United States Senate

WASHINGTON, DC 20510

November 5, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Mr. D. Lee Forsgren
Senior Official Performing the Duties of
Assistant Secretary of the Army (Civil Works)
U.S. Department of Defense
108 Army Pentagon
Washington, DC 20310

Dear Administrator Zeldin and Mr. Forsgren:

We write to express our serious concern regarding the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers' September 9, 2026 Supplemental Notice of Proposed Rulemaking (SNPRM) that proposes to further narrow which waters would receive federal protections under the Clean Water Act.[1] On January 28, 2026, we urged the agencies to abandon the proposed 2025 waters of the United States (WOTUS) rule. As we explained then, excluding these waters from federal protection threatens drinking water, increases downstream pollution and flood risk, and shifts substantial costs onto states, communities, and ratepayers.[2] We are disappointed that your agencies have not only chosen to disregard all of these concerns, but have put out a second, more extreme proposal that does even more harm. We urge you to abandon this effort altogether and remember your statutory responsibilities to protect drinking water, public health, and the environment.

The core proposal of the SNPRM is to define "relatively permanent" waters to include only perennial waters, which the proposal suggests defining as "having standing or continuously flowing water every day of the year during ordinary conditions."[3] The SNPRM includes limited exceptions for drought, dry spells, and low tides, and allows only a single interruption of no more than 30 consecutive days annually. The SNPRM also considers a definition of "continuous surface connection" that would require even perennial surface water within a wetland to be continuously connected to a jurisdictional water in order to merit protection as WOTUS.[4]

Limiting "relatively permanent" waters to perennial and interconnected waters would be scientifically indefensible and would put downstream water quality at risk.[5] EPA's own scientific record demonstrates why. EPA's review of more than 1,200 peer-reviewed studies concluded

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[1] EPA-HQ-OW-2025-0322-15447, https://www.federalregister.gov/documents/2026/09/09/2026-18317/updated-definition-of-waters-of-the-united-states
[2] https://www.schiff.senate.gov/wp-content/uploads/2026/01/Schiff-EPA-DOD-WOTUS-proposal-letter.pdf
[3] EPA-HQ-OW-2025-0322-15447
[4] https://www.epa.gov/system/files/documents/2026-09/wotus_snprm_factsheet_508c.pdf
[5] https://www.americanrivers.org/wp-content/uploads/2026/01/AR_WhereRiversAreBorn_2026.pdf

that streams are connected to downstream waters regardless of their size or frequency of flow and strongly influence downstream physical, chemical, and biological conditions. That review, and numerous other independent scientific studies, found that perennial, intermittent, and ephemeral tributaries transport water, sediment, nutrients, contaminants, organic material, and organisms through river networks and collectively affect larger downstream waters.[6,7] Further, the definitions proposed by the SNPRM would remove federal protections for 80 percent of streams in the United States and 95 percent of individual wetlands, which makes a mockery of the congressional intent behind the Clean Water Act.[8]

Your agencies acknowledge these concerns in the SNPRM and recognize the functions served by ephemeral streams. The agencies also acknowledge that the majority of wetlands would not satisfy the supplemental definition of "continuous surface connection," because most wetlands do not contain perennial surface water.[9] Even more, your agencies concede that the 30-day threshold is not "scientifically-grounded" and is proposed only because it is "easy to administer." Given these acknowledgements, it appears the entirety of the SNPRM is contradictory—proposing changes that go against the very scientific findings cited in the notice. "Easy to administer" does not justify the neglect of waterways that contribute on average 55% of the water found in larger rivers – the protection of which is the mission of your agencies and the Clean Water Act.[7]

The SNPRM also includes an arbitrary five-year cutoff for waters impacted by drought conditions, a policy that would cause particular harm to more arid regions like the West. After five years of dry conditions, such drought conditions would be treated as the new baseline. As American Rivers explains in its public comment, this would "convert a growing share of currently 'relatively permanent' waters to non-jurisdictional status over time, particularly in the West, as droughts lengthen and recur more frequently."[10]

The agencies justify these contradictions and known harms in part by claiming that the proposal allegedly provides regulatory clarity, giving landowners clearer notice of Clean Water Act obligations. But administrative simplicity cannot provide cover for a scientifically and legally indefensible interpretation of the Clean Water Act, as its primary purpose is to protect waters from pollution. Moreover, this SNPRM would not provide clarity, as it would inevitably lead to litigation and overwhelm state and tribal capacity to manage waters. The agencies acknowledge in the supplemental proposal that "Tribes may disproportionately rely on the Federal Government for water program implementation and enforcement of water quality violations" and

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[6] https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=523020
[7] https://www.science.org/doi/10.1126/science.adg9430
[8] Jon Devine, Susan Lee & Matthew McKinzie, *Mapping Destruction: Using GIS Modeling to Show the Disastrous Impacts of Sackett v. EPA on America's Wetlands*, NRDC Report No. R:25-03-B (Mar. 2025).
[9] EPA-HQ-OW-2025-0322-15447
[10] Comment submitted by American Rivers on EPA–HQ–OW–2025–032 (October 8, 2026)

"many Tribes are still building capacity and may lack resources to create a Tribal water program."[11] This SNPRM will remove federal protections for many waters Tribes may care about, thus pulling the rug out from under them.

As we emphasized in January, pollution does not respect the arbitrary boundaries laid out in these proposals. When upstream waters lose federal protection, downstream communities do not cease experiencing their effects of that loss. And states are not going to be able to fill the gaps left by the SNPRM. One state's hypothetical capacity to regulate their own waters, absent federal law, does not mean as much when an under-resourced, upstream state exports the cost of their water quality remediation downstream. Instead, the costs of additional pollution, degraded drinking water sources and the associated health risks, diminished flood protection, and lost aquatic habitat are shifted to states, Tribes, municipalities, water utilities, and ultimately the American taxpayer. Our previous letter warned that narrowing WOTUS in this manner would transfer responsibility and costs downstream rather than eliminate them. The recent supplemental proposal fails to heed that warning and would multiply these costs to the American people.

The Clean Water Act was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[12] Proposing to systematically exclude waters known to be critical to that integrity ignores science and defeats the purpose of the Act. Although we do not agree with its reasoning, the Supreme Court spoke in *Sackett v. EPA,* and EPA and the Corps conformed to that decision in 2023.[13] There is no need for a further rulemaking, especially when that rulemaking envisions slashing federal water protections even further than the Supreme Court already has. The SNPRM your agencies have published includes a litany of contradictions and acknowledged significant harm to human health and the environment. We urge you to abandon this disastrous SNPRM as well as the 2025 proposal and leave the 2023 conforming rule in place.

Sincerely,

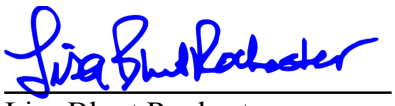
Adam B. Schiff
United States Senator
Ranking Member
Subcommittee on Fisheries,
Water, and Wildlife

Edward J. Markey
United States Senator

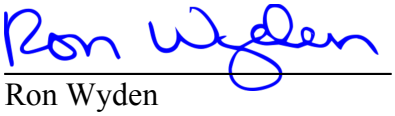
[11] EPA-HQ-OW-2025-0322-15447
[12] https://www.govinfo.gov/content/pkg/USCODE-2018-title33/pdf/USCODE-2018-title33-chap26.pdf
[13] EPA-HQ-OW-2023-0346



Richard Blumenthal
United States Senator



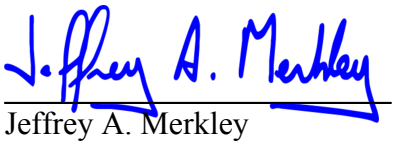
Lisa Blunt Rochester
United States Senator



Ron Wyden
United States Senator



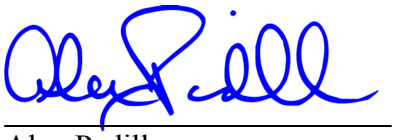
Sheldon Whitehouse
United States Senator
Ranking Member
Committee on Environment
and Public Works



Jeffrey A. Merkley
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