

United States Senate

WASHINGTON, DC 20510

January 28, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

The Honorable Adam Telle
Assistant Secretary of the Army (Civil Works)
U.S. Department of Defense
108 Army Pentagon
Washington, DC 20310

Dear Administrator Zeldin and Assistant Secretary Telle:

In 1972, after the Cuyahoga River caught fire more than a dozen times and the Potomac River choked the nation's capital with pollution, Congress passed the Clean Water Act (CWA) with strong bipartisan votes to protect America's water resources and safeguard our nation's public health. Yet, six decades later, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE)¹ have proposed a new Waters of the United States (WOTUS) draft rule that threatens to undo the significant progress our nation has made to restore the quality of our nation's waters. The proposed rule is legally unnecessary, scientifically unsound, and will harm public and environmental health by allowing more harmful chemicals into our waterways. We urge you to abandon this rulemaking and refocus your efforts on making Americans healthier.

The proposed 2025 WOTUS rule purports to implement the 2023 *Sackett v. EPA* decision,² in which the 5-4 Supreme Court majority substituted its own faulty understanding of science for EPA's (*Sackett v. EPA*, 598 U.S. 651 (2023)).³ On the majority's new definition in *Sackett*, Justice Brett Kavanaugh even wrote, "In my view, the Court's 'continuous surface connection' test departs from the statutory text, from 45 years of consistent agency practice, and from this Court's precedents."⁴ The *Sackett* ruling determined that wetlands lacking a continuous surface connection to a year-round or flowing body of water shall not be considered WOTUS, even though such waters may have significant effects on the quality of permanent bodies of water. In doing so, *Sackett* stripped protections for anywhere between 60 to 80 percent of America's wetlands, depending on ultimate implementation.⁵ And yet, the administration's new 2025 proposed rule goes even further than *Sackett*'s draconian definition, excluding many types of headwaters, tributaries, and ephemeral or intermittent streams and water bodies from WOTUS jurisdiction as well.⁶

¹ EPA-HQ-OW-2025-0322, <https://www.federalregister.gov/documents/2025/11/20/2025-20402/updated-definition-of-waters-of-the-united-states>

² <https://www.epa.gov/newsreleases/epa-army-corps-unveil-clear-durable-wotus-proposal>

³ *Sackett v. EPA*, 598 U.S. 651 (2023), https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf

⁴ https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf

⁵ https://www.nrdc.org/sites/default/files/2025-03/Wetlands_Report_R_25-03-B_05_locked.pdf

⁶ <https://natlawreview.com/article/proposed-wotus-rule-could-reduce-cwa-permitting-burdens-developers>

EPA’s own analysis⁷ estimates that only 19 percent of the nation’s existing nontidal wetlands would fall under WOTUS jurisdiction if the 2025 rule is codified as proposed, while other studies find this number could range from 9 percent to 0 percent.⁸ The potential impact on other headwaters, tributaries, and ephemeral water bodies remains to be evaluated.⁹

By excluding all waters but those with continuous surface connections and which abut water bodies, the proposed rule would improperly exclude from federal jurisdiction many discharges that are functionally equivalent to discharges into jurisdictional waters. The ecology of these important water bodies is inextricably tied to the water quality of traditionally navigable waters. These water bodies are the capillaries and kidneys of the nation’s watersheds; when they are polluted or filled in, harm flows downstream in the form of higher nutrient, sediment, and toxics loads, all of which cumulatively degrade water quality throughout watersheds. This means more flooding, more harmful algal blooms, and less filtration of pollutants. The new definition would also absolve upstream polluters from the obligation to adopt responsible prevention measures, and would instead shift the burden of managing pollution, flood, and drought onto the shoulders of those who work and live downstream.

The administration’s proposed rule would cause EPA and USACE to fail to meet Congress’s mandate, and Administrator Zeldin’s stated primary objective: to maintain clean water for all Americans.¹⁰

We all drink and use water. Municipal water utilities and their ratepayers—the American people—will disproportionately bear the economic burden of remediating the poorer quality water this rule will cause. Moreover, flood risk management and disaster response services will become increasingly overburdened from the compounding impacts of cumulative upstream watershed degradation. The proposed rule considers benefits to developers yet makes no attempt to estimate or compare those theoretical benefits to the other costs to society from the degradation that will occur to drinking water sources and aquatic ecosystems across the country. Further, this new rule jeopardizes wetlands and wildlife habitat that many Americans enjoy for outdoor recreation and wildlife watching.

EPA stated in its announcement that the proposed rule “support[s] the role of states and tribes as primary regulators managing their own land and water resources.”¹¹ Yet states are not helped by the federal government’s abdication of its statutory responsibilities. Because of EPA’s abandonment of responsibility to protect clean water, more of the onus will fall on the states to enforce state-level protections of clean water—protections that can vary greatly state-by-state. States will be forced to pick up the slack, which runs the risk of straining state budgets and environmental enforcement resources. Additionally, by excluding interstate waters flowing

⁷ Environmental Protection Agency, Department of the Army. Nov. 2025. Regulatory Impact Analysis for the Proposed *Updated Definition of Waters of the United States* Rule.

https://www.epa.gov/system/files/documents/2025-11/11132.1-01-ow_wotus_nprm_ria_20251110_508.pdf

⁸ Gold, 2024. How wet must a wetland be to have federal protections in post-Sackett US? *Science*, 385, 1450-1453.

<https://www.science.org/doi/10.1126/science.adp3222>

⁹ https://www.epa.gov/system/files/documents/2025-11/11132.1-01-ow_wotus_nprm_ria_20251110_508.pdf

¹⁰ <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-announces-epas-powering-great-american-comeback>

¹¹ <https://www.epa.gov/newsreleases/epa-army-corps-unveil-clear-durable-wotus-proposal>

between two or more states, the proposed rule would likely result in costly legal battles between states.

As proposed, the 2025 draft WOTUS rule ignores science, removes vast swaths of aquatic areas from federal jurisdiction, fails to protect water quality, and passes the costs on to the American taxpayer. It does not simplify the ability of the agency to identify jurisdictional waters. There are reasonable policies we could pursue to simplify permitting and create union jobs in this country, but this proposed rule does not represent a viable path forward. We urge you to immediately abandon this unnecessary and statutorily unfaithful rulemaking that will harm public health and to instead refocus your efforts on protecting the American people's right to clean and safe water.

Sincerely,



Adam B. Schiff
United States Senator
Ranking Member
Subcommittee on Fisheries,
Water, and Wildlife



Sheldon Whitehouse
United States Senator
Ranking Member
Committee on Environment
and Public Works



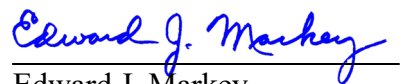
Kirsten Gillibrand
United States Senator



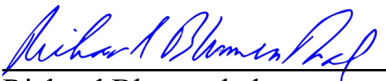
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United States Senator



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United States Senator



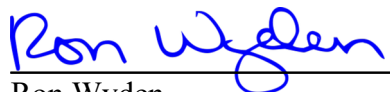
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