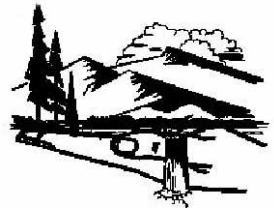




Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Mark Gordon, Governor

Todd Parfitt, Director

January 5, 2026

Mr. Lee Zeldin
United States Environmental Protection Agency
EPA Docket Center
Office of Water Docket
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Submitted online via <https://www.regulations.gov>

Re: Document ID No. EPA-HQ-OW-2025-0322 Updated Definition of “Waters of the United States”

Administrator Zeldin,

The Wyoming Department of Environmental Quality (WDEQ) submits the following comments in response to the U.S. Environmental Protection Agency’s and the U.S. Department of Army, Corps of Engineers’ (hereafter, “the Agencies”) November 2025 Federal Register (FR) notice regarding the “Updated Definition of ‘Waters of the United States’”.

As a co-regulator in implementing the Clean Water Act (CWA), the WDEQ is responsible for implementing the National Pollutant Discharge Elimination System (NPDES) program under Section 402; adopting state water quality standards, water quality assessments, and total maximum daily loads (TMDLs) under Sections 303 and 305; issuing water quality certifications under Section 401; and addressing nonpoint source pollution under Section 319, in addition to implementing state water quality laws and regulations as authorized by the Wyoming Environmental Quality Act.

The WDEQ appreciates the opportunity to comment on the proposed rule and the updated definition of Waters of the United States (WOTUS). In general, the WDEQ supports many of the proposed modifications, including regional approaches to defining WOTUS and the removal of the interstate waters category. We support the Agencies’ explicit exclusion of groundwater, as well as the clarification of exclusions for prior converted cropland, certain ditches, and waste treatment systems from the definition of WOTUS. The WDEQ recommends that the Agencies consider additional clarification in some areas to promote regulatory certainty and consistency. The WDEQ continues to advocate for a clear, consistent, durable, and objective definition of WOTUS that recognizes the limits of federal authority and is easily understood by the public. Below are our detailed recommendations and comments.

Introduction of “Wet Season” in Definitions

The WDEQ has concerns regarding the use of the undefined term “wet season” to determine whether waters meet the “relatively permanent” and “continuous surface connection” definitions. This ambiguity

invites inconsistent interpretation among federal agencies and creates uncertainty for co-regulators and landowners. While the preamble describes “wet season” as (1) extended, predictable periods of continuous surface hydrology in the same feature year after year, and (2) periods when “average monthly precipitation exceeds average monthly evapotranspiration,” it simultaneously acknowledges that many streams depend on delayed hydrologic inputs such as snowmelt or groundwater recharge, which may occur outside the modeled “wet season.” WDEQ recommends that instead of using the term “wet season,” the Agencies provide explicit, objective criteria for evaluating relatively permanent flow, including for streams whose hydrology is driven by snowmelt or other delayed processes, and that the term “typical year” (as defined in the 2020 Navigable Waters Protection Rule (NWPR¹)) be reinstated, as it is a critical component in identifying relatively permanent flow.

In contrast, the use of an undefined “wet season” introduces additional complexity and ambiguity and is likely to increase economic burden by requiring more extensive technical evaluation to demonstrate compliance across reaches with differing geomorphic and hydrologic characteristics. The WDEQ is concerned that the currently proposed use of “wet season” in defining “relatively permanent” could lead to some ephemeral waters being considered jurisdictional, which would appear to contradict the Agencies’ stated intent as well as Supreme Court decisions. Clear regulatory definitions and predictable criteria are essential to ensuring nationally consistent implementation, legal defensibility, and practical workability in the field.

Defining “Relatively Permanent”

The WDEQ supports the Agencies’ proposed interpretation of “relatively permanent” within 40 CFR § 120.2 and 33 CFR § 328.3, except for the introduction of the newly added term “wet season.” The proposed interpretation includes surface waters that are standing or flowing year-round, and this interpretation is consistent with WDEQ’s recommendation to include perennial waters that reach traditional navigable waters. Consistent with our comments provided during previous WOTUS rulemakings, the WDEQ recommends that “relatively permanent” for perennial waters be defined as “surface water flowing continuously during a typical year.” Perennial waters that contribute flow to a traditional navigable water in a “typical year” would be considered WOTUS. Additionally, we recommend the inclusion of intermittent waters as “relatively permanent” provided they have a continuous hydrologic connection to a traditional navigable water for at least three consecutive months (equivalent to a season) during a “typical year.” WDEQ recommends that the Agencies incorporate quantitative criteria in the definition of a typical year, which would include: (1) requiring the use of the most current 30-year hydrologic datasets; (2) increasing spatial resolution to better reflect localized conditions; (3) using National Oceanic and Atmospheric Administration 30-year precipitation normals as the national benchmark for identifying “wet season” conditions; and (4) incorporating the broader 25th to 75th percentile range, to reflect climate normals while excluding anomalous drought and flood years. The use of such quantitative criteria would promote transparency, reduce economic burden, and enhance implementation consistency. As described in earlier comments, the WDEQ has significant concerns regarding the proposal to extend jurisdiction to waters that are standing or flowing at least during a “wet season,” absent a clear, durable and unambiguous regulatory definition. Failure to clearly define “wet

¹ FR 85, 22341 (Apr. 21, 2020) - The term *typical year* means when precipitation and other climatic variables are within the normal periodic range (e.g., seasonally, annually) for the geographic area of the applicable aquatic resource based on a rolling thirty-year period.

season” in regulation risks inconsistent implementation and insufficient recognition of regional hydrologic variability, particularly in arid and semi-arid western states such as Wyoming.

WebWIMP

While WDEQ appreciates that the Agencies state in the preamble their intent to use publicly available analytical tools, WDEQ remains concerned that WebWIMP, as presently designed, lacks the functionality and precision necessary to support accurate, consistent, and defensible jurisdictional determinations, based on WDEQ’s recent attempts to use WebWIMP to determine the “wet season” for several Wyoming streams. Many Wyoming streams are driven by snowpack accumulation, delayed snowmelt, and recharge of baseflow—processes that do not coincide with WebWIMP’s identified “wet season.” WebWIMP indicates that much of Wyoming’s “wet season” occurs primarily during winter months when precipitation exceeds evapotranspiration; however, the preamble concurrently recognizes that in these regions, streamflow is typically driven by later snowmelt, with runoff and surface-flow expression occurring months after the modeled precipitation window. Further, such systems may not exhibit predictable timing or duration of flow given annual variability in snowpack volume, melt rate, and climatic conditions. WDEQ therefore requests clarification as to how the agencies intend to apply the preamble’s definition of “wet season,” articulated as the period “when average monthly precipitation exceeds average monthly evapotranspiration,” in instances where hydrologic response is demonstrably delayed due to snow-dependent hydrology.

Additional uncertainty results from WebWIMP’s reliance on potentially outdated datasets, the absence of a clearly defined period of record, and its relatively coarse one-half-degree spatial resolution (approximately 20-40 miles based on 5 random test sites where latitudes and longitudes were selected within Wyoming). Another observed problem was the “spatial interpolation” operation that failed to generate a reference point location to the nearest grid point with relevant climatic data (see Attachment 1). Beyond misrepresenting locations, the spatial interpolation is potentially estimating water balance values with no correlating data. These limitations increase the likelihood of inaccurate hydrologic characterization, particularly in topographically complex western watersheds. Additionally, the “Global Climate” resources page indicates that the data sets provided will not be updated in the future, and that no technical support is available to maintain the website’s content.

To ensure that determinations made pursuant to the proposed 40 CFR § 120.2 and 33 CFR § 328.3 are scientifically defensible, consistent, and aligned with established federal practice, WDEQ recommends the development of instructional materials, including publicly accessible training resources, that demonstrate appropriate WebWIMP applications and evaluation of delayed-flow, snowmelt-dependent, and seasonally variable systems. These revisions and clarifications would improve regulatory clarity, enhance scientific reliability, and reduce the likelihood of arbitrary or inaccurate determinations under the “Waters of the United States” framework.

Defining and Implementing “Tributary”

Under the proposed revisions to 40 CFR § 120.2(c)(10) and 33 CFR § 328.3(a)(10), the Agencies appropriately clarify that a tributary must convey relatively permanent flow and that certain features such as debris accumulations, boulder fields, wetlands, and “subterranean rivers” do not establish jurisdiction if they fail to convey such flow. However, the preamble discussion of “reaches” (p. 52525) introduces significant uncertainty by suggesting that alternating segments of relatively permanent and non-relatively permanent conditions may be evaluated as separate reaches. This provision requires technical, subjective

determinations in the field and risks inconsistent outcomes, contrary to the stated objective of increasing clarity and administrative predictability.

The proposed revisions recognize that features lacking relatively permanent flow sever jurisdiction upstream, yet the reach-based approach appears to reintroduce discretionary evaluations regarding whether connectivity resumes beyond a non-relatively permanent segment. Such a framework blurs the clear and workable structure the rule otherwise seeks to establish. The uncertainty is compounded by the reference to “subterranean rivers,” a term that is not defined and that raises practical implementation concerns, especially given the explicit exclusion of groundwater elsewhere in the rule.

Accordingly, the Agencies should remove reliance on the reach concept articulated in the preamble and instead affirm a clear termination of jurisdiction where a feature does not convey relatively permanent flow, as was prescribed in the NWPR². The rule should also be revised to eliminate the undefined “subterranean river” reference or make explicit that undefined or speculative subsurface pathways cannot reestablish jurisdiction. These revisions would preserve the strengths of the proposed regulatory text while ensuring the rule is administrable, transparent, and consistent with its stated intent.

Defining and Implementing Continuous Surface Connection

The WDEQ supports the proposed definition of “continuous surface connection,” as applied to wetlands except with relation to “wet season” for the reasons described above. The definition appropriately requires a wetland to physically abut and maintain a direct and relatively permanent hydrologic connection to a jurisdictional water during a typical year. This approach provides clarity, improves consistency in delineating jurisdictional wetlands, and aligns with the Agencies’ longstanding exclusion of groundwater and non-relatively permanent features.

More broadly, the WDEQ supports the Agencies’ effort to apply consistent hydrologic principles across other categories of waters, including tributaries, lakes, ponds, and adjacent waters. In particular, we endorse the use of standardized, 30-year climatological datasets, NOAA precipitation normals, and percentile-based approaches, such as those reflected in the APT to define typical year conditions, evaluate relatively permanent connections, and inform wet-season flow determinations. Applying these data-driven methods across water categories will reduce subjectivity, increase reproducibility of field determinations, and improve administrative consistency while maintaining alignment with the rule’s exclusions.

We further recommend that the Agencies provide clear guidance on implementing these datasets in field determinations to ensure transparency and predictability for both agency staff and regulated entities. By affirming a bright-line, hydrologically grounded framework, the rule will enhance legal durability, enforceability, and practical implementation across all categories of jurisdictional waters.

Removal of Interstate Water Category

The WDEQ supports the Agencies’ intent to remove the “interstate waters” category under 40 CFR § 120(a)(1)(iii), recognizing that political boundaries should not automatically determine whether a surface water is a WOTUS. The WDEQ supports the Agencies’ approach that, to qualify as a WOTUS, an interstate water must be a surface water with “relatively permanent” standing water or flow, or that has a “continuous surface connection.”

² 85 FR, 22276 (Apr. 21, 2020).

Exclusions from the Definition

We support the Agencies' explicit exclusion of groundwater, as well as the clarification of exclusions for prior converted cropland, certain ditches, and waste treatment systems from the definition of WOTUS. This effort to clarify exclusions provides legal clarity and regulatory certainty and increases administrative efficiency for state and federal partners. However, we recommend the agency reinstate the 2020 NWPR's categorical exclusion of ephemeral features under the proposed 40 CFR § 120.2 (b)(8), as this section fails to clarify that ephemeral streams are explicitly excluded, as was defined in NWPR³. Without explicitly incorporating this exclusion, Wyoming could experience an unnecessary increase in the number of stream miles under federal jurisdiction, particularly given the uncertainties associated with the use of the term "wet season" in defining "relatively permanent," as described in our earlier comments. Wyoming's water quality standards apply to all surface waters of the state, regardless of their status as a WOTUS. Excluding ephemeral features does not eliminate water quality protections; rather, it reinforces Congress' intent as outlined in CWA Sections 101(b) [33 U.S.C. § 1251] and 303 [33 U.S.C. § 1313], which affirms states' primary responsibilities to protect water quality within their borders. We appreciate the Agencies' acknowledgment of the importance of state authority and cooperative federalism in the preamble to the proposed rule.

Clarification of Effluent-Dependent Systems and Irrigation Controlled Systems

The WDEQ suggests that the Agencies incorporate an additional exclusion under the rule to capture effluent-dependent bodies of water that would not otherwise be permanently flowing or flowing during the wet season and would not be relatively permanent, standing, or continuously flowing if the discharge from a permitted facility ceased. This would be similar to the non-WOTUS category EPA already recognizes at 120.2(b)(4) for artificially irrigated areas that would revert to dry land if the irrigation ceased.

Defining Substrate

We recommend that the Agencies define "substrate" within the framework of bed and banks in the regulatory text for clarity. We suggest that "substrate" be defined as *the underlying layer of rock or sediment (like sand, mud, or gravel) that forms the foundation of a waterbody, serving as the base where physical, chemical, and biological processes occur*. This ensures that evidence of ephemeral features (e.g., grassy swales or vegetative debris) is not interpreted as a "substrate" as a result of an episodic precipitation event.

Defining "Groundwater"

For the purpose of increasing regulatory clarity, the WDEQ recommends that the Agencies implement a definition of "groundwater" into the regulatory text of the proposed rule and define groundwater as *subsurface water that fills available openings in rock or soil materials such that they may be considered water saturated under hydrostatic pressure*. This reinforces that water beneath the surface does not become subject to federal Clean Water Act jurisdiction until the source of water qualifies as "relatively permanent" as defined in 40 CFR § 120 (c) (8) and or (10) of the proposed rule.

³ 85 FR 22340 (Apr. 21, 2020) - "Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools."

Geospatial Mapping of WOTUS

The WDEQ continues to encourage identifying WOTUS by integrating publicly available, national geospatial mapping tools through federal-state partnerships. While technical and procedural challenges exist, a phased approach to generating a WOTUS map is not only feasible but also practical. Initial mapping efforts could focus on traditional navigable waters, territorial seas, and many of the excluded waters, followed by the more complex jurisdictional waters such as tributaries, lakes and ponds, and ultimately adjacent wetlands. Such mappings would improve regulatory certainty, consistency, and transparency while also reinforcing the principles of cooperative federalism. To maintain effectiveness and scientific accuracy, these maps could be periodically updated (e.g., every five years) to be consistent with the effective duration of jurisdictional determinations and to reflect long-term changes in the hydrology of the nation's waters.

Closing Remarks

The WDEQ appreciates the Agencies' effort to pursue a balanced federal-state collaboration in the protection of the nation's waters in accordance with cooperative federalism. We also appreciate the Agencies' effort to incorporate regional approaches into the definition of WOTUS. We are optimistic that the Agencies will be able to craft a durable rule after considering all legal precedents and comments received. Thank you for the opportunity to comment, and we look forward to working alongside EPA and other state and tribal co-regulators during future engagement opportunities with the shared goal of implementing a clear, consistent, durable, and objective definition of WOTUS now and into the future.

Sincerely,



Todd Parfitt

Director

Department of Environmental Quality

TP/JZ/DHW/JRZ/JJT

cc: Jennifer Zygmunt, Water Quality Division Administrator
David Waterstreet, Manager, Watershed Protection Section
David DeWald, Deputy Attorney General, Attorney General's Office
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Attachment 1- Random locations were selected and labeled using Google Earth ("Scenario # - Random Location"), and the associated latitude and longitude coordinates were entered into WebWIMP. WebWIMP generated coordinates within the Climatic Water Balance Result Page, which assigns locations to the nearest spatially interpolated 0.5°x 0.5° latitude- longitude grid point. These coordinates were then plotted and labeled ("Scenario # - WebWIMP Generated Location") within Google Earth to examine spatial resolution accuracy and precision. As shown, the randomly selected locations and corresponding WebWIMP generated locations can be significantly different, and WebWIMP's rounding algorithm is limited to rounding to the nearest 0.5°x 0.5° latitude- longitude rather than generating the nearest grid point with data.

