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October 9, 2026

Ms. Stacey Jensen
Office of Water
Oceans, Wetlands, and Communities Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Mr. Milton Boyd
Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310-0104

Re: Updated Definition of “Waters of the United States,” Supplemental Notice of Proposed Rulemaking, Docket ID No. EPA-HQ-OW-2025-0322

Dear Ms. Jensen and Mr. Boyd:

On behalf of the members of the Association of Clean Water Administrators (ACWA), we appreciate the opportunity to comment on the U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army, Corps of Engineers’ (USACE) Supplemental Notice of Proposed Rulemaking (SNPRM) concerning the “Updated Definition of ‘Waters of the United States’” under the federal Clean Water Act (CWA).

ACWA is the independent, nonpartisan national organization of state, interstate, and territorial water program managers who serve as co-regulators with EPA and USACE in implementing the CWA. States have a unique and substantial interest in any federal regulatory updates or policy positions that define terms central to CWA jurisdiction. The definition of “waters of the United States” (WOTUS)—long the subject of litigation, federal rulemakings, and judicial interpretation—establishes the outer bounds of federal authority and directly affects permitting, compliance, restoration, and infrastructure planning functions carried out by state surface water programs. A durable, clear, and workable WOTUS definition is essential to the consistent, lawful, and efficient administration of clean water programs nationwide.

ACWA appreciates the agencies’ continued efforts to develop a durable definition grounded in the Supreme Court’s decision in *Sackett v. EPA* and

structured to promote transparency, predictability, and consistency in jurisdictional determinations.

The supplemental proposal presents alternatives that could significantly change the scope of federal jurisdiction compared with the November 2025 proposal (as well as with currently effective regulations and guidance). In particular, the SNPRM seeks comment on (1) a definition of “relatively permanent” that would generally limit jurisdiction to perennial waters, including some waters that flow continuously but are dry for up to 30 consecutive days, and (2) a definition of “continuous surface connection” that would generally require perennial surface water in an adjacent wetland. These alternatives have significant implications for state CWA programs.

In response to the SNPRM, ACWA provides the agencies with the following comments and recommendations:

1. “Relatively Permanent” and Perennial Waters

The November 2025 proposed rule defined “relatively permanent” waters as those that are standing or continuously flowing year-round or, at minimum, during a predictable “wet season.” ACWA supported including a definition focused on waters that are standing or continuously flowing year-round or during extended periods of predictable, continuous surface hydrology occurring in the same geographic feature year after year in response to the wet season.

The SNPRM proposes an alternative approach under which relatively permanent waters would generally be limited to “perennial” waters—waters with standing or continuously flowing surface water year-round during ordinary conditions. The supplemental proposal would allow certain temporary interruptions in surface water, including drought and other typical conditions that may result in interruption to limit federal jurisdiction and thereby eliminate federal CWA protections.

A national perennial-water standard should account for the significant geographic, geologic, climatic, and hydrologic diversity among states, particularly the markedly different hydrologic conditions found in the eastern and western United States. ACWA strongly encourages the agencies to carefully consider all state-specific feedback and gain insight into a definition of “perennial” that will be both clear and durable across all states while complying with legally binding precedent.

States face distinct circumstances in implementing CWA programs and protecting the Nation’s waters, and a uniform perennial-flow requirement would have substantially different jurisdictional consequences across regions. This concern is especially pronounced in the arid and semi-arid West, where intermittent and seasonally flowing streams may constitute important components of larger hydrologic systems despite not

maintaining year-round surface flow. As a result, the proposed approach would produce a significant geographic disparity in federal CWA coverage, retaining jurisdiction over a greater proportion of surface waters in wetter eastern states while shifting greater responsibility for protecting non-perennial waters to western states under state law. As ACWA has previously emphasized, the agencies should craft a definition that provides regulatory clarity while retaining sufficient flexibility to account for regional hydrologic differences and the diverse circumstances facing state CWA programs.

ACWA Recommendation: ACWA recommends that the agencies carefully evaluate all state-specific feedback regarding the proposal to limit “relatively permanent” waters to perennial waters and how the proposed definition accounts for the substantial regional variation in hydrologic conditions across the country. The agencies should identify and prioritize the legal and scientific criteria most relevant to this analysis, including criteria the agencies used to identify the proposed allowance for temporary interruptions in perennial flow, and share these criteria with states for discussion prior to finalizing the proposed rule. Such engagement will help ensure the definition is implementable and scientifically defensible.

ACWA further recommends that the agencies provide additional rationale regarding the proposed allowance for temporary interruptions in perennial flow. Any national threshold must be grounded in science and should account for differences in regional hydrologic conditions. Clear expectations will support consistency across regions and between state and federal regulators. Absent such justification, the proposed thresholds risks being viewed as arbitrary rather than the product of reasoned, evidence-based decision-making.

2. “Continuous Surface Connection” and Adjacent Wetlands

The SNPRM also proposes an alternative definition of “continuous surface connection” for adjacent wetlands. Under the supplemental proposal, a wetland generally would need to contain perennial surface water continuously connected to surface water in a jurisdictional water such that it is difficult to determine where the jurisdictional water ends and the wetland begins.

ACWA recognizes the agencies’ obligation to implement the Supreme Court’s decision in *Sackett*. At the same time, ACWA encourages the agencies to carefully consider the practical effects of requiring perennial surface water within a wetland as a condition of federal jurisdiction. The SNPRM acknowledges that this approach would result in a significant reduction in the number of wetlands subject to federal jurisdiction.

As ACWA has previously stated, the agencies should acknowledge and respect the geographic, geologic, climatic, and hydrologic diversity among states and craft a definition that provides clarity as well as flexibility for state implementers. Wetland

hydrology varies considerably across regions, and the agencies should carefully consider state-specific feedback about what wetland characteristics indicate a wetland's direct physical relationship with otherwise jurisdictional waters. All absence of year-round standing or flowing surface water may not always mean that a wetland lacks a direct physical relationship with jurisdictional water.

ACWA Recommendation: The agencies should ensure that the final definition of "continuous surface connection" is consistent with *Sackett* while remaining technically workable and identifying scientific factors considered in the definition. ACWA appreciates that the agencies are re-engaging with states to obtain comments on the supplemental rulemaking in response to comments received on the original rulemaking, and ACWA recommends that the agencies work extensively with individual states to better understand how a perennial-surface-water requirement would operate under differing regional hydrologic conditions and how it may impact states' ability to protect the Nation's waters.

The agencies should also clearly identify the hydrologic indicators, field observations, mapping resources, and other information that may be used to demonstrate a continuous surface connection, particularly where site conditions vary seasonally or reliable historical information is unavailable. ACWA encourages that the agencies engage early with states when developing any implementation guidance for any final rule.

3. Implications for State CWA Programs and Resources

Changes to the WOTUS definition will have significant implications for state program workloads and budgets. A narrower federal definition may shift permitting, monitoring, enforcement, restoration, and other water-quality protection responsibilities to state programs. While reductions in federal jurisdiction do not restrict a state's independent authority to regulate waters under state law, states differ significantly in their statutory authorities, regulatory programs, staffing, funding, and other resources available to protect waters that fall outside federal jurisdiction. Accordingly, a reduction in federal jurisdiction does not simply eliminate regulatory responsibilities; in many circumstances, it may transfer additional responsibilities to state agencies.

ACWA has consistently emphasized that when passing the CWA, Congress deliberately established a balance of powers and responsibilities between states and the federal government according to the principles of cooperative federalism. The agencies must adhere to this Congressionally designated balance of state-federal powers and responsibilities in CWA rulemaking.

ACWA Recommendation: ACWA encourages the agencies to fully assess the impacts that the supplemental alternatives would have on state CWA programs, including changes in state permitting, monitoring, compliance, enforcement,

restoration, and administrative workloads. This assessment should include direct engagement with individual states, particularly those where the proposed perennial-water standards would result in significant changes in federal jurisdiction.

ACWA also encourages the agencies to identify and pursue adequate funding mechanisms—through both existing and new sources—to support states as they implement the finalized rule, especially where reductions in federal jurisdiction may shift permitting, monitoring, or enforcement responsibilities to state programs. Federal funding to states should reflect necessary levels to continue states’ ability to effectively and efficiently administer CWA programs and protect our Nation’s water resources.

4. Implementation, Guidance, and Technical Assistance

States will require timely, coordinated implementation support in response to any new WOTUS definition. This need is particularly important if the final rule adopts new concepts such as “perennial” waters or quantitative limits on temporary interruptions in surface flow.

ACWA has previously recommended that the agencies provide states, well in advance, with technical assistance, tools, and trainings to assist with implementation of any revised definition. Meaningful collaboration includes early engagement, reviewing draft products, identifying intended and unintended consequences, considering implementation obstacles and challenges, discussing administrative resource implications, and supporting states with appropriate training, tools, and support materials.

ACWA Recommendation: ACWA encourages the agencies to work closely with states to develop:

- Technical guidance, field methods, and decision tools for evaluating perennial waters and continuous surface connections;
- Training for state and federal field staff;
- Clear standards regarding the data and information sufficient to support jurisdictional determinations; and
- Clear processes for resolving jurisdictional questions early and consistently.

Early collaboration will help prevent inconsistent interpretations and reduce regulatory uncertainty. The agencies should also consider a delayed effective date, dependent on the significance and scope of the final rule, to give state partners

adequate time to revise state regulations and/or develop new state policies necessary to address changes in federal jurisdiction.

Conclusion

ACWA appreciates the agencies' continued engagement with state CWA co-regulators throughout the development of the WOTUS rule. ACWA supports the development of a durable, clear, and workable definition grounded in *Sackett* and other binding legal precedent and structured to promote transparency, predictability, and consistency in jurisdictional determinations.

As the agencies evaluate the supplemental alternatives, ACWA encourages them to comply with binding legal precedent while recognizing the geographic, geologic, and hydrologic diversity among states; ensuring that jurisdictional standards are technically workable and scientifically defensible; and carefully evaluating the impacts that reductions in federal jurisdiction may have on state CWA programs and resources. The agencies should continue to provide states with early, continuous, and meaningful opportunities for dialogue and input as the final rule is developed.

ACWA's comment development process seeks to capture the diverse perspectives of states, territories, and interstates that implement CWA programs. However, ACWA also recognizes that state perspectives on defining WOTUS are highly varied. The agencies should give substantial consideration to comments submitted directly by individual state, interstate, and territorial agencies.

We appreciate the opportunity to provide these recommendations and look forward to continued collaboration as the rulemaking proceeds. Please contact ACWA Executive Director Julia Anastasio at janastasio@acwa-us.org or (202) 756-0600 with any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Feltis Cortese".

Jennifer Feltis Cortese
ACWA President