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Lee Zeldin
U.S. Environmental Protection Agency
Office of the Administrator (1101A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Arizona Department of Environmental Quality's public comment on the November 20, 2025, Proposed Rule: Updated Definition of "Waters of the United States"; Docket ID No. EPA-HQ-OW-2025-0322

Dear Administrator Zeldin,

This letter is in response to the November 20, 2025, "Proposed Rule: Updated Definition of 'Waters of the United States.'" The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to provide input on this important topic and values the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) (the Agencies) commitment to improving upon past regulatory approaches through broad, transparent stakeholder engagement. ADEQ believes that the success of this engagement depends on a final rule that translates these collaborative efforts into a predictable and legally defensible framework.

A deliberate process focused on science-based, reproducible thresholds and practical solutions is essential for a durable nationwide rule that ensures clarity for all stakeholders. Without a clear and consistent WOTUS definition, states cannot confidently invest in or develop the critical water quality programs necessary to protect surface waters and fill federal jurisdictional gaps. While ADEQ appreciates that this proposed rule attempts to provide jurisdictional clarity, the proposed framework still risks incongruous jurisdictional determinations. Most specifically ADEQ believes the proposed "wet season" metrics and potential connectivity "severance" could lead to inconsistent application of jurisdiction and implementation challenges, especially in the Arid West.

Traditional Navigable Waters

The Supreme Court's decision in *Sackett v. EPA* (2023), along with this rulemaking, has fundamentally elevated the importance of the USACE's role in designating Traditionally Navigable Water (TNWs). Under the current "relatively permanent" and "continuous surface connection" framework, TNWs serve as the indispensable "anchor" for all jurisdictional waters.

Consequently, further administrative focus on proactive and comprehensive TNW designations is needed to resolve inconsistencies in the current regulatory landscape. Outside of the Colorado River, TNW designations in Arizona currently favor isolated segments and reservoirs. However, this approach underrepresents the functional connectivity of the state's river systems and falls short of providing the regulatory predictability required under the *Sackett* framework.

Additionally, in the Arid West, many primary river systems are now impacted by extensive water withdrawals, diversions, and prolonged drought. These modern anthropogenic and climatic shifts should be distinguished from a river's underlying legal status as "navigable-in-fact." To maintain this distinction, USACE should consider the full historical context of these watercourses, including the pre-Columbian era, ensuring that designations reflect the foundational capacities and flows that define these river systems.

ADEQ recommends USACE transition toward designating entire waterbodies as TNWs rather than isolated segments. This comprehensive approach offers a more robust pathway for applying CWA protections, particularly in areas where current designations are limited. Establishing these jurisdictional "anchors" at a landscape scale would significantly reduce case-by-case inconsistency and empower states with the regulatory certainty needed to protect water quality.

Relatively Permanent Waters

ADEQ appreciates the Agencies' recognition in the preamble that determining flow permanency requires a flexible, multi-factor approach that extends beyond limited stream gauge data. In regions like the Southwest, where the density of reliable flow gauges is sparse and climatic variability is extreme, we welcome the EPA's acknowledgment that localized indicators are essential for establishing jurisdictional clarity.

Weight of Evidence Approach

ADEQ appreciates that the Agencies have clearly considered and incorporated Arizona's prior feedback into the current proposed rulemaking, particularly regarding the unique hydrological realities of our region. By specifically referencing a weight of evidence approach to determine whether a water meets the regulatory requirements, the Agencies have demonstrated a significant commitment to cooperative federalism and a willingness to act on the extensive pre-proposal input ADEQ provided.

The Agencies should consider the ADEQ Weight of Evidence Approach to Assign Flow Regimes to Arizona Stream Reaches (WOE Approach) methodology as an example of a science-based framework that successfully balances hydrological data with the requirements of federal law. In developing the WOE Approach, ADEQ established a robust, nine-category weighted scoring system that represents a significant leap in regulatory precision, moving

beyond the binary "snapshots" of the past toward a sophisticated, quantitative, and science-based methodology. This nine-category scoring system standardizes the process of assigning flow regimes by weighting data sources based on their reliability and scientific rigor.

While the preamble to the proposed rule references several tools that could be used in a weight of evidence approach, Arizona's process has already fully integrated these tools into a single, unified framework that goes beyond the federal recommendations. Furthermore, the ADEQ WOE Approach incorporates multiple modeling options, including specialized screening tools for snowpack, groundwater depth, and riparian vegetation developed by ADEQ to specifically address the unique environmental conditions of Arizona. This approach provides essential versatility as a "data-scalable" solution that functions effectively in both data-heavy and data-light environments. ADEQ created a system where the most reliable evidence leads to a definitive determination, providing a proven "plug-and-play" roadmap to achieve the regulatory certainty required under the *Sackett* framework.

ADEQ recommends the Agencies include language in the final rule or accompanying guidance that explicitly supports and empowers states to develop their science-based, weighted methodologies, similar to the ADEQ WOE Approach. By shifting from a "one-size-fits-all" temporal snapshot to a data-scalable weight of evidence model, the Agencies can empower states to achieve the scientific integrity and regulatory certainty required in a post-*Sackett* landscape.

Streamflow Duration Assessment Methodology

The Agencies have frequently identified the Streamflow Duration Assessment Methodology (SDAM) as a primary technical tool for determining relatively permanent flow, and ADEQ strongly affirms its essential role in the regulatory process. Since the methodology's release in 2021, ADEQ has demonstrated its utility through rigorous field application, conducting nearly 300 SDAM assessments, 72 of which have served as the direct evidentiary basis for jurisdictional evaluations.

ADEQ's extensive implementation proves that the SDAM is not merely an optional resource but a vital, scientifically-robust instrument for assigning flow regimes and providing the objective data necessary to distinguish between relatively permanent and non-relatively permanent waters. ADEQ encourages the Agencies to not only recognize the significance of this tool but to prioritize its results in guidance as a primary line of evidence to ensure that WOTUS implementation is grounded in empirical field data.

ADEQ recommends the Agencies develop a definitive cross-walk between SDAM flow regime classifications and the terms "relatively permanent" and "non-relatively permanent", to better utilize SDAM data in jurisdictional evaluations. This crosswalk could also be used for other data

sources that define a flow regime (e.g., U.S. Geological Survey (USGS) recommended thresholds for intermittent versus ephemeral based on percent zero-flow days).

Wet Season

ADEQ appreciates the Agencies' efforts to acknowledge seasonal variability of flow in the Arid West by moving beyond "year-round" flow to include the "wet season", including a specific mention of the monsoon. However, the current proposal to define the wet season based on where average monthly precipitation exceeds evapotranspiration is technically incongruent with Arizona's hydrology. In arid environments, published science shows that evapotranspiration is incredibly volatile; it can shift dramatically in a matter of hours, not just seasons. Relying on this limited metric to define a wet season creates a high risk of mislabeling streams in the Arid West and could result in many relatively permanent streams failing to meet the jurisdictional definition.

While the Agencies' proposed use of the Web-based Water-Budget Interactive Modeling Program (WebWIMP) outputs within the Antecedent Precipitation Tool (APT) is a constructive starting point, it should not be the sole tool recommended or used to define the "wet season" for relatively permanent assessments. Over-reliance on these modeling "snapshots" can lead to inaccurate jurisdictional outcomes. Furthermore, requiring evidence that a waterbody has "standing or continuously flowing year-round or at least during the wet season" presents substantial resource constraints. Expecting states to provide evidence of unbroken flow over a series of months places a significant demand on staff capacity and monitoring resources, especially where continuous monitoring networks are limited.

ADEQ recommends removing the requirement of "continuous surface hydrology throughout the entirety" of a wet season. Expecting states to provide evidence of unbroken flow over a series of months creates a burden on staff capacity and agency resources because continuous monitoring networks are so limited, especially in the Arid West.

ADEQ recommends the Agencies refrain from adopting static thresholds where precipitation exceeds evapotranspiration and instead adopt a process for determining "wet season" that incorporates a weight of evidence approach, similar to the approach mentioned in the preamble in reference to Relatively Permanent Waters.

ADEQ recommends a multi-factor approach to identify relatively permanent flow, instead of a rigid "wet season" continuous flow assessment. This approach would utilize biological and physical indicators, such as those detailed in the SDAM and the ADEQ WOE Approach. These indicators provide a more reliable record of long-term hydrological regime than a snapshot of flow during a specific month(s) or year(s).

Connectivity

ADEQ cautions adoption of a rule in which sections of non-relatively permanent flow within a continuous streambed are used to sever upstream jurisdiction. A rule that includes this type of severance language is likely to be found to be too vague for implementation and ultimately not live up to the Agencies goal of creating a "durable" definition of WOTUS.

In Arizona, many perennial and intermittent headwaters are separated from downstream TNWs by sections that could potentially be found to be not relatively permanent under this new rule. Treating these segments as "jurisdictional breaks" could have unintended consequences for currently permitted wastewater and industrial discharges. The Agencies should emphasize the foundational CWA principle that temporary or anthropogenic physical alterations, such as modern water withdrawals, diversions, and drought, do not strip a waterbody of its historic navigable capacity or its functional role within the watershed. To implement such a "severance" rule would be to disregard the hydrologic reality that these "breaks" serve as vital conduits for flow that ultimately reach TNWs.

The Salt River provides a local example that can be used to illustrate how implementation regarding connectivity could impact surface waters and their neighboring communities. The Salt River flows from east-central Arizona, near the border with New Mexico, towards the Phoenix Valley in the central part of the state. Before reaching Phoenix, the river is dammed to form Roosevelt Lake, which was determined to be a TNW in an Approved Jurisdictional Determination (AJD) by the USACE. Under the new proposed rule, ADEQ is concerned flow interruption from dams and water withdrawals could sever jurisdiction either above or below the TNW, potentially rendering the entirety of this critical water source as non-jurisdictional.

Current guidance is also unclear if the creation of effluent dependent waters (EDWs) could impact regulation on previously non-relatively permanent waters or breaks. For example, since 2019, treated wastewater discharge restored perennial flow in the Santa Cruz River in Tucson. Prior to discharge, the reach was classified as ephemeral. The Santa Cruz EDW reach, among other similarly situated EDWs, now experiences year-round perennial flow and may effectively establish a new relatively permanent surface water connection between previously severed jurisdictional reaches under the proposed rule.

ADEQ recommends the Agencies adopt a robust, data-driven assessment of hydrologic connectivity that reflects the functional integrity of the watershed and accounts for both physical modifications and existing TNW designations. By developing rule language and guidance through a collaborative process that integrates state-level data, the Agencies can create a more comprehensive and accurate jurisdictional map.

ADEQ recommends that the final rule or accompanying guidance provide further clarity on conducting jurisdictional evaluations for EDWs. In many Arid West states, treated wastewater

discharges sustain flow in channels that might otherwise lack a relatively permanent standard. While we appreciate the Agencies' acknowledgment that flow may be supported by various sources, additional guidance would help ensure a consistent and predictable application of the rule, particularly in complex systems where EDWs may be influenced by downstream diversions or infrastructure.

Ensuring Clarity

ADEQ recognizes and supports the efforts of the Agencies to bring long-overdue clarity to the definition of WOTUS. We specifically appreciate that this proposed rule addresses critical inconsistencies found in the 2023 Conforming Rule, which in some ways did not reflect the core tenets of the *Sackett v. EPA* decision.

By relying on broad "interstate" categories and evolving connectivity standards, the previous Conforming Rule resulted in regulatory uncertainty that did not fully reflect the Supreme Court's guidance. This created a lack of clarity between existing regulations and recent jurisprudence. The removal of the "interstate waters" category in this proposal is a constructive step toward aligning federal regulation with the constitutional and statutory limits affirmed by the Court

ADEQ also strongly supports the Agencies' clarification that even if a nonrelatively permanent waterbody does not satisfy the jurisdictional definition of a "tributary," it may still function as a point source, as noted in the preamble and supported by the *Rapanos* plurality. In Arizona, where ephemeral, non-relatively permanent headwaters can serve as the primary conduit for pollutants to downstream regulated waters, this distinction is critical. It ensures that discharges into these features remain subject to CWA permitting, protecting downstream water quality without overextending federal jurisdiction to the land features themselves.

Finally, ADEQ supports and echoes the principles outlined in the Association of Clean Water Administrators (ACWA) comment letter on the "Updated Definition of 'Waters of the United States'". This letter powerfully articulates the federalism principles essential for a lasting WOTUS definition, advocating for robust state partnership and recognition of diverse hydrological conditions. ADEQ specifically emphasizes ACWA's call for a durable, clear, and workable definition grounded in the *Sackett* decision that promotes transparency and predictability. We agree that the agencies must prioritize technical clarity regarding "wet season" analyses and the "relatively permanent" standard to ensure the rule is implementable across varied landscapes. Furthermore, we join ACWA in urging the agencies to provide adequate funding and technical guidance to support states as they navigate shifting regulatory responsibilities and maintain the integrity of our nation's water quality programs.

Conclusion

The proposed rule makes strides toward reflecting the balance struck by CWA to protect the nation's waters while preserving the primary responsibilities of the states. ADEQ generally supports the "relatively permanent" standard as outlined in the preamble and has already developed a robust, science-based methodology to successfully implement this section. ADEQ also appreciates the clarity provided by removing certain interstate categories and acknowledging point source functionality. To ensure the rule's long-term success, ADEQ encourages the Agencies to further refine the "wet season" metrics and connectivity standards through multi-factor, science-based methodologies that prevent implementation challenges or jurisdictional inconsistencies. ADEQ welcomes the continued opportunity to work as a collaborative partner with the Agencies, leveraging the principles of cooperative federalism to finalize a durable, predictable WOTUS definition that serves both Arizona and the nation.

Sincerely,

Karen Peters
Director, Arizona Department of Environmental Quality