



NATIONAL ASSOCIATION OF STATE FORESTERS

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January 5, 2026

U.S. Environmental Protection Agency
EPA Docket Center
Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: EPA-HQ-OW-2025-0322 – Updated Definition of “Waters of the United States”

To Whom It May Concern:

The National Association of State Foresters (NASF) appreciates the opportunity to provide comments on clarifying the definition of “Waters of the United States” (WOTUS) to provide greater regulatory certainty and increase Clean Water Act implementation and interpretation predictability and consistency.

NASF, established in 1920, represents the heads of the state forestry agencies in all fifty states, the U.S. territories, and the District of Columbia. Our members are either directly responsible for or the primary deliverers of sustainable forest management on three hundred million acres of family, state, and locally owned forest land. State forestry agencies also provide wildfire protection on more than 1.5 billion acres nationwide and often assist in managing federal forests. Over half of the nation’s drinking water supply comes from forested landscapes. Forests are the most effective land use type in protecting water quality and are key to protecting groundwater reserves.

We applaud the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (“the agencies”) for revising the regulations defining the scope of waters federally covered under the Clean Water Act, in light of the U.S. Supreme Court's 2023 decision in *Sackett v. Environmental Protection Agency*. As stated in our public comment letter dated April 23, 2025 on the EPA’s request for recommendations on WOTUS implementation, NASF has been a supporter of both regulatory clarity and reduced overreach in the definition and implementation of WOTUS through all its definitional iterations.

Each state has published a set of “Forestry Best Management Practices” (BMPs) for the protection of water quality and quantity. State foresters promote the use of BMPs through

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various means during forest management operations. The NASF website (www.stateforesters.org/bmps/) houses a comprehensive data set and interactive map that includes each state's BMPs program. Nationally, the implementation rate and effectiveness of BMPs in protecting water resources are very high. Given this, NASF appreciates that this proposed rule reaffirms the long standing, now codified, exemption of normal silvicultural activities under section 404(f)(1)(A) of the Clean Water Act, even in areas that meet the definition of a WOTUS.

We applaud the agencies' efforts to respect the Act's careful balance between Federal authority and State responsibilities over waters and carry out Congress' overall objectives to restore and maintain the integrity of the Nation's waters in a manner that preserves the traditional sovereignty of States over their own land and water resources pursuant to the cooperative federalism framework predicated by the Act.

As outlined below, we support adding definitions for “relatively permanent” and “continuous surface connection” to provide clarity and predictability for Federal agencies, States, Tribes, the regulated community, and the public. In addition, we thank the agencies for re-establishing the definition for “ditch,” and “tributary,” to ensure clear boundaries for our members who in many cases have the statutory requirement to regulate water quality through forestry BMPs.

Relatively Permanent

NASF supports the agencies proposing to add a definition of “relatively permanent” to help ensure clarity and predictability for Federal agencies, States, Tribes, and the regulated community. At the same time, we realize the need for the definition to account for regional hydrologic variability across the country. Regarding the definition itself, we recommend that relatively permanent waters be defined as perennial waters only. This would avoid either field staff having to make a further determination of the intermittent/ephemeral transition, or the agency having to define a term in “wet season” that is highly variable across the country. It is important to recognize that in many states, the statutory definition of perennial is not “flowing every day” as stated in the proposal but instead is “flowing >90% of the time”. Using this definition of perennial makes using the term in the definition of “relatively permanent” more in line with the term “relatively” in the *Rapanos* and *Sackett* decisions, appropriately leaving intermittent and ephemeral waters under the jurisdiction of states.

If EPA chooses to pursue the “standing or continuously flowing year-round or at least during the wet season” definitional approach, NASF prefers the following alternative approach presented in the proposal for defining “at least during the wet season *where surface hydrology must occur [annually] for at least some months in response to the wet season. The agencies would not require the flow to occur throughout the wet season but would still require flow to occur for at least some months of continuous flow. The duration would extend beyond merely weeks, or even one month, and would require the flow for at least an extended period of time of some months during or in response to the wet season.*” NASF believes this definition lacks clarity that the streams flowing only during the wet season must do so on an annual basis. To clarify, we recommend inserting the word annually were shown in brackets.

Continuous Surface Connection

NASF further supports the agencies proposing to add a definition of “continuous surface connection” to again help ensure clarity and predictability for Federal agencies, States, Tribes, and the regulated community. Further, we support that discrete features do not inherently sever jurisdiction.

In our April 23, 2025, Federal Register Notice comment letter NASF stated we support the agencies implementing the “continuous surface connection” to mean abutting or “touching” jurisdictional waters and not using the exclusion of natural berm or if they are behind a natural berm or similar natural landform where that natural landform provides evidence of a continuous surface connection. In addition, NASF supports the “continuous surface connection” to wetlands, and phenomena like low tides or dry spells.

NASF supports adding this definition to further provide States with clarity while providing greater decision-making authority when determining whether a water feature warrants protection under a federal WOTUS designation. NASF also supports maintaining definitions that are either inclusive of, or without conflict with, the diversity of state program definitions already in place, such as definitions used in states’ BMPs manuals. The WOTUS rule should provide some flexibility for regional or state-specific criteria rather than a one-size-fits-all national standard. Doing so will provide land managers with the flexibility they need, while also ensuring consistency in implementation.

Ditches

NASF supports ditches that are constructed or excavated entirely in dry land being excluded from WOTUS. Further, we support the definition to mean “a constructed or excavated channel used to convey water”, which is consistent with the definition the agencies use for other Clean Water Act purposes. While some of the discussion in the proposal around ditches refers to “point sources”, we would like to remind the agencies of the judicial, administrative and legislative rulings (<https://www.epa.gov/npdes/forest-roads>) that have established forest roads and associated ditches to not be point sources and thus to not require National Pollutant Discharge Elimination System (NPDES) permits. Forest roads and ditches are established as nonpoint sources and fall under the purview of state forestry BMPs.

Tributary

NASF supports defining tributary as “a body of water with relatively permanent flow, and a bed and bank, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow.” This definition would be consistent with the silvicultural exemptions codified in Section 404(f) of the Clean Water Act and state-adopted BMPs.

Thank you for this opportunity to comment. We look forward to collaborating closely with you as this process continues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason M. Hartman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jason Hartman
President, National Association of State Foresters
Kansas State Forester