



THE UNITED STATES
CONFERENCE OF MAYORS



January 5, 2026

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

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

RE: EPA-HQ-OW-2025-0322

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 the proposed Updated Definition of "Waters of the United States" (WOTUS) published in the Federal Register on November 20, 2025. As the agencies move forward in 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 help implement federal laws, including the CWA. 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 final 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, Implementable Rule to Reduce Confusion and Duplication

Due to previous 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. We appreciate the efforts of the agencies to propose a rulemaking that is both aligned with the recent *Sackett v. EPA* Supreme Court decision and that is also clear, predictable, and enduring for local governments.

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. Furthermore, it must be recognized that the effects of a new WOTUS definition should be evaluated against the jurisdictional scope permitted by the Supreme Court's *Sackett v. EPA* interpretation of the statute, and not based on any prior regulations or guidance.

Modifications to the existing regulatory framework will take time and resources for municipal engineers to learn and implement. It is critical to emphasize that local leaders have had to adjust to four different WOTUS definitions over the past decade, severely impeding project planning timelines, increasing costs and creating regulatory uncertainty. A definition that is unnecessarily broad and enforced on varying case by case interpretations will mitigate local leaders' abilities to effectively provide vital drinking water, wastewater, and stormwater management services in their communities.

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 certainty for their investments in community assets and private property.

The current Administrative process is ripe for reform as it requires duplicative tasks. For example, the EPA and Army Corps currently 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, which is an unsustainable practice. Alternatively, the EPA and Army Corps could create one WOTUS map that clearly shows all waters that would be considered jurisdictional under the final rule. We urge EPA and Army Corps to provide technical assistance to local governments to help officials and employees understand and implement the definitional changes once finalized.

We strongly urge the EPA and Army Corps to adopt a definition that is practical and implementable at the local level. 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 final rule should reflect a common-sense approach to determining which waters do and do not meet the thresholds of WOTUS.

Recommendations on the Proposed Rule

While our organizations are generally supportive of several elements of the newly-proposed definition of WOTUS, we offer the following specific recommendations to strengthen the proposed rule and provide clarity and certainty for local governments:

1. Definitions

We have some concerns that the newly-proposed definition for “relatively permanent,” particularly as it pertains to the undefined term “wet season,” is unclear and therefore not implementable as currently written. To address this, we suggest the Agency have two tests for identifying “relatively permanent” waters: (1) A bright line test that may be under inclusive but that could be used by landowners, including local governments, to know for sure when a water is excluded and (2) An additional test based on “wet season” as proposed to make a jurisdictional determination in less clear situations.

We further recommend that any additional tests should be based on scientifically available and objective data to better ensure consistency and ease of implementation.

2. Exclusions

We were pleased to see specific exclusions for ditches, wastewater treatment plants and groundwater included in the proposed rule. The definition of ditch as “a constructed or excavated channel used to convey water” provides needed clarity for local governments to determine if it is subject to federal jurisdiction. We urge the agencies to keep these exclusions in the final rule.

However, the proposed rule omits the categorical exclusions for drinking water and stormwater control features that were previously included in the 2015 Clean Water Rule and 2020 Navigable Waters Protection Rule, but have never been codified. These explicit exclusions are needed so that owners, operators, and managers of local drinking water, wastewater and stormwater systems can perform essential operations and maintenance work efficiently and effectively.

To further strengthen the final rule, we continue to strongly urge the EPA and Army Corps to make public and private stormwater control features and other municipally-owned facilities, such as those related to drinking water, explicitly excluded under the rule. This includes gray and green infrastructure serving drinking water facilities, as well as natural infrastructure such as bioswales, vegetative buffers, constructed wetlands,

vegetated infiltration features, and rain gardens owned and operated by local governments and private entities.

We strongly recommend that the following simple and concise language be included in the final rule:

The following are not “waters of the United States”:

- Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff.
- 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.
- Ditches, both navigable and non-navigable, and other drainage features such as local streets and gutters that protect and ensure the operation of public infrastructure

This common-sense exclusion language furthers the agencies’ goals of finalizing a durable and implementable WOTUS rule. For example, with more than 7,500 permitted local stormwater programs and an estimated 2.5 million stormwater treatment assets across the country, according to the American Society of Civil Engineers, it is impractical for EPA to conduct case-by-case jurisdictional determinations. Rather, providing a categorical exclusion for stormwater control features would provide certainty to local governments and greatly improve the rule’s implementability.

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.

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 finalize 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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