, the use of terms like “wet season” will require robust and clear definitions and guidance that the agencies have yet to provide.

This term also introduces new vulnerabilities in the legal defensibility of the rule, which could lead to further deliberation and the need for prolonged back and forth in the future. If EPA and USACE continue to use this terminology as the foundation for their interpretation of *Sackett*, the agencies should clearly outline the climatic or hydrological definitions, models, or tools they plan to reference in order to provide better clarity.

### *Source Water Protection*

Protecting the source waters that drinking water systems rely on for supply is a foremost concern for AMWA’s members. Drinking water systems’ top priority is protecting public health, and a water system’s ability to access pure, high-quality source waters is a key first step to providing safe and reliable drinking water. Furthermore, the cost of water treatment is also greatly impacted by overall source water quality. For these reasons, it’s essential that EPA and USACE are mindful of the definition’s impact on source water quality and incorporate these considerations into their cost benefit analyses. AMWA recommends consulting with water systems that will be impacted by the new rule to fully account for associated costs and benefits when determining the impact of new guidance.

---

<sup>1</sup> Peel, M. C., Finlayson, B. L., & McMahon, T. A. (2007). Updated world map of the Köppen-Geiger climate classification. *Hydrology and earth system sciences*, 11(5), 1633-1644.

USGS estimates that surface water sources provided 61 percent of the total water withdrawn for public supply use in 2015<sup>2</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 systems and their customers.

In particular, the *Sackett* ruling has greatly narrowed which wetlands will fall under federal CWA jurisdiction. 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. As WOTUS definitions are finalized, AMWA encourages EPA and the USACE to consider the full impact of their actions when determining which wetlands should be considered jurisdictional under the new rule.

Finally, the new rule outlines a sweeping exclusion for all groundwater. AMWA agrees that the groundwater exclusion is consistent with *Sackett's* requirement of a "continuous surface connection" in order to trigger federal jurisdiction. Despite this, AMWA encourages EPA and USACE to continue to prioritize the care and preservation of groundwater as is permitted within the breadth of their responsibilities. Groundwater sources are crucial for water systems that lack access to adequate surface water reservoirs, and groundwater protections under the Safe Drinking Water Act<sup>3</sup> are largely focused on underground injection control programs rather than comprehensive protections.

#### *Clear Exemptions for Water Infrastructure*

EPA's newest guidance provides further clarity on exclusions related to stormwater systems and wastewater reuse facilities but does not provide any specific exemptions for drinking water facilities. AMWA continues to encourage the agencies to provide a specific water infrastructure exclusion that clearly encompasses the full breadth of water system operations and infrastructure, 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.

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

---

<sup>2</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.

<https://pubs.usgs.gov/circ/1441/circ1441.pdf>

<sup>3</sup> 42 U.S.C. § 300h. (1974). <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter6A-subchapter12&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGl0bGU0Mi1zZW50aW9uMzAwZg%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim.>

historic regulatory standard be maintained and for these exemptions to be made more explicit within the final rulemaking.

Finally, AMWA supports the opinion 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 should be excluded from jurisdiction under WOTUS. These transfers are an essential element of water resource management for local utilities, and this practice is already in place within the National Pollutant Discharge Elimination System Water Transfers Rule<sup>4</sup>. 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 enabling the efficient building, expansion, and operation of water infrastructure are key requirements for a durable and implementable WOTUS rule.

AMWA appreciates that the proposed rule will bring additional clarity to 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. 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), AMWA's Government Affairs Associate.

Sincerely,



Tom Dobbins  
Chief Executive Officer

cc: Stacey Jensen, OWOW  
Milton Boyd, ASA(CW)  
Jennifer McClain, OGWDW  
Andrew Sawyers, OWM

---

<sup>4</sup> 40 C.F.R. § 122.3(i) (2024). <https://www.ecfr.gov/current/title-40/section-122.3>.