



**DEPARTMENT of AGRICULTURE
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Water Docket
Environmental Protection Agency
EPA Docket Center (EPA-HQ-OW-2025-0322)
1200 Pennsylvania Avenue NW
Washington, DC 20460

Subject: Public Comment on the Proposed Rule "Updated Definition of 'Waters of the United States'"
(Docket ID No. EPA-HQ-OW-2025-0322)

Dear Administrator Zeldin and Assistant Secretary Telle,

On behalf of the South Dakota Department of Agriculture and Natural Resources (DANR), thank you for the opportunity to comment on the proposed rule revising the definition of "waters of the United States" (WOTUS) under the Clean Water Act (CWA), as published in the *Federal Register* on November 20, 2025.

As South Dakota's delegated authority for implementing Clean Water Act programs, DANR appreciates the agencies' commitment to maintaining open dialogue with states and partners throughout development of the Proposed Rule. DANR requests that EPA and the Army Corps of Engineers (USACE) continue to meaningfully engage states - including through networks such as the National Association of State Departments of Agriculture and the Environmental Council of the States - to move away from a patchwork regulatory regime and ensure states have the resources necessary to effectively coregulate in conformance with the revised boundaries of WOTUS.

We offer the following comments and recommendations to help ensure a clear, durable rule that is consistent with *Sackett v. EPA*, scientifically grounded, implementable across diverse hydrologic settings, and aligned with cooperative federalism.

Principles for Clear, Predictable, and Defensible Implementation

- **Ensure timely, transparent jurisdictional determinations.** The final rule should ensure that determinations are timely, defensible, and consistent with *Sackett* and the CWA, using observable criteria and repeatable methods.
- **Develop a public GIS mapping tool.** DANR recommends the agencies develop and maintain a public GIS map of federally regulated waters to streamline jurisdictional determinations, support state decision making, cut costs and delays, and improve transparency for landowners, developers, and regulators.

Allow for Regional Variation in Implementation

South Dakota's climate, geology, and land use differ markedly from other regions. Brightline national definitions of "relatively permanent" or "continuous surface connection" may under or over capture waters in ways that are misaligned with local hydrology.

- **Use regionally tailored tools.** DANR supports the use of Streamflow Duration Assessment Methods (SDAMs), WebWIMP, and other regionally relevant indicators to identify the wet season and to characterize flow duration and connectivity.
- **Improve accuracy, reduce burden.** Regionally tailored implementation improves the accuracy of jurisdictional determinations and reduces regulatory uncertainty for states, developers, and landowners, while better aligning determinations with real world hydrologic behavior.

Clarify Treatment of Non-Jurisdictional Waters Discharging into WOTUS

To prevent misinterpretation and unnecessary burden on landowners and producers, DANR recommends the final rule clarify that non-jurisdictional waters (e.g., tile outlets, certain agricultural ditches, or non-jurisdictional tributaries) discharging into WOTUS do not become point sources requiring permits. This clarification will help maintain the intended distinction between nonpoint and point sources and preserve regulatory certainty for agricultural and rural communities.

Cooperative Federalism and Adequate Federal Funding for Delegated Programs

DANR supports a durable framework rooted in cooperative federalism, recognizing states' primary authority and responsibility for water resource protection outside of federal jurisdiction. To achieve this, DANR recommends:

- **Match responsibilities with resources.** South Dakota implements multiple CWA programs under federal delegation (permitting, standards, monitoring, nonpoint management). These require sustained technical, financial, administrative, and enforcement capacity.
- **Provide robust, reliable funding.** We urge robust and sustained federal funding of existing CWA programs (i.e., 319, 106) to ensure states can focus state financial resources on the protection of state-jurisdictional waters efficiently and effectively—especially when federal rule changes affect the scope or process for determinations.

Conclusion

Thank you for considering these comments. DANR looks forward to continued collaboration with EPA and the USACE in finalizing a rule that reflects sound science, respects regional diversity, aligns with *Sackett*, and supports the shared goal of protecting the Nation's waters through clear, predictable, and implementable standards.

Sincerely,



Hunter Roberts,
Secretary