



THE UNITED STATES
CONFERENCE OF MAYORS



June 2, 2025

Ms. Stacey Jensen
Oceans, Wetlands and Communities
Division, Office of Water (4504-T)
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr. Milton Boyd
Office of the Assistant Secretary of the Army
for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310-0104

RE: Docket ID No. EPA-HQ-OW-2025-0093; FRL-12683-01-OW

Dear Ms. Jensen and Mr. Boyd,

On behalf of the nation's mayors, cities and counties, we appreciate the opportunity to submit comments to the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Army Corps) in response to "WOTUS Notice: The Final Response to SCOTUS" published on March 24, 2025. We appreciate EPA and the Army Corps holding a Federalism Consultation briefing for state and local governments pursuant to Executive Order 13132: Federalism on April 3, 2025 to solicit feedback on the implementation of the definition of "Waters of the United States" (WOTUS) in light of the U.S. Supreme Court's 2023 decision in *Sackett v. Environmental Protection Agency*. As the agencies move forward in drafting and finalizing a durable WOTUS rule, we urge you to continue to engage local governments to ensure the rule is effective and implementable at the local level.

The health, safety and well-being of residents are top priorities for local leaders. As partners in protecting America's water resources, it is essential that local governments clearly understand the vast impact that a change to the definition of WOTUS will have on all aspects of the Clean Water Act (CWA).

Collectively, our organizations represent the nation's 3,069 counties, 19,000 cities, towns and villages, and the mayors of the 1,400 largest cities. Local governments serve as co-regulators with the federal government and ultimately help implement new and existing laws, including CWA programs. Additionally, cities and counties own public safety facilities and infrastructure directly impacted by federal laws and regulations. To that end, federal, state and local governments must work together to craft reasonable and practicable rules and regulations.

In this letter, we provide insight into what a change in the definition of WOTUS means for local governments and recommendations on developing the proposed rule. As stewards of the environment, local governments appreciate the efforts of the EPA and Army Corps to implement water pollution programs and regulate quality standards, and we look forward to partnering with the federal government to protect our nation's water supply.

Local Governments Support a Clear and Implementable Rule

Due to ongoing litigation, the pre-2015 regulatory framework and the 2023 conforming rule are both currently in place. This has led to confusion and inconsistent implementation standards for local governments. Creating one definition for federally protected waters under the CWA would give local governments much-needed regulatory certainty and consistency.

The foundational waters consisting of traditional navigable waters, interstate waters and territorial seas are familiar to local governments. Adjacent wetlands, tributaries and impoundments of these foundational waters are also familiar to local governments. However, the courts established numerous standards relating to these definitions, which need to be clarified by the agencies through this rulemaking.

Modifications to the existing regulatory framework will take time and resources for municipal engineers to learn and implement. We urge EPA and the Army Corps to create a regulatory framework that clarifies which waters are jurisdictional—without the need for local governments to hire consultants or expend valuable and limited resources in determining if a waterway is under federal jurisdiction. As co-regulators and regulated entities, local governments seek that level of clarity in this definition.

Local governments would also greatly benefit from technical assistance and funding to help officials and employees understand and implement the definitional changes once finalized. Alternatively, the EPA and Army Corps can create one WOTUS map that clearly shows all waters that would be considered jurisdictional under the new proposed rule. Right now, the EPA and Army Corps recommend local governments check and monitor eight different mapping resources, plus any that their respective state has to offer, to determine if a water is federally regulated.

We strongly urge the EPA and Army Corps to adopt a definition that is practical for local governments to adhere to. Any revised interpretation of WOTUS should be grounded by a realistic framework that makes a clear distinction between waters that are federally regulated and those that are associated with public operations and related municipal infrastructure. The proposed rule should reflect a common-sense approach to determining which waterbodies do and do not meet the thresholds of WOTUS.

Recommendations for Explicit Exclusions

A definition that is unnecessarily broad and enforced on varying case by case interpretations will mitigate our members' abilities to effectively provide vital drinking water, wastewater, and stormwater management services. Therefore, local governments strongly urge the EPA and Army Corps **to make public and private stormwater control features and other municipally-owned facilities, particularly those related to drinking water, wastewater, and stormwater control features, explicitly excluded under the rule.** Our organizations supported the specific exclusions outlined in the 2015 Clean Water Rule and the 2020 Navigable Waters Protection Rule, which included :

- Public safety water and stormwater conveyances, including roads and roadsides ditches, flood control channels, drainage conveyances and culverts.
- Municipal Stormwater Sewer Systems (MS4s) and constructed stormwater ponds, channels, ditches, and pipes in the MS4 system.

- Green infrastructure stormwater control features including bioswales, vegetative buffers, constructed wetlands, vegetated infiltration features, and rain gardens owned and operated by local governments and private entities.
- Drinking water facilities and infrastructure consisting of reservoirs, dams, ponds, canals serving drinking water facilities.
- Water reuse infrastructure which includes facilities built to generate additional water supply, like ponds, recharge basins, canals and ditches serving water reuse facilities.

As stated in the 2015 Clean Water Rule preamble: “Codifying these longstanding practices supports the agencies’ goals of providing greater clarity, certainty, and predictability for the regulated public and regulators, and makes rule implementation clear and practical.” These explicit exclusions are needed so that owners, operators, and managers of local drinking water, wastewater and stormwater systems can do their essential operations and maintenance work efficiently and effectively.

Conclusion

As partners in protecting America's water resources, it is essential that local leaders clearly understand the vast impact that changes to the WOTUS definition will have on their communities, residents and resources. We seek a definition that does not require local leaders to hire professional consultants to determine jurisdictional status.

Due to the responsibilities and the complicated nature of determining federal jurisdiction under WOTUS, our organizations have consistently asked for a transparent and straightforward rulemaking process, including continued meaningful and engaging Federalism consultations under Executive Order 13132. As intergovernmental partners, we look forward to meeting with the EPA and Army Corps more as this definition is developed.

On behalf of the nation's mayors, cities and counties, we thank you for engaging with our organizations and local governments. We look forward to working with you as you continue to develop a new "waters of the United States" definitional rule, as this change will have far-reaching impacts on local governments.

Please do not hesitate to contact our staff for any questions you may have: Judy Sheahan (USCM) at jsheahan@usmayors.org; Carolyn Berndt (NLC) at berndt@nlc.org; or Charlotte Mitchell Duyshart (NACo) at cmitchell@naco.org.

Sincerely,



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