



**January 5, 2026**

Comments regarding:

**November 20, 2025 Updated Definition of “Waters of the United States”**

Submitted by:

**Energy and Wildlife Action Coalition**

Filed electronically to the attention of:

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

Docket No. EPA-HQ-OW-2025-0322

The Energy and Wildlife Action Coalition (“EWAC”)<sup>1</sup> submits these comments in connection with the U.S. Environmental Protection Agency (“EPA”) and the U.S. Department of the Army Corps of Engineers (“USACE”) (jointly, “the Agencies”) November 20, 2025 proposed rule “Updated Definition of ‘Waters of the United States’” (“Proposed Rule”).<sup>2</sup> The Proposed Rule provides a proposed definition of “waters of the United States” (“WOTUS”) to ensure that the regulatory definition of WOTUS is consistent with the Clean Water Act (“CWA”) and the U.S. Supreme Court (“SCOTUS”) decision in *Sackett v. EPA* (“*Sackett*”).<sup>3</sup> EWAC provides these comments based on the knowledge and experience of its membership.

EWAC appreciates the Agencies’ commitment to promulgating a WOTUS definition that is consistent with the CWA and relevant SCOTUS decisions. As the Agencies are aware, Executive Orders issued by President Trump and Secretarial Orders issued by Secretary of the Interior Burgum have prioritized the need for domestic electricity generation and streamlined permitting processes.<sup>4</sup> In EWAC’s experience, uncertainty in the implementation of CWA section 404 and, specifically, inconsistency across USACE regions and districts when identifying WOTUS within a project site, has a real and negative impact on the deployment of energy and transmission projects. Uncertainty with respect to understanding the extent of WOTUS within a project site creates delays in project timelines, increased costs, and an increase in enforcement and litigation exposure. These delays, increased costs and exposure are antithetical to the policies outlined by President Trump, which call for removing roadblocks to advancing the nation’s domestic supply of electricity and an efficient federal government. Accordingly, EWAC’s primary recommendation with respect to the Proposed Rule focuses on how to ensure that WOTUS determinations are made consistently across the Agencies’ regions and divisions.

EWAC agrees that the Proposed Rule proffers a definition of WOTUS that more closely aligns with both CWA and *Sackett*. However, EWAC urges the Agencies to either provide a clear standard in the final rule for identifying “wet season” or pivot away from relying on “wet season” to establish “relatively permanent” or “continuous surface connection.” EWAC understands the USACE has relied on the concept of “wet season” for decades when considering the extent of WOTUS,<sup>5</sup> but given the variability of ecological settings across the country, the Proposed Rule leaves room for interpretation with respect to how to apply the concept. Without a clear standard for “wet season” the potential for inconsistent application across USACE regions and districts remains. Not only does this create the potential for inconsistency when issuing an approved

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<sup>1</sup> EWAC is a national 501(c)(6) trade association formed in 2014 whose members consist of electric utilities, electric transmission providers, and independent power producers, operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

<sup>2</sup> 90 Fed. Reg. 52,498 (November 20, 2025).

<sup>3</sup> 598 U.S. 651 (2023).

<sup>4</sup> See, e.g., Executive Order 14156, “Declaring a National Energy Emergency,” 90 Fed. Reg. 8,433 (January 29, 2025); Executive Order 14154, “Unleashing American Energy,” 90 Fed. Reg. 8,353 (January 29, 2025); Secretarial Order 3418, “Unleashing American Energy” (February 3, 2025); Secretarial Order 3417, “Addressing the National Energy Emergency,” (February 3, 2025).

<sup>5</sup> Proposed Rule at 52,518.

jurisdictional determination (“AJD”), the lack of certainty with respect to applying the “wet season” to a feature also will result in increased requests for AJDs, which require significant USACE resources to produce. Providing greater certainty with respect to identifying the “wet season” or using a different brightline test altogether would result in both more consistent AJDs across USACE regions and districts. It would also have the added benefit of providing the regulated community greater confidence in assessing the presence of WOTUS without an AJD, which in turn will reduce the demand on USACE resources. Thus, providing clearer guidance on how to apply the “wet season” standard or pivoting away from “wet season” to a more brightline test would achieve two objectives; it would reduce delays, costs, and enforcement and litigation exposure for electric generation and transmission providers (and the regulated community as a whole) and also reduce the demand on limited USACE resources. Both of these objectives align with stated priorities of this administration.

EWAC appreciates the Proposed Rule’s efforts to reduce regulatory uncertainty and thanks the Agencies consideration of these comments when finalizing the WOTUS definition.

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