CLEAN WATER ACTION | CLEAN WATER FUND

January 5, 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 the Army
108 Army Pentagon
Washington, DC 20310-0108

Re: Comments of Clean Water Action and Clean Water Fund on the Proposed Rule Revising the Definition of "Waters of the United States" (Docket ID No. EPA-HQ-OW-2025-0322)

Administrator Zeldin and Assistant Secretary Telle,

Clean Water Action and Clean Water Fund submit the following comments in strong opposition to the proposed rule, which would revise the regulations defining waters federally covered under the Federal Water Pollution Control Act (also known as the Clean Water Act). We urge the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) not to finalize the proposed rule, which would further weaken the definition of "Waters of the United States" under the Clean Water Act.

Clean Water Action is a national organization with members across the country. Priorities include improving water quality, ensuring safe drinking water, reducing toxic exposures, and addressing the climate crisis. Clean Water Fund engages in policy analysis, research, and public and policymaker education focused on reducing water pollution, protecting drinking water, and ensuring robust implementation of Clean Water Act programs. For more than five decades, Clean Water Action and Clean Water Fund have worked to advance the goals of the Clean Water Act and to ensure that its protections are implemented consistent with science, statutory purpose, and long-standing agency practice.

The proposed rule represents a significant and unwarranted narrowing of Clean Water Act jurisdiction that goes well beyond what is required by the Supreme Court's decision in *Sackett v. The Environmental Protection Agency (*2023). The proposal introduces new concepts, exclusions, and ambiguities that will further erode protections for wetlands, streams, and headwaters nationwide. Most concerning among these is the proposed rule's reliance on an

undefined and inconsistently applied concept of a "wet season," which creates arbitrary jurisdictional cutoffs, undermines regulatory certainty, and invites widespread loss of protections for waters that play critical roles in maintaining downstream water quality, flood resilience, and drinking water supplies.

I. The Proposed Rule Narrows Jurisdiction Far Beyond What is Required by the *Sackett v. EPA* Decision

In *Sackett*, the Supreme Court held that the Clean Water Act covers only those wetlands that have a "continuous surface connection" to relatively permanent bodies of water such that they are "indistinguishable" from those waters. While Clean Water Action and Clean Water Fund strongly disagree with this interpretation and its departure from decades of science-based water protection, we recognize that the agencies are obligated to implement the Court's holding. The Biden Administration complied with the ruling and released a final conforming rule that aligns with the *Sackett* decision; therefore, no further regulatory changes are necessary. Over half of the nation's wetlands and thousands of miles of streams have already lost Clean Water Act protections because of the *Sackett* decision.

The proposed rule does not simply implement *Sackett*; it goes significantly further. The Court did not require the agencies to eliminate protections for all seasonal or rain-dependent streams, nor did it mandate the exclusion of wetlands and tributaries that contribute to downstream navigable waters through periodic or predictable hydrologic connections. Nor did the Court direct the agencies to adopt new temporal limitations—such as reliance on an ill-defined "wet season"—to determine jurisdiction.

By layering new restrictions onto the already-narrowed scope imposed by *Sackett*, the proposal effectively rewrites the Clean Water Act's jurisdictional framework in a manner unsupported by the statutory text or the Court's decision. This approach transforms *Sackett* from a limiting interpretation into a justification for wholesale deregulation of upstream waters, contrary to the Act's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

II. The Failure to Define "Wet Season" Creates Arbitrary and Unworkable Jurisdictional Boundaries

One of the most significant and troubling aspects of the proposed rule is its reliance on the concept of a "wet season" without providing a clear, science-based definition. The proposal appears to treat the presence or absence of surface water during certain periods as determinative of jurisdiction, yet it fails to specify how the wet season is identified, how long it lasts, or how it varies across regions, watersheds, and climatic conditions.

Hydrology does not operate on uniform calendars. Wet seasons differ dramatically by geography, elevation, climate, soil type, and watershed characteristics. In arid and semi-arid regions, streams may flow only in response to precipitation but nonetheless provide critical

downstream functions. In humid regions, wetlands may appear disconnected at the surface for portions of the year while maintaining subsurface or episodic surface connections that are essential to water quality and flood mitigation.

By failing to define the wet season, the rule creates a regime in which jurisdiction may hinge on whether a site inspection occurs on the "right" or "wrong" day. A stream or wetland could lose protection simply because water is not present at the moment of observation, even if it predictably conveys flow during certain times of year or following rainfall events. This is not a scientifically defensible approach, nor is it consistent with the Clean Water Act's preventative purpose.

The lack of a clear definition also invites inconsistent application by regulators, landowners, and courts. Different districts or regions may apply different interpretations of when a wet season begins or ends, leading to uneven enforcement and increased litigation. Rather than providing regulatory clarity, the proposal injects uncertainty into an already complex jurisdictional landscape.

III. The Proposed Rule Fails to Analyze the Severe Consequences of the Loss of Clean Water Act Protections

The Clean Water Act is premised on the understanding that waters are interconnected, and that pollution introduced into upstream or adjacent waters will ultimately affect downstream rivers, lakes, and drinking water sources. By narrowing jurisdiction based on surface conditions at specific moments in time, the proposed rule disregards this fundamental reality.

Seasonal streams, ephemeral tributaries, and wetlands—particularly those in headwater areas—play an essential role in filtering pollutants, moderating flows, recharging groundwater, and reducing flood risks. When these waters lose protection, pollutants such as nutrients, sediments, pesticides, and pathogens are more likely to reach downstream waters untreated. Floodwaters move faster and with greater force, increasing risks to communities and infrastructure. Drinking water utilities face higher treatment costs, which are often passed on to ratepayers. Clean Water Action and Clean Water Fund has released a white paper, highlighting the importance of protecting all water resources in order to protect our drinking water sources (see **Attachment 1**).

Despite the sweeping nature of the proposed changes, the proposal offers no meaningful analysis of the multiple severe impacts from removing protections. The agencies have not provided a clear estimate of how many waters would lose Clean Water Act protections under the rule, nor do they evaluate the downstream consequences of those losses for water quality, public health, or local economies. The proposed rule does not adequately assess the impacts to drinking water, including subtle water chemistry changes that influence treatment needs. It also does not analyze effects on wildlife, habitat, recreation, or fishing.

This omission deprives the public, decision-makers, and other stakeholders of the information necessary to evaluate the proposed rule's consequences. In previous rulemakings, the agencies

have acknowledged the importance of understanding the scope of jurisdictional changes. Here, however, the absence of quantification suggests either that the impacts are not fully understood or that they are so extensive as to be politically inconvenient to disclose. Neither explanation is acceptable.

Without a clear accounting of affected waters, it is impossible to assess the full scope and severity of the proposed rule's impacts. The agencies should not finalize a rule that would fundamentally reshape national water protections without first providing a transparent analysis of its effects. Proceeding with a rule of this magnitude without quantifying its impacts is deeply concerning and inconsistent with sound policymaking.

IV. The Proposed Rule Conflicts with the Clean Water Act's Purpose and Longstanding Implementation

For decades, the Clean Water Act has been implemented with the understanding that protecting upstream waters is essential to protecting downstream navigable waters. This approach reflects both scientific consensus and common sense. The proposed rule abandons this framework in favor of a narrow, surface-connection-focused approach that elevates form over function.

By introducing undefined temporal concepts, disregarding cumulative impacts, and failing to quantify losses, the rule undermines the Act's core purpose. It effectively invites increased pollution and destruction of waters that communities rely on for drinking water, flood protection, recreation, and economic activity.

V. Conclusion

Clean Water Action and Clean Water Fund urge EPA not to finalize this rule. The agencies should instead maintain a definition of "Waters of the United States" without introducing additional, unsupported restrictions that further erode Clean Water Act protections.

If the agencies proceed with revising the definition, they must clearly define any concepts relied upon—such as "wet season"—ground those definitions in sound science, fully quantify the waters that would lose protection, and meaningfully assess the downstream consequences of those losses. Anything less risks irreparable harm to the nation's waters and to the communities that depend on them.

Thank you for the opportunity to submit these comments.

Respectfully submitted,

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ATTACHMENT 1

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Putting Drinking Water First:

Clean Water Act Protections for Streams and Wetlands are Essential for Safeguarding Drinking Water

The Clean Water Act is intended to protect waterways from harmful pollutants, yet many streams and wetlands have lost their protections and others continue to be at risk. Streams and wetlands are more than just landscape features — they are critical parts of our natural water infrastructure that influence downstream water quality, including in drinking water sources. Relying solely on the Safe Drinking Water Act (SDWA), which sets limits on contaminants in tap water, is not sufficient for ensuring safe drinking water and places burdens on communities relying on polluted drinking water sources.

Clean Water's ***Putting Drinking Water First*** approach means thinking about how upstream activities and the implementation of environmental regulations will impact downstream drinking water sources. Preventing pollution and the destruction of streams, wetlands, and other water bodies has multiple benefits, including improving source water quality, protecting public health, and lowering costs for water systems and their customers.

Streams, wetlands and other water bodies are complex systems that influence larger downstream water bodies.

Streams and wetlands improve water quality, filter out pollutants, absorb runoff, offer flood protection, help regulate the climate through carbon sequestration, and provide essential habitat for fish and other wildlife. The U.S. Environmental Protection Agency's (EPA) *Connectivity of Streams and Wetlands to Downstream Waters* (Connectivity Report), a review and synthesis of numerous peer-reviewed scientific publications, highlighted the important role that wetlands, small streams, and other water bodies play in supporting the health of downstream water bodies.[1] These findings were further bolstered in December 2022 when the U.S. Army Corps of Engineers (Corps) and EPA analyzed the conclusions of over 2,000 peer-reviewed papers published since the Connectivity Report, stating:

> *"...the evidence reviewed is conclusive: ephemerally, intermittently, and perennially flowing streams, floodplain wetlands and open waters, and non-floodplain wetland and open waters are hydrologically, biologically, chemically, and functionally connected to downstream systems and substantively and definitively affect down-gradient aquatic systems."*[2]

Streams and wetlands reduce contaminants of specific concern for drinking water quality.

Streams and wetlands filter out pollutants such as excess nutrients, harmful chemicals, and other contaminants, which can cause public health risks and impact Public Water Systems' ability to comply with the Safe Drinking Water Act.

Nutrient pollution (nitrogen and phosphorus) is a good example of the potential downstream impacts of removing stream and wetland protections. In 2016, EPA's Office of Water stated, "Nutrient pollution remains one of the greatest challenges to our Nation's water quality and presents a growing threat to public health and local economies — contributing to toxic harmful algal blooms, contamination of drinking water sources, and costly impacts on recreation, tourism, and fisheries."[3] Algal blooms produce cyanotoxins which, at high levels, can cause severe illness and organ damage for wildlife and humans.[4] For example, in Toledo, Ohio, a harmful algal bloom in 2014 led to a two-day "Do Not Drink" advisory for more than 500,000 consumers.[5]

Research shows that toxic algal blooms are growing in size. Using satellite imagery for over 2,000 large lakes and reservoirs across the country, the United States Geological Survey (USGS) found a 6.9% increase in spatial extent of harmful algal blooms between 2017 and 2020.[6] Some states were found to have larger spatial increases than others, such as New Jersey, which had a 24.75% increase in the spatial extent of harmful algal blooms. EPA's *Connectivity Report* found that healthy small streams can remove as much as 20–40% of nitrogen pollution, capturing these nutrients before they can contribute to algal blooms in larger water bodies downstream.[7] Protecting streams and wetlands is a crucial tool for reducing pollutants, such as nitrogen and phosphorus, in our waterways.

Streams feed the drinking water sources for over 117 million people.

More than 90% of Americans get their drinking water from Public Water Systems regulated under the Safe Drinking Water Act.[8] Within that 90%, EPA estimates that 117 million Americans rely on drinking water sources that are supplied at least in part by intermittent, ephemeral, or headwater streams[9] — water resources that are now under serious threat. This estimate only considers streams; many more people rely on drinking water sources connected to wetlands. Further, pollution and disruption of streams and wetlands also impact the groundwater that is used by Public Water Systems and people relying on private wells.

There is overwhelming support for source water protection. The American Water Works Association (AWWA), the largest organization of water supply professionals in the world, released the 2024 State of the Water Industry report and ranked source water protection as the water sector's most pressing challenge.[10] At the 2024 United Nations Climate Change Conference (also known as COP29), the United Nations Environment Program (UNEP) called water one of our most valuable resources and emphasized the importance of protecting freshwater ecosystems.[11] Protecting source water is a cost-effective way to prevent drinking water contamination, address serious public health concerns, reduce water service disruption, and lower the costs to Public Water Systems and their consumers.

Drinking water must be protected by strong Clean Water Act Programs.

There has been controversy over which streams, wetlands, and other water resources are covered under Clean Water Act pollution control programs (also known as "Waters of the United States" or WOTUS). Supreme Court rulings and policies enacted during the George W. Bush administration left water resources vulnerable to pollution. In 2015, the Obama administration's Clean Water Rule broadened protections, but the Trump administration replaced it with the Navigable Waters Protection Rule (the NWPR), which significantly weakened Clean Water Act protections and became known informally as the "Dirty Water Rule."[12, 13]

In 2021, the Biden administration directed a review of the NWPR. The Corps and EPA determined that the significant reduction of protections under the Dirty Water Rule for ephemeral streams, wetlands, and other aquatic resources could "cause cascading, cumulative, and substantial downstream effects, including but not limited to effects on water supplies, water quality, flooding, drought, erosion, and habitat integrity."[14] In January 2023, the Corps and EPA restored the protections to wetlands and streams that were lost and established a durable definition of the water resources protected under the Clean Water Act based on overwhelming scientific evidence.[15]

However, in May 2023, the Supreme Court issued the devastating *Sackett v. EPA* decision, ruling that the Clean Water Act only protects "relatively permanent" bodies of water connected to navigable waters and wetlands that have "continuous surface connection" to other protected bodies of water.[16] The Biden administration subsequently amended their ruling to follow the *Sackett* decision.[17] This Supreme Court decision removed Clean Water Act protections for up to 63 percent of the nation's wetlands and for thousands of miles of streams throughout the country.[18] The ruling ignores the overwhelming scientific evidence that headwater, ephemeral and intermittent streams, and wetlands support the quality of downstream rivers and streams, including those that serve as drinking water sources.

Not only was this Supreme Court decision one of the largest setbacks for source water protections on the national scale, but the Trump administration and EPA now seek to reinterpret the *Sackett v. EPA* decision even more narrowly — putting even more wetlands and streams at risk. In March 2025, EPA and the Corps announced plans to revisit the definition of waters protected under the Clean Water Act.[19] In November 2025, the Corps and EPA moved ahead with their plans and released a new proposed rule that would leave most streams that don't flow year-round and the majority of remaining wetlands unprotected.[20]

The *Sackett v. EPA* decision and the latest proposed rule directly ignore overwhelming scientific evidence that streams and wetlands are critical to maintaining water quality and clean drinking water. Protecting streams, wetlands, and other water bodies is a commonsense way to safeguard downstream drinking water sources. ***Putting Drinking Water First*** not only results in drinking water protection but leads to better choices which can prevent other environmental and economic impacts. The burden of higher water treatment costs from upstream polluters should not be put on downstream communities and their drinking water systems. Ultimately, the U.S. Congress needs to incorporate a robust and durable definition of "Waters of the United States" into the Clean Water Act to meet the goals of the Act and to protect the nation's water resources, including drinking water.

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