



# Environmental Council of the States

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1200 Pennsylvania Ave NW  
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Milton Boyd  
Office of the Assistant Secretary of the Army for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310-0104

Via email and [regulations.gov](https://www.regulations.gov): EPA-HQ-OW-2025-0322

Re: Comments on the U.S. EPA and U.S. Army Corps of Engineers Proposed Updated Definition of Waters of the U.S.

Dear Director Jensen and Assistant Counsel Boyd,

Members of the Environmental Council of the States (ECOS), the national nonprofit, nonpartisan association of state environmental agency leaders, thank you for the opportunity to comment on the proposed Updated Definition of Waters of the U.S. (WOTUS). As co-regulators and key implementers of the Clean Water Act (CWA), states are eager for clarity on what constitutes federal jurisdictional waters. The WOTUS definition is of significant interest to states as changing jurisdictional scope can have a significant impact on many state-administered surface water, wetland, and watershed stewardship programs. The proposed rule seeks to provide legal certainty and predictability. Under cooperative federalism, state co-regulators need early, meaningful, and substantial involvement in the development and implementation of environmental rules. ECOS appreciates federal engagement with our members throughout this process. The following comments address state concerns related to implementation, effects on state programs, and tools, funding, and other support for states protecting our nation's waters.

While many terms in the proposed rule have been defined to increase clarity, some still appear likely to create implementation challenges. For example, the proposed rule defines "relatively permanent" and "continuous surface connection" based on conditions during the "wet season." While the proposed use of "wet season" acknowledges the importance of regional variability and is conceptually sound, determining what constitutes "wet season" may present challenges in practice, particularly in atypical years or in regions with inconsistent seasonal patterns. Without published, regionally-specific indicators to rely on, a typical one-day site delineation conducted outside the "wet season" might need to be

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extended for long-term observations or monitoring to definitively establish whether a stream is "relatively permanent" and if a wetland has a continuous surface connection. This will increase the time and resources required to reach a determination, ultimately adding delay and expense to every project requiring a jurisdictional determination.

Throughout changing WOTUS definitions, states have sought consistency in implementation of the rule across different Corps of Engineers districts. As states plan for the implementation of a new definition, our members are also interested in learning if U.S. EPA and the Corps of Engineers expect all aquatic resources to be mapped and included in a delineation report. This is certainly an opportunity for federal agencies, states, academic institutions, and others to deploy advanced mapping tools using information technology, including AI, to identify wetland and stream resources for potential conservation and stewardship.

In addition to the need for a clear jurisdictional rule and tools and guidance to implement it, ECOS asks that the federal agencies not lose sight of the fact that although certain waters may no longer be jurisdictional under the federal CWA, consistent with the U.S. Supreme Court's *Sackett v. EPA* decision, many of those waters and wetlands still play an incredibly valuable role in the environment, economy, and public health and safety of our states. Those essential waters and wetlands include ground water and subsurface flows in many state laws and programs. The shift in responsibility for many waters to states will substantially increase state workloads at a time when federal funding for delegated CWA programs—such as Sections 106 (water quality) and 319 (nonpoint source management)—has remained essentially flat for decades and, when adjusted for inflation, represents a decline in real support even as program responsibilities have grown. The need for federal funding and support, under EPA, Corps of Engineers, Interior, USDA, NOAA, and other agencies for the goals of the CWA will endure.

As stated in [ECOS Resolution 8-3, State Assumption of Clean Water Act Section 404 Permit Program](#), ECOS has consistently advocated for adequate funding for states that assume the Section 404 permitting program, and emphasized the importance of the option for the existing U.S. EPA wetland grant program to support both development and implementation activities. While the Wetland Program Development Grants and 319 Nonpoint Source Grant Program provide funding for states to build capacity to protect wetlands and to reduce nonpoint source pollution, other sources of federal and nonfederal funding will be needed for states to carry out water protection and stewardship programs because of the increased responsibilities. This federal funding need certainly includes federal capitalization grants which remain critical for the continued success of State Revolving Funds under the CWA and the Safe Drinking Water Act.

In addition to the process of implementing a new definition, under this proposed rule some states will be faced with the need to expand state protections and stewardship of streams and wetlands no longer covered at the federal level to protect downstream water quality, manage flooding risks, and preserve water resources critical to state economies. The agencies should work with states to look for ways this rule and other policy mechanisms can further incentivize voluntary wetland stewardship, protection, restoration, and conservation, whether that is through providing improved tools for mapping, incentivizing mitigation banking, facilitating opportunities to bring in private sector funding, or other

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strategies. The agencies should also consider thoughtful and intentional setting of the implementation date of the new WOTUS definition in such a way as to not overburden states that must continue to develop or expand water protection programs or permits. Statutory, regulatory, and programmatic adjustments at the state level should be given reasonable time for development.

State and federal agencies alike are invested in the promulgation of a final rule that provides certainty, predictability, and consistency, and our members appreciate the agencies' consideration of this request in support of that shared goal. ECOS encourages U.S. EPA and the Corps to review the comments of our member agencies and partner state associations. Should you have questions, please contact me at [bgrumbles@ecos.org](mailto:bgrumbles@ecos.org). Thank you and we look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Grumbles". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ben Grumbles  
Executive Director

