AMERICAN SOCIETY OF CIVIL ENGINEERS

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The Honorable Lee Zeldin
Administrator
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The Honorable Adam Telle
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ATTN: Docket ID No. EPA-HQ-OW-2025-0322

The American Society of Civil Engineers (ASCE) is pleased to offer the following comments on the proposed rule defining "Waters of the United States" (WOTUS) under the Clean Water Act (CWA). The proposed rule, released jointly by the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE), was published in the Federal Register for comment on November 20, 2025, with the comment period closing on January 5, 2026.

Founded in 1852, ASCE is the nation's largest and oldest civil engineering organization. With more than 160,000 members in over 177 countries, ASCE is dedicated to leading the civil engineering profession to sustainably advance and protect the health, safety, and welfare of all, and ensure that the built and natural environment work in harmony for the benefit of humanity.

The Clean Water Act of 1972 is among the most consequential pieces of legislation in history. It established the basic framework to implement pollution control programs, set water quality standards for contaminants, and prohibited the discharge of pollutants into navigable waters from point sources without the proper permit. The CWA has been credited with preventing the discharge of more than 700 billion pounds of pollutants into American waterways annually and has funded over 35,000 grants totaling more than half a trillion dollars with each grant having, on average, significantly reduced pollution for 25 miles downstream.[1]

Civil engineers are responsible for designing and implementing sustainable infrastructure that works in concert with the natural environment. Natural features such as wetlands, marshes, and floodplains protect communities, homes and businesses from the effects of flooding and erosion, recharge groundwater, and maintain water quality. Meanwhile, groundwater serves as a primary source of drinking water for more than one third of Americans and is essential for much of the crop irrigation for the nation's food supply. Preserving these natural features enhances the resilience and extends the design life of built infrastructure systems, while also supporting the health, wellbeing, and economic vitality of the United States.

[1] National Wildlife Federation, "Five Decades of Clean Water: The Clean Water Act's Incredible Success, Its Current Limitations, and Its Uncertain Future."

ASCE has reviewed the proposed rule defining WOTUS put forth by EPA and USACE, and while we strongly support the federal government's role in implementing the CWA and providing needed protection for navigable waters and waterways, ASCE is concerned with some of the provisions defining WOTUS in the proposed rule. We are hopeful that EPA and USACE will consider these concerns, and welcome further dialogue between the agencies and the civil engineers represented by ASCE.

Consistent Regulation and Protections for Wetlands

ASCE has concerns over the narrowed definition of wetlands in the proposed rule. America's wetlands capably serve a variety of important and necessary purposes including water filtration, flood control, recharging of groundwater, and ecosystem protection. Wetlands are critically necessary to maintain water quality, guard against the effects of increasingly extreme weather, and conserving biodiversity. The nation's wetlands effectively work hand in hand with both navigable waterways and the built environment, but are already under stress from urban expansion, agricultural activity, and historically inconsistent regulation.

Wetlands play a vital role in the overall health of our nation's waterways and provide a natural alternative to expensive infrastructure facilities. Acting as a flood control barrier and absorbing heavy rains for groundwater recharge, wetlands limit the encroachment of a significant amount of stormwater runoff into urban centers thereby lowering flooding potential, reducing the risk of overtopping and breaching of dams, and enhancing the overall resilience and design life of stormwater infrastructure systems. Furthermore, by capturing stormwater runoff, wetlands prevent contaminants in the runoff from reaching the navigable waters which serve as a source of drinking water for many millions of Americans.

Preservation of wetlands can reduce the need for and cost of infrastructure projects and reduce the environmental impacts of project development and construction. The increased risk of flooding due to a reduction in wetland protections may well result in billions of dollars in lost economic activity as well as greater insurance and recovery costs for communities that face more frequent flooding due to reduced protections.

The proposed rule, in large part, reflects the 2023 Supreme Court decision in *Sackett v. EPA* which narrowed the scope of CWA jurisdiction, eliminating protections for adjacent wetlands, and limiting them to only those which are "as a practical matter indistinguishable from waters of the United States" through continuous surface connection to other waters of the United States.[2] *Sackett* did not provide clear answers to questions regarding streams, flow duration, or interstate waters. The proposed rule would exceed the limitations enshrined in *Sackett,* removing protections for the vast majority of wetlands nationwide which will increase flood risk, negatively affect water quality in waters of the United States, and destroy important but delicate ecosystems. The economic, public health, and environmental impacts would be enormously negative.

The proposed rule also stipulates that for wetlands to be considered WOTUS, they must maintain a surface connection to a "relatively permanent" waterbody that is standing or continuously

[2] Supreme Court of the United Sates, *Sackett ET UX V. Environmental Protection Agency ET AL,* May 25, 2023.

flowing year-round or at least during the "wet season." The proposed "wet season" standard creates opportunity for inconsistent application in practice. A "wet season" varies dramatically from region to region and even from state to state depending on climate conditions and variations in precipitation intensity, frequency, and duration that affect runoff volumes, stream flows, and water levels. ASCE recommends the development of a more objective and transparent criteria that can be applied consistently nationwide, which would also create greater predictability for civil engineers in infrastructure design.

Furthermore, one of the factors that distinguishes natural features like wetlands from built structures is that natural features like wetlands do not adhere to state or political borders, often crossing state lines. This creates a situation where a single wetland would be subject to multiple jurisdictions where state regulations are not consistent or may be altogether non-existent in a particular state. The proposed rule exacerbates this by eliminating the category of interstate waters entirely. It creates a scenario where the impacts of an infrastructure project or from industrial runoff create challenges to waters in one state are pushed downstream and across state borders, creating a challenge for another state. This creates the need for a federal solution. Federal jurisdiction over all interstate waters and their tributaries is essential for consistent application of regulation and protections.

ASCE supports maintaining federal jurisdiction over all interstate and navigable waters, their tributaries, and all adjacent wetlands; and applying consistency in wetlands regulations- including seasonal and isolated wetlands- to ensure uniform regulatory protections across jurisdictions.

Concerns Over Excluding Groundwater from CWA Protections

Groundwater is a vital resource utilized by all sectors of American society affecting its agricultural, industrial, and domestic prosperity. According to the U.S. Geological Survey (USGS), 140 million Americans (approximately 41% of the U.S. population) rely on groundwater sources for their drinking water.[3] In 2018, data indicated that 39 billion gallons of water per day were withdrawn from surface water and groundwater sources between 2000 and 2015, and a 2024 review of those figures indicates that those estimates are likely higher than had been reported.[4]

There is evidence to suggest that vast swells of groundwater resources have been depleted over several decades. A recent report states that several aquifers supplying water to 90 percent of the nation's public water systems have been significantly drained, threatening access to clean drinking water.[5] Overextraction of groundwater has led to saltwater intrusion into aquifers serving coastal communities, resulting in degradation of groundwater quality. This harms public health and economic growth. The report indicates that another significant challenge to

[3] U.S. Geological Survey, "The Quality of the Nation's Groundwater: Progress on a National Survey," 2017 (updated September 1, 2022).
[4] Alzraiee, Ayman, et al., "Next Generation Public Supply Water Withdrawal Estimation for the Conterminous United States Using Machine Learning and Operational Frameworks," Water Resources Research 60, no. 7 (2024)
[5] *New York Times*, "America is Using Up its Groundwater Like There's No Tomorrow," August 28, 2023.

groundwater supplies is the inconsistent state regulation of groundwater, combined with limited federal regulatory role, thus leading to harmful outcomes such as growing of water intensive crops in dry areas and overreliance on groundwater in urban areas.[6]

ASCE supports groundwater management policies that protect against human caused contamination and overutilization. The need for safe and clean water sources to support human health and agricultural production for a growing U.S. population, requires that such management practices be based on the best available science. To this end, ASCE supports increased national and international groundwater data gathering and analysis. As noted previously, water is inherently connective, with wetlands charging groundwater supplies which then either flow into more permanent streams or are extracted for consumption. This is why ASCE supports an integrated approach to water management considering groundwater in the context of the entire water cycle.

Given these factors, ASCE is very concerned about the proposed exclusion of groundwater from the definition of "waters of the United States." While ASCE is not arguing that groundwater be included under the definition of WOTUS, it is incumbent upon EPA and USACE to provide clearer explanation of how this exclusion meets existing discharge obligations. In 2020, the Supreme Court held in *County of Maui v. Hawaii Wildlife Fund* that pollutant discharges from a point source, such as a wastewater reclamation facility, that pass through groundwater sources into navigable waters are the functional equivalent of a pollutant discharge into navigable waters, thus requiring a CWA discharge permit.[7] EPA and USACE must provide greater clarification as to how the proposed rule comports with the *County of Maui* decision. Before taking the unprecedented step of explicitly excluding groundwater from the definition of WOTUS, the agencies should examine and provide greater clarification on how said exclusion would affect discharges into navigable waters via groundwater sources.

Conclusion

ASCE would like to thank the EPA Administrator and the Assistant Secretary of the Army for Civil Works for the opportunity to provide comments on this important issue. We acknowledge that effective implementation of the CWA and the establishment of effective federal jurisdiction over the nation's waterways is a complex issue. We are hopeful that EPA and USACE will consider our comments as a good faith contribution to the rulemaking process and simultaneously as an invitation for further dialogue on this critical issue. We also hope that the agencies will consider the connected nature of America's waterbodies and will recognize the importance of consistent application of regulations and protections to waterbodies that naturally cross state boundary lines. We invite EPA and USACE to engage with ASCE on best practices and to utilize the vast expertise of our members who have dedicated their livelihoods to the practice and science of civil engineering.

[6] Ibid.

[7] Supreme Court of the United States, *County of Maui, Hawaii v. Hawaii Wildlife Fund ET AL.,* April 23, 2020.