



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

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The Honorable Lee M. Zeldin
Administrator
Environmental Protection Agency
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Washington, DC 20460
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The Honorable Jessica Kramer
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
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Re: Supplemental notice of proposed WOTUS rulemaking [EPA-HQ-OW-2025-0322]

Dear Administrator Zeldin and Assistant Administrator Kramer,

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

We offer the following comments in response to the Supplemental Notice of Proposed Rulemaking (SNPRM) on updated definition of “Waters of the United States” (WOTUS) (91 FR 57284). The WSWC appreciates the agencies' careful consideration of the nuances a WOTUS definition requires. We recognize the cooperative spirit reflected in this approach and appreciate the opportunity to comment.

Our States will give their respective feedback regarding the appropriate scope of “perennial,” “relatively permanent,” and “continuous surface connection.” Without question, states are in the best position to understand their own unique landscapes, flow regimes, and seasonality that these definitions must reflect, as well as the impact that proposed language will have on implementation within their borders. We urge you to give heightened consideration to the comments submitted by state regulatory authorities.

As stated during federalism consultation, it is the position of the WSWC that any federal effort to clarify or define WOTUS must: (1) create an enduring and broadly supported definition; (2) acknowledge and address the needs, priorities, and concerns of states as co-regulators; (3) provide for a clearly delineated process for resolving differences of opinion over jurisdictional determinations; (4) provide for mapping and map maintenance of jurisdictional waters as a joint federal/state/tribal effort; and (5) consider further the practical application of a regional approach to implementation, building upon existing classification systems based on hydrology, geology, and climate. As you assess state responses and compare against the proposed rule, we encourage you to ensure that these principles are reflected in your final decision-making.

I. One-Size-Fits-All Approach

A one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West. Water and precipitation are often scarce and a variety of unique waterbodies exist, including small ephemeral washes and arroyos, snow dependent intermittent streams, effluent dependent and dominated streams, prairie potholes, playa lakes, and terminal lakes, as well as numerous man-made reservoirs, impoundments, and water and stormwater conveyance structures.

The West differs from the East both hydrologically and legally, and western states also differ from one another. Physical, hydrological, biological, and chemical differences between waters, both spatially and temporally, as well as considerable differences in legal doctrines that govern water in western states, mean that any federal effort to clarify CWA jurisdiction will inevitably impact each state differently.

The WSWC urges the agencies to ensure that any final rule considers a regional approach to the definitions of terms such as "relatively permanent," with regions building upon existing classification systems based on hydrology, geology, and climate. Any final rule should also balance definitional clarity with flexibility in implementation to address the unique landscapes, flow regimes, and legal frameworks in various regions of the Nation.

II. Cooperative Federalism

The Clean Water Act (CWA) is built upon the principle of cooperative federalism, especially as noted under CWA §101(b) and (g). Efforts to redefine or clarify CWA jurisdiction have numerous federalism implications, with the potential to significantly impact states to alter the distribution of power and responsibilities among the states and federal government. The WSWC encourages the agencies to continue to proactively reach out to the states individually as co-regulators at every stage of the rulemaking process. States remain uniquely positioned to address the significant questions presented in the supplemental proposal.

III. Technical and Financial Assistance

The WSWC supports continued access to federal technical and financial assistance to the states to protect and improve water quality under existing EPA programs. These non-regulatory federal measures have been meaningful for the states to address point and non-point source pollution through state regulatory and voluntary programs tailored to fit unique state needs.

The six components used in the Water Pollution Control state grant allotment formula are: (1) Surface Water Area; (2) Groundwater Use; (3) Water Quality Impairment; (4) Point Sources; (5) Nonpoint Sources; and (6) Population of Urbanized Area (40 CFR 35.162). Some of these components have the potential to be impacted if certain waters are no longer considered WOTUS, but are still protected as waters of the state. Many states use a combination of state funds, fee funds, and federal water pollution control grant funds to implement their water pollution control programs. The WSWC does not support any reduction in water pollution control state or other grant funding for western states due to the WOTUS changes.

IV. Mapping and Geospatial Datasets

The WSWC supports the development of geospatial datasets for mapping jurisdictional waters through a joint federal, state, and tribal effort. WSWC supports joint federal-state efforts to identify and employ the most up-to-date data and tools, as well as appropriate provisions and funding for field verification of map accuracy and ongoing data and map maintenance. Regardless of how WOTUS is defined, there has long been a need for a national mapping structure that provides clarity to regulators and the regulated community with respect to jurisdiction. While the currently available data lacks the quality and resolution needed for an accurate and comprehensive map of all jurisdictional waters, an initial joint effort could be made toward identifying traditionally navigable waters. We are willing to support a meeting or series of meetings to begin these discussions.

V. Dispute Resolution Mechanism

Uncertainty and differences of opinion exist between states regarding CWA jurisdiction, as evidenced by the many lawsuits brought by states either objecting to or supporting the 2015 Clean Water Rule, the 2020 Navigable Waters Protection Rule, and the 2023 Revised Definition of WOTUS Rule. Further, substantial and recurring changes from one Administration to the next create uncertainty, inconsistencies, and indecision not only for states as co-regulators, but also for the regulated community. This further underscores the need for the EPA and Corps of Engineers to work more closely with the states to develop and implement a more reliable, enduring, and broadly supported definition of WOTUS that effectively ends the regulatory whiplash.

The WSWC supports a clear process for resolving differences of opinion over federal and non-federal jurisdiction, as well as jurisdictional disputes between different states and tribes with Treatment as a State authority. For example, although 40 CFR §131.7 provides a dispute resolution mechanism between states and tribes with differing water quality standards, this does not appear to apply to jurisdictional disputes between one state and another state, or between one tribe and another tribe, or between a state/tribe and a federal agency, e.g., if a federal agency determines a water is jurisdictional as a “water of the United States” and a state claims it is instead a “water of the State.”

In closing, the WSWC urges the agencies to adopt a durable definition of WOTUS that respects the Clean Water Act’s framework of cooperative federalism and recognizes the primary responsibilities and expertise of the states in managing and protecting water resources within their borders. Federal jurisdiction should be clear and predictable, while preserving state authority and flexibility to address waters beyond federal jurisdiction through programs tailored to their unique hydrologic, climatic, and legal conditions. As the agencies move toward a final rule, we urge you to give substantial weight to the views of state co-regulators and to continue working directly with the states on implementation.

Thank you for the opportunity to comment.

Sincerely,



J.D. Strong
Executive Director