



State Water Resources Control Board

April 23, 2025

Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Daniel Driscoll
Secretary of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Submitted via Federal eRulemaking Portal

RE: Docket ID No. EPA-HQ-OW-2025-0093

Dear Administrator Zeldin and Secretary Driscoll:

Thank you for the opportunity to provide recommendations to inform any future administrative actions by the U.S. Environmental Protection Agency and U.S. Department of the Army (collectively the “Agencies”) to revise the regulations defining “waters of the United States” protected under the federal Clean Water Act. The California State Water Resources Control Board (“State Water Board”), in conjunction with the nine California Regional Water Quality Control Boards (collectively, “Water Boards”), is designated as California’s water pollution control agency for the Clean Water Act. The definition of “waters of the United States” affects all Clean Water Act programs that are administered by the Water Boards, including programs overseeing section 401 water quality certification, section 402 permitting, and section 303 water quality standards.

The Clean Water Act is an important tool to promote the Water Boards’ mission to preserve, enhance, and restore the quality of California’s water resources on behalf of all Californians. Under the Clean Water Act and California’s Porter-Cologne Water Quality Control Act, the Water Boards have regulatory responsibility for protecting the water quality of nearly 1.6 million acres of lakes, 1.3 million acres of bays and estuaries, 211,000 miles of rivers and streams, and 1,100 miles of coastline. For more than 50 years, the Clean Water Act has protected the right to waterways that are clean and safe for use. Clean Water Act programs protect the broad array of beneficial uses ranging

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

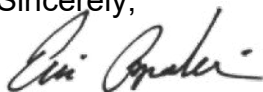
from agricultural and commercial uses to habitat and spawning for wildlife to recreational uses and municipal and domestic water supply. Clean Water Act protections work in tandem with the Water Boards' state authority to ensure the human right to safe, affordable, and accessible drinking water. Any future administrative actions should build upon the Clean Water Act's tremendous successes and bolster its ability to address emerging challenges like harmful algal blooms and non-point sources of pollution that continue to impact the quality of the nation's waters. The objective of the Clean Water Act "to restore and maintain the chemical, physical and biological integrity of the Nation's waters" must remain the guiding principle for implementing regulations.

Affording protection for the full range of wetlands protected by statute, as interpreted by judicial opinions, is integral to achieving the Clean Water Act's objective. The "Revised Definition of 'Waters of the United States,'" [88 FR 3004](#) (January 18, 2023) as amended by the rule "Revised Definition of 'Waters of the United States'; Conforming," [88 FR 61964](#) (September 8, 2023) ("Conforming Rule") is consistent with *Sackett v. Environmental Protection Agency* (2023) 598 U.S. 651 (*Sackett*) and its treatment of adjacent wetlands should be retained. Further, as a duly promulgated regulation, the express language in the preamble to the Conforming Rule cannot be amended by a memorandum.

The full scope of scope of wetlands identified in the Conforming Rule are important to proper ecological function of waters of the United States. Wetlands provide environmental and economic benefits to Californians, including flood and stormwater control, surface and ground water supply, fish and wildlife habitat, erosion control, pollution treatment, nutrient cycling, and public enjoyment and recreation. Wetlands ameliorate the effects of increasingly common extreme weather events by providing floodwater storage, sequestering carbon, and maintaining vulnerable plant and animal communities. Wetlands also impact water quality by acting as sinks that retain floodwaters, sediments, nutrients, and contaminants that could otherwise negatively impact the condition or function of downstream waters. These wetlands can also provide important habitat for aquatic-associated species to forage, breed, and rest.

If the Agencies decide to pursue revisions to the definition of waters of the United States, any proposed changes must be regionally appropriate and accommodate the hydrology in the arid west. In particular, any revision based on flow rates and timing, or similar characteristics, for tributaries is unlikely to accommodate the variable hydrology found in California and other arid western states. In most of California, precipitation is highly seasonal and varies greatly from year to year. The intensity of this variability is expected to increase. The Water Boards hope that the Agencies will work closely with all states if they pursue regulatory revisions in the future.

Sincerely,



Eric Oppenheimer
Executive Director