



April 23, 2025

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

The Honorable Lee Forsgren
Acting Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, D.C. 20310

RE: Docket ID Number EPA-HQ-OW-2025-0093: Waters of the U.S. Definition Request for Recommendations

Dear Administrator Zeldin and Acting Assistant Secretary Forsgren,

On behalf of the 40,000 members nationwide of the Izaak Walton League of America (League), I offer the following comments regarding the request for recommendations for defining “waters of the United States.”

Clean water is a fundamental human right and a critical resource for public health, environmental sustainability, and economic vitality. Congress recognized this right with passage of the Clean Water Act in 1972 and declared its stated purpose in Section 101 of the Act: “The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. §1251) Your agencies have clear and overriding responsibility to implement the Act to achieve its statutory purpose. For over fifty years, this simply stated purpose has been a guide to safeguard the waters that Americans depend on for drinking, commerce, and outdoor recreation by following well-understood scientific principles, namely that pollution upstream affects water quality downstream. Since the adoption of the 2015 Clean Water Rule—which we supported at the time—scientific understanding of the importance of ephemeral and intermittent streams and wetlands has only deepened. These waters play a critical role in sustaining the health and resilience of downstream waters. Any regulatory action that diminishes protections for these features will have significant negative consequences for water quality, biodiversity, and human health across the country.

The League believes that the U.S. Supreme Court erred, alarmingly so, in its ruling in *Sackett v. EPA* defining “waters of the United States” in a manner that removes protection under the Clean Water Act for the majority of the nation’s remaining wetlands and millions of miles of streams. In its decision, the Court ignored its own precedence, peer-reviewed science, and the crystal-clear intent of the Act’s chief architects in Congress. Senator Edmund Muskie emphasized from the floor of the Senate 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.”¹ In the U.S. House of Representatives, Representative John Dingell stressed that the term waters of the United States, “means all ‘the waters of the United States’ in a geographical sense. It does not mean ‘navigable waters of the United States’ in the technical sense as we sometimes see in some laws.”² The Conference Report explains that “the conferees fully intend that the term ‘navigable waters’ be given the broadest possible Constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes.”³

Any further rollback of protections, particularly those that limit the jurisdiction of the Clean Water Act over wetlands, intermittent streams, or small tributaries, endangers not only ecosystems, but also communities across the country that depend on these waters for drinking water, flood mitigation, agriculture, and outdoor recreation. Further weakening of Clean Water Act protections would:

- Disregard scientific consensus about the interconnectedness of water systems and the importance of headwaters and wetlands;
- Undermine decades of progress in cleaning up America’s waterways;
- Exacerbate the effects of climate change and severe flooding by destroying wetlands that act as natural buffers;
- Shift the burden of pollution and water treatment onto states and municipalities already struggling with limited resources;

Therefore, the League urges the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to uphold the existing 2023 conforming rule, which aligns the long-standing, Reagan-era definition of “waters of the United States” with the Supreme Court’s decision in *Sackett*. We strongly oppose any effort to further weaken these protections or that fails to comply with the clear statutory purpose of the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of our Nation’s waters.”

Wetlands

Wetlands are among the most vital and productive ecosystems on Earth, offering a wide range of environmental, economic, and public health benefits. Despite often being overlooked or undervalued, wetlands play a critical role in maintaining the health of our nation’s waters and the resilience of our communities.

Natural Water Filters:

Wetlands act as nature’s kidneys — filtering out pollutants, excess nutrients, and sediments from stormwater and agricultural runoff before they reach rivers, lakes, and groundwater. This natural filtration protects drinking water sources and reduces the need for costly water treatment infrastructure.

Flood Control and Climate Resilience:

Wetlands absorb and slow the flow of floodwaters, reducing the severity and impact of floods on surrounding communities. As climate change increases the frequency of extreme weather events, intact wetlands are essential for buffering storms, managing droughts, and mitigating sea-level rise.

¹ 118 Cong. Rec. 33699 (1972) (statement of Sen. Muskie)

² 118 Cong. Rec. 33756 (1972) (statement of Rep. Dingell)

³ 118 Cong. Rec. 33699 (1972) (statement of Sen. Muskie)

Biodiversity Hotspots:

Wetlands support an incredible diversity of life, providing essential breeding, nesting, and feeding habitats for fish, birds, amphibians, and other wildlife. More than one-third of threatened and endangered species in the U.S. rely on wetlands at some point in their life cycle.

Carbon Sequestration:

Wetlands are powerful carbon sinks. They store vast amounts of carbon in their vegetation and soils, helping to regulate greenhouse gases and combat climate change. Protecting wetlands is one of the most effective nature-based solutions to the climate crisis.

Economic and Recreational Value:

Wetlands contribute billions of dollars annually to the U.S. economy through commercial fishing, waterfowl hunting, tourism, and recreation. They also support agriculture by improving water quality and reducing erosion, and they sustain many local economies, particularly in rural and coastal communities.

Beginning in the 1970s and solidified in subsequent decades, the EPA and Corps interpreted the term “waters of the United States” to include not only rivers and lakes, but also wetlands that are adjacent to or hydrologically connected to those waters. This interpretation recognized the essential role wetlands play in maintaining the health and function of other aquatic systems. For decades, courts have upheld the inclusion of wetlands under Clean Water Act jurisdiction, acknowledging their ecological importance and connection to ‘navigable waters.’ Scientific research confirms wetlands — even those not directly connected by surface water to rivers, lakes or other waters— contribute to water quality, flood control, and ecosystem health downstream.

EPA’s assessment of the science of the connectivity of streams and wetlands to downstream waters found that research consistently demonstrates that wetlands located in riparian zones and floodplains are physically, chemically, and biologically connected to rivers, providing critical functions that enhance downstream water quality.⁴ These wetlands serve as natural buffers, filtering pollutants and supporting the health of aquatic ecosystems, and they play a vital role in sustaining riverine food webs.

Moreover, substantial evidence shows that many wetlands situated outside of riparian areas and floodplains — including those without direct surface water connections — still perform important physical, chemical, and biological functions that influence the condition of downstream waters.⁵ In some cases, their ecological value arises specifically from their isolation, which enables them to retain water, trap sediments, and process nutrients in ways that benefit the broader watershed.⁶

Consideration of “continuous surface connection”

The concept of a “continuous surface connection” to define wetlands has no basis in statute, decades of EPA and Corps regulation, or science. Wetlands often remain ecologically and hydrologically connected to rivers, lakes and other waters even when separated by natural features (such as berms or sandbars) or human-made structures (such as levees, roads, or culverts). These separations do not negate the wetland’s role in supporting the integrity of downstream waters — and should not be used to exclude them from Clean Water Act protections.

Even when surface water flow is intermittent, redirected, or temporarily obstructed, wetlands can remain ecologically and hydrologically integrated with nearby rivers, streams, and lakes. Subsurface flows, seasonal flooding, and periodic overbank events frequently maintain physical and chemical exchanges

⁴ U.S. Evtl. 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).

⁵ *Id.*, at ES-4.

⁶ *Id.*

between wetlands and other waters — exchanges that directly affect water quality, nutrient cycling, and flood mitigation.

It is well established in scientific literature that constructed features including levees, roads, or drainage ditches may limit direct surface flow, but they rarely eliminate the broader hydrologic relationship between a wetland and a river, stream, lake, or other nearby water. In fact, many wetlands modified by infrastructure still provide critical ecological services such as nutrient retention, sediment trapping, and wildlife habitat, which support downstream water health.

Defining a wetland based on “continuous surface connection undermines the Clean Water Act’s core purpose, as stated in Section 101(a): to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” A restrictive reading further ignores decades of scientific understanding and limits protection for wetlands that clearly influence the condition of downstream waters.

Both natural features and human modifications may obscure surface connections without severing the essential functional relationship between a wetland and other nearby waters. A sound, science-based approach requires recognizing that ecological connectivity often persists even when physical separation is present — and that these wetlands must remain protected under the Clean Water Act to preserve the health of our nation’s waters.

Streams

Non-perennial streams — those that do not flow year-round — are essential components of the hydrological and ecological fabric of watersheds across the United States. Though they may appear dry for parts of the year, these streams play vital roles in protecting water quality, sustaining biodiversity, managing floods, and maintaining the overall integrity of downstream waters.

Hydrologic Connectivity and Water Quality:

Non-perennial streams serve as the capillaries of watersheds, capturing rainfall, snowmelt, and runoff and delivering it to larger, perennial rivers and other waters such as lakes. During wet periods, these streams transport water, nutrients, sediments, and organic matter that support the health of downstream ecosystems. Even when dry, their channels store and transmit subsurface flows that contribute to groundwater recharge and baseflow in rivers and wetlands.

Moreover, these streams act as natural filters, slowing runoff and allowing sediments and pollutants to settle or be transformed by microbial activity. Without healthy headwaters, downstream waters become more vulnerable to nutrient pollution, sediment overload, and harmful algal blooms.

Critical Habitat for Biodiversity:

Many plant and animal species depend on non-perennial streams for part or all of their life cycles. These include amphibians, aquatic insects, migratory birds, and fish that use these habitats for breeding, feeding, or refuge during high flows. The temporary nature of non-perennial streams creates unique conditions — such as isolated pools and seasonal wetlands — that support specialized and often imperiled species.

Flood Mitigation and Watershed Resilience:

By intercepting and dispersing surface runoff during storm events, non-perennial streams reduce downstream flooding, protect infrastructure, and limit erosion. Their vegetated banks and floodplains act like natural sponges, temporarily storing water and slowing its release. In a changing climate, where extreme weather is more frequent, these streams are essential for building watershed resilience.

Downstream Dependence:

More than 60 percent of stream miles in the continental U.S. are intermittent or ephemeral, especially in arid and semi-arid regions. Downstream rivers, wetlands, and drinking water sources depend on these headwater networks for flow, recharge, and ecological stability. If these streams are degraded or left unprotected from discharge of pollution, the health of entire watersheds is put at risk.

Scientific and Legal Recognition:

The scientific consensus is clear: non-perennial streams are hydrologically and ecologically connected to larger waters.⁷ Decades of peer-reviewed research and watershed-scale studies confirm that excluding these systems from Clean Water Act protections would create dangerous gaps in water quality regulation and enforcement. These gaps would lead to degraded water quality, threaten public health, and increase treatment costs for local communities and, ultimately, the American people.

Tributary streams that do not flow every day are not minor or expendable features — they are dynamic, interconnected systems that sustain the health of entire watersheds. Protecting them is essential to achieving the Clean Water Act’s goal of restoring and maintaining the integrity of the Nation’s waters.

Historically, the EPA and the Corps interpreted “waters of the United States” to include tributaries— a category that encompassed intermittent and ephemeral streams.

The 1986 and 1988 “waters of the United States” regulations broadly defined tributaries as any waterbody that contributes flow, either directly or indirectly, to a traditionally navigable water. This included intermittent streams, which carry water seasonally or during rainfall events but have a defined bed, bank, and ordinary high-water mark — physical characteristics commonly used to establish jurisdiction.

Intermittent streams have traditionally been protected under the Clean Water Act because of their well-documented ecological and hydrological connections to other waters. They form a critical part of the nation’s water infrastructure, especially in headwater regions, and play an essential role in the Act’s core mission to protect the chemical, physical, and biological integrity of the Nation’s waters. Excluding these streams from protection directly undermines the agencies’ ability to achieve the statutory purpose of the Clean Water Act and jeopardizes the health of entire watersheds and the American public.

Scientific research, collected and published by the EPA, including in the Connectivity Report⁸ which is part of the record for the 2015 “waters of the United States” rulemaking, clearly shows that streams — regardless of their size or how frequently they flow — are hydrologically connected to downstream waters and directly and indirectly affect the physical, chemical, and biological integrity of those other waters.

The evidence also supports a watershed-scale perspective: the contributions of individual streams and wetlands, though they may appear minor in isolation, are cumulative and collectively influence the condition of downstream waters.⁹ Therefore, their effects should be evaluated in the broader context of the entire watershed.

Defining a stream based on whether it flows permanently has no grounding in either science or statute— and doing so undermines the very goals of the Clean Water Act. The core issue is not how often water flows in a stream, but rather the stream’s connection to downstream waters and its impact on overall water quality. Pollution discharged into streams that do not flow year-round will still reach other jurisdictional waters when flow resumes, carrying contaminants downstream. Intermittent and ephemeral streams are integral parts of broader watersheds and play a critical role in maintaining the chemical, physical, and

⁷ U.S. Env’tl. 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).

⁸ *Id.*

⁹ *Id.*, at ES-5.

biological integrity of the Nation’s waters. Focusing on permanence of flow distracts the agencies from carrying out their statutory obligation: protecting water quality nationwide, which requires acknowledging the importance of all streams, regardless of how frequently they carry water.

Consideration of “relatively permanent”

A stream should be considered “relatively permanent” if it flows continuously during all but its longest natural or normal dry periods — those that are expected based on local climate and hydrologic patterns. This approach reflects both scientific understanding and longstanding legal protections in several key ways:

Anchored in Hydrologic Reality

In many regions — especially arid, semi-arid, or seasonally variable climates — even ecologically vital streams may cease surface flow during dry seasons or drought years. These flow interruptions are not signs of impermanence; they are part of the natural hydrologic regime. Across most of the country, the majority of stream miles are not perennial, but flow for only part of the year.¹⁰

Defining “relatively permanent” based on the longest expected or normal dry periods accounts for this regional variation. It avoids excluding streams that are functionally permanent within the context of their climate, geology, and watershed — even if they experience temporary drying. Even during dry periods, these streambeds remain active zones of biological activity and subsurface hydrology. A definition that excludes streams solely because they are dry during their longest normal dry period would fail to recognize these persistent, landscape-scale functions.

Legally Defensible and Consistent with Past Practice

Courts and federal agencies have long recognized that “permanence” in hydrology does not mean year-round surface water. In *Rapanos v. United States* (2006), the Supreme Court plurality suggested jurisdiction over “relatively permanent” streams — but did not require perpetual flow.¹¹ Justice Scalia specifically calls out streams that flow seasonally as not necessarily excluded from the definition of “waters of the United States.”¹² This recognition that a stream that flows only part of the year, but does flow continuously outside of its longest dry period should satisfy the definition of “relatively permanent.” In its return to the *Rapanos* plurality, the Court in *Sackett* specifically declined to further define or clarify “relatively permanent” beyond the words of Justice Scalia. The agencies should follow this example.

Using the longest typical dry period to define this threshold helps maintain consistency with prior regulatory interpretations and scientific norms, reducing arbitrary exclusions and reinforcing the Clean Water Act’s purpose and the obligations of the EPA and Corps: to protect the integrity of the Nation’s waters.

Prevents Regulatory Loopholes and Harmful Outcomes

If “relatively permanent” is interpreted too narrowly — such that any seasonal dry period disqualifies a stream — countless headwater and non-perennial systems will lose protection. This would open the door to unregulated discharges of pollution into those streams, habitat loss, and cumulative downstream degradation. Such degradation will erode water quality and threaten public health.

¹⁰ U.S. Env’tl. Prot. Agency, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, EPA/600/R-14/475, at 2-17 (Jan. 2015).

¹¹ *Rapanos v. United States*, 547 U.S. 715, at 732 (2006).

¹² *Id.*

Using the longest normal dry period as a benchmark ensures that regulatory definitions reflect hydrologic permanence, not superficial appearances.

A scientifically credible, legally sound approach to defining “relatively permanent” streams must consider regional hydrology and natural variability. Evaluating stream permanence in light of the longest expected dry periods ensures that vital waterways remain protected, even if they lack year-round flow. This approach upholds the Clean Water Act’s intent and reflects how streams function across the diverse landscapes of the United States.

Recommendations

The Izaak Walton League of America urges the EPA and the Corps to maintain current protections and avoid further weakening the definition of “waters of the United States.” The 2023 conforming rule appropriately reflects the legal framework established by the Supreme Court in *Sackett v. EPA*, and there is no scientific or legal necessity for further modification.

Should the agencies choose to revisit the “waters of the United States” definition against our recommendation, any such process must be carried out through a robust, transparent, and science-based rulemaking in compliance with the Clean Water Act, Administrative Procedure Act, National Environmental Policy Act, and other applicable statutes

Thank you for the opportunity to comment. The League urges the agencies to uphold strong, science-informed protections for our Nation’s waters in any future regulatory efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Mott". The signature is fluid and cursive, written over a light gray background.

Jared Mott
Conservation Director
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