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Environmental Protection Agency
1200 Pennsylvania Avenue NW
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Milton Boyd
Office of the Assistant Secretary of the Army for Civil Works
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Washington, DC 20310–0104

RE: Comments on Proposed Definition of "Waters of the United States"
Docket ID Number EPA-HQ-OW-2025-0322

Dear Ms. Jensen and Mr. Boyd:

On behalf of the 40,000 members nationwide of the Izaak Walton League of America (League), I offer the following comments regarding the proposed definition of "waters of the United States" (WOTUS).

Clean water is indispensable to public health, ecological integrity, and economic well-being. Congress affirmed this principle through the Clean Water Act of 1972, expressly stating in Section 101 that the Act's objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251). The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) bear a clear obligation to administer the Act in a manner consistent with this mandate. For more than five decades, the Act's purpose has provided the foundation for protecting waters relied upon for drinking water supplies, commerce, and outdoor recreation, based on the settled scientific understanding that upstream pollution degrades downstream water quality. Since promulgation of the 2015 Clean Water Rule, which the League supported, the scientific record has only further reinforced the critical role that ephemeral and intermittent streams and wetlands play in sustaining downstream

waters. Regulatory actions that diminish protections for these waters threaten to undermine water quality, harm biological diversity, and increase risks to human health across the nation.

The proposed rule would exclude millions of acres of wetlands and millions of miles of streams from federal Clean Water Act protections. These waters and the rivers, lakes, and reservoirs they feed, are essential to public health, fish and wildlife habitat, and the nation's $1.2 trillion outdoor recreation economy.[1] The proposal will increase regulatory confusion, undermine cooperative federalism, and directly conflict with the Clean Water Act's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[2]

I. Further Clarification of *Sackett v. EPA* Is Unnecessary

Basic federal Clean Water Act protections safeguard public health, protect our communities, and ensure that fish and wildlife have the aquatic habitat needed to thrive. Those protections have already been substantially weakened as a result of the Supreme Court's decision in *Sackett v. EPA*, which ignored longstanding precedent and science and removed federal protection from approximately two-thirds of the nation's remaining wetlands and up to five million miles of streams.

EPA and the Corps responded by issuing the 2023 conforming rule, which modified the long-standing, Reagan-era definition of "waters of the United States" to reflect *Sackett* without going further than the Court required. Nothing in *Sackett* compels additional narrowing of jurisdiction. To the contrary, the Court declined to further define terms such as "relatively permanent," leaving agencies' discretion to apply longstanding interpretations consistent with hydrology and science.

The proposed rule would further erode Clean Water Act protections by imposing new and confusing standards not required by *Sackett* and contrary to both science and statutory purpose. Further clarification is neither legally necessary nor environmentally defensible. The agencies should retain the 2023 conforming rule.

II. The Proposed Rule Will Lead to Greater Regulatory Uncertainty

Rather than providing durability or certainty, the proposed rule will exacerbate confusion and uncertainty for regulators, landowners, and courts. By the agencies' own estimates, the combined

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[1] Outdoor Recreation Roundtable. (2025, November) *Outdoor Recreation on Federal Public Lands and Waters, A Valuable American Asset*. https://recreationroundtable.org/news/new-economic-report-shows-outdoor-recreation-on-federal-public-lands-and-waters-as-a-valuable-asset-on-americas-balance-sheet/.

[2] 33 U.S.C. § 1251

effect of *Sackett* and this proposal would leave more than 80 percent of the nation's remaining wetlands and millions of miles of streams without federal Clean Water Act protections.

The proposal introduces vague and undefined concepts, such as a "wet season," to determine jurisdiction, without explaining how that term should be applied across regions with vastly different climate and hydrologic conditions. Information about flow timing and duration is missing or inadequate for many streams, and in much of the country, flow periods are not coterminous with any identifiable "wet season." This ambiguity will make Clean Water Act implementation and enforcement more difficult and litigation more likely.

The proposal would also eliminate protections for ephemeral streams and some intermittent streams. Ephemeral streams provide more than 50 percent of the flow to larger rivers, and at least 117 million Americans receive drinking water from sources fed by headwater streams. In arid and semi-arid states, up to 95 percent of streams are intermittent or ephemeral, and climate-driven drought is causing even perennial streams to shift toward intermittent flow. Excluding these waters creates regulatory loopholes and undermines water security.

III. The Proposed Rule Disregards Impacts on Communities, Habitat, and the Economy

The proposal fails to meaningfully assess the consequences of withdrawing protections for wetlands and small streams on public health, ecosystems, and the economy. Increased pollution in upstream waters will result in heightened human health vulnerabilities, higher treatment costs for drinking water systems, increased flood risk, and degraded fish and wildlife habitat.

EPA's own scientific assessments demonstrate that wetlands and non-perennial streams are physically, chemically, and biologically connected to downstream waters.[3] Wetlands filter pollutants, recharge groundwater, store floodwaters, and sustain baseflows during drought.

Wetlands are among the most ecologically productive systems on the planet and provide substantial environmental, economic, and public health benefits. Although they are often underestimated or overlooked, wetlands are essential to the integrity of the Nation's waters and to the resilience of the communities that depend upon them.

Natural Water Filtration
Wetlands function as natural filtration systems, removing pollutants, excess nutrients, and sediments from stormwater and agricultural runoff before those contaminants reach rivers, lakes, and groundwater. By improving water quality at the source, wetlands help safeguard drinking water supplies and reduce the need for costly downstream treatment infrastructure.

[3] U.S. Envtl. Prot. Agency, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence, EPA/600/R-14/475, at ES-3 (Jan. 2015).

Flood Mitigation and Climate Resilience
Wetlands store and slow floodwaters, reducing the severity and frequency of flooding in downstream communities. As climate change drives more intense storms, prolonged droughts, and rising seas, intact wetlands play an increasingly critical role in buffering extreme weather events, moderating hydrologic variability, and enhancing landscape resilience.

Biodiversity and Wildlife Habitat
Wetlands support a remarkable diversity of species and provide essential breeding, nesting, and foraging habitat for fish, birds, amphibians, and other wildlife. More than one-third of threatened and endangered species in the United States depend on wetlands during some portion of their life cycle, underscoring the importance of these systems to national biodiversity conservation.

Carbon Storage and Climate Regulation
Wetlands are highly effective carbon sinks, storing significant quantities of carbon in vegetation and soils. By sequestering carbon and regulating greenhouse gas emissions, wetlands represent one of the most effective nature-based strategies for addressing climate change.

Economic and Recreational Benefits
Wetlands generate billions of dollars annually for the U.S. economy through commercial and recreational fishing, waterfowl hunting, tourism, and other forms of outdoor recreation. They also support agricultural productivity by improving water quality, reducing erosion, and mitigating flood impacts, sustaining local economies, particularly in rural and coastal regions.

Non-perennial streams, defined as streams that do not exhibit continuous surface flow throughout the year, are integral components of watershed hydrology and aquatic ecosystem function across the United States. Although surface flow may be absent during portions of the year, these systems perform essential functions that influence water quality, biological integrity, flood dynamics, and the condition of downstream waters.[4]

Hydrologic Connectivity and Water Quality Functions
Non-perennial streams collect and convey precipitation, snowmelt, and surface runoff to downstream perennial rivers, lakes, and wetlands. During periods of flow, they transport water, nutrients, sediments, and organic matter that support downstream ecological processes. During periods without surface flow, stream channels often continue to transmit subsurface flows, contributing to groundwater recharge and sustaining baseflow in connected waters.

These streams also influence water quality by moderating runoff velocity and facilitating the retention, settling, and biogeochemical transformation of sediments and pollutants. Degradation or loss of headwater stream function can increase downstream susceptibility to nutrient enrichment, sedimentation, and harmful algal blooms.

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[4] U.S. Envtl. Prot. Agency, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence, EPA/600/R-14/475, at ES-2 (Jan. 2015).

Biological Habitat and Ecological Support
Non-perennial streams provide habitat for a wide range of aquatic and semi-aquatic organisms and support critical life-history stages for many species, including amphibians, aquatic invertebrates, migratory birds, and fish. The variable hydrologic conditions associated with non-perennial flow regimes create specialized habitats such as seasonal pools and connected wetlands that support species adapted to these environments, including species of conservation concern.

Flood Attenuation and Watershed Resilience
By intercepting, storing, and gradually releasing surface runoff during precipitation events, non-perennial streams reduce peak flows, limit erosion, and decrease downstream flood risk. Vegetated channels and adjacent floodplain areas enhance infiltration and slow water movement through the watershed. As climate variability increases the frequency and intensity of storm events, the flood-attenuation functions of non-perennial streams contribute to overall watershed resilience.

Downstream Dependence and Cumulative Effects
Intermittent and ephemeral streams comprise more than 60 percent of total stream miles in the contiguous United States, particularly in arid and semi-arid regions. Downstream rivers, wetlands, and drinking water sources depend on these headwater networks for flow contributions, groundwater recharge, sediment regulation, and ecological stability. Impairment or exclusion of non-perennial streams from pollution controls increases the risk of cumulative downstream degradation and undermines watershed-scale water quality objectives.[5]

The agencies' failure to consider these impacts in the proposed rule could have potentially disastrous impacts on America's water quality, despite the clear intent of Congress to improve water quality, plainly written into the Clean Water Act.

IV. The Proposed Rule Undermines Cooperative Federalism and the Statutory Purpose of the Clean Water Act

The Clean Water Act was enacted because states alone were unable to prevent widespread water pollution, famously exemplified by events such as the Cuyahoga River fire of 1969. Congress established a federal regulatory floor to ensure minimum protections nationwide while allowing states and Tribes to build upon them.

The plain language of the Act makes clear the statutory purpose: to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.[6] In order to achieve this

[5] U.S. Envtl. Prot. Agency, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence, EPA/600/R-14/475, at ES-5 (Jan. 2015).
[6] 33 U.S.C. §1251

purpose, Congress envisioned broad jurisdiction over what it termed "waters of the United States."

During Senate consideration of the Clean Water Act, Senator Edmund Muskie emphasized that, "[b]ased on the history of consideration of this legislation, it is obvious that its provisions and the extent of application should be construed broadly."[7] Similarly, in the House of Representatives, Representative John Dingell clarified that the term "waters of the United States" refers to waters "in a geographical sense," rather than "navigable waters of the United States" in a narrow or technical meaning.[8] Consistent with these statements, the Conference Report confirms that Congress intended the term "navigable waters" to receive the broadest constitutionally permissible interpretation, free from limiting administrative constructions.[9]

In light of this clear legislative intent, any additional narrowing of Clean Water Act jurisdiction, particularly exclusions affecting wetlands, intermittent streams, or small tributaries, needlessly poses significant risks to aquatic ecosystems and to the communities that rely on these waters for drinking water supplies, flood risk reduction, agricultural productivity, and outdoor recreation.

Further, by excluding large categories of waters from federal protection, the proposed rule shifts the burden of pollution control onto states and Tribes, many of which lack the resources or legal authority to fill the resulting gaps. Some states have no protections for at-risk waters at all, while others struggle to enforce existing programs. Even states with strong protections remain vulnerable to pollution from upstream states with weaker standards.

The proposal further undermines cooperative federalism by eliminating "interstate waters" as a distinct category of protection—an action not required by *Sackett* and inconsistent with the Clean Water Act's structure and purpose.

By asserting that Clean Water Act jurisdiction "cannot be drawn in response to ecological concerns," the proposal abandons the science-based foundation that has driven decades of water quality improvements and risks reversing half a century of progress.

Conclusion

If adopted, the proposed definition of "waters of the United States" would place the small streams and wetlands that sustain fish and wildlife, protect drinking water, reduce flooding, and support local economies at serious risk of irreparable harm. The League urges EPA and the Corps to withdraw the proposal and reaffirm the 2023 conforming rule, which appropriately reflects

[7] 118 Cong. Rec. 33699 (1972) (statement of Sen. Muskie)
[8] 118 Cong. Rec. 33756 (1972) (statement of Rep. Dingell)
[9] 118 Cong. Rec. 33699 (1972) (statement of Sen. Muskie)

Supreme Court precedent while remaining faithful to science, the law, and Congressional intent to ensure every American's right to clean water.

Thank you for the opportunity to comment.

Sincerely,

Jared Mott
Interim Executive Director
Izaak Walton League of America