Washington State Department of HEALTH
PO Box 47890 Olympia, WA 98504
www.doh.wa.gov • TDD Relay: 711

April 23, 2025

The Honorable Benita Best-Wong, Deputy Assistant Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

The Honorable Robyn S. Colosimo, SOPDO, Deputy Assistant Secretary of the Army
U.S. Department of Defense
108 Army Pentagon
Washington, DC 20310

RE: **Waters of The United States (WOTUS) Request for Recommendations Docket ID No. EPA-HQ-OW-2025-0093**

Dear Deputy Administrator Best-Wong and Deputy Assistant Colosimo:

The Washington State Department of Health (DOH) appreciates the opportunity to provide recommendations on the implementation of the "waters of the United States" definition. DOH's review of this regulation is focused on the drinking water impacts, particularly source water protection.

The Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) work in tandem to prevent water contamination and supply depletion. More than 6.2 million Washington State residents get drinking water from public water systems that source drinking water from groundwater, surface water, and springs. One of the primary principles of the SDWA is the multiple barrier approach for public health protection, with watershed and wellhead protection being the first barrier in providing safe and reliable drinking water. Drought, contamination, changing weather patterns, and growth demands collectively emphasize the need to proactively protect drinking water source quality and quantity to mitigate the need and cost associated with increased treatment and addressing reduced capacity.

Regulatory agencies and permitting authorities must understand the impact specific actions may have on drinking water sources, especially in areas where water scarcity or contamination is a threat. The categories of "waters of the United States" defined as subject to federal jurisdiction under CWA requirements will have a direct impact on drinking water supplies throughout Washington State.

Recommendation: The definition of "waters of the United States" as limited to "relatively permanent waters" under *Sackett* should incorporate source water protection, aquifer recharge, and drought considerations. Intermittent and ephemeral waters should be considered as vital

aspects of the definitions in areas where they are shown to be essential to protect drinking water supply.

Intermittent and ephemeral waters, including wetlands, contribute to ecohydrology of associated watersheds, providing recharge to both groundwater and surface water drinking water systems. Wetlands provide natural filtration, specifically beneficial in reducing nitrate. Wetlands control sedimentation from runoff and mitigate the risk of harmful algal blooms, beneficial in protecting surface water intakes and reducing costs associated with drinking water treatment. Permeable aquifers are particularly sensitive to the loss of wetlands and can weaken the rejuvenation of groundwater resources.

Washington state has tidally influenced coastal wetland areas that are often separated from any jurisdictional waters by sand dunes and are not connected to any streams on the surface. The failure to protect these wetlands will result in lower water quality, less biodiversity, and potentially huge releases of carbon dioxide into the atmosphere. The social and economic decline of communities that rely on those ecosystems for work, healthy living, and cultural connectedness will follow. At the very least it is strongly recommended that any revision of "waters of the United States" consider the substantial diversity of regional environmental characteristics.

Washington state is experiencing significant levels of drought, declaring drought emergency for the third consecutive year. The impacts of drought present water insecurity and can be costly for drinking water systems, specifically surface water systems that rely heavily on runoff and recharge. In addition to water shortfalls, drought poses water quality concerns such as increased turbidity, taste and odor, harmful algal blooms, pathogens, and disinfection byproducts. This puts emphasis on the importance of recharge needs for vulnerable drinking water sources. Wetlands mitigate the impacts of drought by absorbing and retaining excess water during wet periods and returning it to the water table, acting as a reserve. This process is especially vital in aquifer recharge areas, regardless of physical connectedness to relatively permanent waters.

To best protect sources of drinking water, wetlands and ephemeral waters, regardless of relative permanency, or continuous surface connection, should not be automatically excluded from regulatory oversight and federal protections. Policy guidance is recommended in determining water resources of the United States in areas of drought and aquifer recharge, as it will impact both EPA and USACE in implementing Section 404 permit actions and Section 401 certifications.

Recommendation: "Continuous surface connection" implementation should consider seasonal variability, areas of prolonged drought, and emphasize impact on aquifer recharge.

Physical separation between intermittent waters and wetlands to relatively permanent waters does not negate the natural hydrologic cycle or subsurface hydrology. Waters without physical continuous connection still contribute to a variety of hydrologic functions, including watershed health, nutrient cycling, runoff control, sedimentation control, and provides infiltration and aquifer recharge opportunities. In implementation, intermittent and ephemeral waters, including wetlands, should be considered in areas of aquifer recharge or drought designation when there is subsurface hydrological interaction.

When assessing whether a continuous surface connection exists to relatively permanent water, it is important to consider seasonal and annual variability. Peak wet months should be used to determine connectedness between waters, and annual patterns should be analyzed. Additionally, temporary drought conditions that may be in effect should be considered when evaluating "continuous surface connection." This is a high priority to drinking water systems, regardless of continuous or intermittent physical surface connection. Utilizing mapping resources, such as historical flood plains, aquifer recharge areas, sole source aquifer areas, and surface drinking water sources can inform decision makers on "continuous surface connection" when there is not physical connection to, abutment, or adjacence.

Recommendation: DOH recommends the following for implementation of the "waters of the United States" ruling:

1) Incorporate drinking water source locations, aquifer recharge areas, and seasonal variability into the "relatively permanent waters" implementation.
2) Consider intermittent waters in "relatively permanent waters" implementation, regardless of continuous surface connection.
3) Protect ephemeral waters if the ephemeral nature is regularly occurring (at least twice annually) and within an aquifer recharge area or areas of prolonged drought designation.
4) In "continuous surface connection" implementation, incorporate wetlands, intrastate, non-navigable waters, relatively permanent lakes and relatively permanent ponds that are 1) directly adjacent to or abutting relatively permanent waters; and 2) not directly adjacent to or abutting relatively permanent waters but within an aquifer recharge or drought area.
5) Wetlands behind natural berms and landforms should be considered abutting and a continuous surface connection.
6) Flood or tide gates, pumps, and similar artificial features should not remove a wetland from being considered "adjacent" to the jurisdictional water on the other side of the feature, given the subsurface connectedness and recharge opportunities.
7) Scope of "connection to" should not be limited to physical surface abutment, given groundwater resource infiltration, natural nutrient cycling, and groundwater recharge opportunities.

8) All implementation analysis for the purpose of land development or regulatory oversight determination should be made in peak wet seasons, incorporating annual trends, and considering drought variabilities.

We hope the consideration of drinking water source protection to be included in the implementation of the "waters of the United States" ruling, as it is vital for public health, improves access to safe and reliable drinking water, and propels economic growth. Federal protections for wetlands, intermittent and ephemeral waters will improve watershed health, provide groundwater recharge, and natural filtration of contaminants. These protections ultimately reduce costs for public drinking water utilities for increased treatment or demand emergencies, in turn keeping costs down for customers.

Sincerely,

Lauren Jenks
Assistant Secretary
Environmental Public Health Division
Washington State Department of Health