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RE: Docket ID No. EPA-HQ-OW-2025-0032
2025 Proposed Revision of the Definition of Waters of the United States (WOTUS)

Dear Administrator Zeldin, Ms. Kramer, Mr. Telle,

We write on behalf of WaterLegacy, a Minnesota grassroots non-profit formed to protect Minnesota waters and communities that rely on clean water. We oppose the 2025 proposed rule changes to constrict the Waters of the United States that would be protected under the Clean Water Act (2025 Proposed WOTUS Rule). We oppose these changes on the following grounds:

1. The 2025 Proposed WOTUS Rule is unnecessary to implement Supreme Court precedent, although that is the Rule's stated rationale.
2. The 2025 Proposed WOTUS Rule is inconsistent with modern scientific understanding of the influence of wetlands and headwaters streams on filtration of pollution, flood control, and other ecological services provided by wetlands and intermittent streams.
3. The 2025 Proposed WOTUS Rule would create economic costs for many residents, property owners, and industries that depend on flood control, clean water, and availability of fish for harvesting, recreation, and tourism.
4. The 2025 Proposed WOTUS Rule would disproportionately benefit polluters and toxic industries—many of which are owned by multinational corporations and billionaires—at the expense of community members and health.

1. The 2025 Proposed WOTUS Rule is Not Necessary to Comply with Legal Precedent.

In 1972, Congress enacted the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). For most of its history, the language of the Clean Water Act defining Waters of the United States was interpreted by federal agencies to include ephemeral streams and drainage ditches if they had a visible high water mark. *Rapanos v. United States*, 547 U.S. 715, 725, 126 S. Ct. 2208 (2006) (citing 33 C.F.R. §§ 328.3(a)(5), 328.3(e)).

The Supreme Court applied the “significant nexus” test to navigable waters in 2001 to exclude an isolated abandoned mine pit used by migratory birds from WOTUS. *Id.* at 726 (citing *SWANCC v. Army Corps of Engineers*, 531 U.S. 159, 168, 121 S. Ct. 675 (2001)). In *Rapanos*, the Court was divided. Four justices concluded that the Clean Water Act applied only to relatively permanent bodies of water, *id.* at 757, four justices dissented, and Justice Kennedy’s concurred with the outcome, concluding that the appropriate standard was the “significant nexus” or “hydrologic connection” between the wetland and waters that were navigable or could reasonably be made so. *Id.* at 779-787.

The Supreme Court in *Sacket v. Environmental Protection Agency* 598 U.S. 651, 143 S. Ct. 1322 (2023) rejected the post-*Rapanos* factual determination by federal agencies of significant nexus based on hydrological and ecological factors. *Id.* at 667-669. The *Sackett* decision focused only on protecting a landowner from the need to seek a permit, without discussing the impact of removing controls from wetlands on hydrology, ecology, downstream water quality, flooding, or economies. With this myopic vision, *Sackett* limited the Clean Water Act to “relatively permanent, standing or continuously flowing bodies of water” and wetlands that are part of such a body of water. *Id.* at 671.

Despite the lack of scientific understanding, narrow consideration of harms and benefits, and incoherent rejection of the statutory definition of wetlands as “navigable waters” (33 U.S.C. § 1344(g)) in the *Sackett* opinion, federal agencies conducted rulemaking in 2023 to conform to this opinion. The 2023 Amended Rule and Conforming Rule¹ implement the latest pronouncement by SCOTUS and are consistent with the text, purpose, and structure of the Clean Water Act. The 2023 Amended Rule also reflects peer-reviewed science, consultation with state, tribal, and local governments, and input from 114,000 public comments. *Id.* The 2023 Amended Rule Conforming follows the *Sackett* and *Rapanos* opinions stating:

- The relatively permanent standard refers to “waters that are relatively permanent, standing or continuously flowing waters” connected to paragraph (a)(1) [traditional navigable] waters, and waters with a continuous surface connection to such relatively permanent waters or to paragraph (a)(1) waters.” 88 FR at 3038.

¹ See Revised Definition of “Waters of the United States,” 88 FR 3004 (January 18, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-18/pdf/2022-28595.pdf> and Revised Definition of “Waters of the United States” Conforming, 88 FR. 61964 (September 8, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-09-08/pdf/2023-18929.pdf>.

- As applied to streams, “the relatively permanent standard encompasses surface waters that have flowing or standing water year-round or continuously during certain times of the year” and have “extended periods of standing or continuously flowing water occurring in the same geographic feature year after year, except in times of drought,” including those with “temporary lack of surface flow, which may lead to isolated pools or dry channels during certain periods of the year.” 88 FR at 3084-3085.
- As applied to wetlands, the 2023 Conforming Amended Rule applies WOTUS coverage only to wetlands where there is a “continuous surface connection” between the wetland and a relatively permanent, standing, or continuously flowing body of water that is a water of the United States. 88 FR at 61966.

From WaterLegacy’s perspective, even the 2023 Conforming Amended Rule is a compromise with scientific knowledge, the clear statutory text of the Clean Water Act, and the balance of benefit to a few upstream landowners and harm to entire watersheds and communities from the dredge and fill and contamination of wetlands and headwater streams. Due to the pronouncement by SCOTUS, this compromise is necessary. But further attacks on water quality, health, and ecological and economic values downstream are unnecessary and unconscionable.

2. The 2025 Proposed WOTUS Rule is Inconsistent with Science and Water Protection.

The factual evidence is clear: wetlands and streams of all kinds are interconnected and greatly influence “provision of freshwater, regulation of water quality, and flood control” in downstream waters.² Wetlands act like kidneys of the watershed, filtering out pollution before it gets into streams, rivers, and lakes. Water quality to sustain aquatic plants, fish, and clean drinking water in downstream, streams, rivers, and lakes cannot be adequately protected if hydrologically connected headwaters streams and wetlands are filled or contaminated.

It is beyond scientific dispute that what appear to be geologically isolated wetlands are often hydrologically connected with downstream waters both by surface water flowpaths after rainfall or during wet seasons and by groundwater flowpaths at these and other times.³ Climatic trends are leading to prolonged periods of drought and deluge, so that even wetlands with a seasonal or rainfall-dependent surface connection to downstream waters can have significant and cumulative beneficial effects on watershed hydrologic, biogeochemical, and ecological function. *Id.*

In addition, individual wetlands may temporarily transfer from one type to another, relying on time-variable dynamics of surface and groundwater within the wetlands as well as climate

² Fritz, K.M., *et al.* (2018) Physical and chemical connectivity of streams and riparian wetlands to downstream waters: a synthesis, *J. Amer. Water Res. Ass’n* 54:2, <https://pubmed.ncbi.nlm.nih.gov/30245566/>.

³ See e.g., Lee, S. *et al.* (2020) Seasonal drivers of geographically isolated wetland hydrology in a low-gradient, Coastal Plain landscape, *J. Hydrology Vol.* 583, <https://www.sciencedirect.com/science/article/abs/pii/S0022169420300688?via%3Dihub>.

change factors.⁴ Wetlands with or without a permanent, visible surface connection to another protected waterbody as well as wetlands with such a connection provide ecosystem services, including filtration of pollutants such as nitrates, and removal of heavy metals from drinking water, surface water, and potential bioaccumulation in the food chain. *Id.* These functions are critically important in Minnesota, where nitrates and lead in drinking water and mercury contamination of fish pose serious health concerns.

It is also beyond scientific dispute that streams with flow intermittence perform vital ecosystem functions during all hydrologic phases: flowing, non-flowing, and dry.⁵ Thus, streams that may not flow continuously must be included in WOTUS to protect biodiversity, nutrient cycling, and water quality. The ecosystem services of intermittent rivers and ephemeral streams are often undervalued, with inadequate consideration given to the multiple ecosystem services provided in a river network that includes perennial and intermittent rivers and ephemeral streams.⁶ The spatial arrangements of linked intermittent and perennial stream reaches favors life cycles of some biota, dry phases may provide a sink for organic matter, and both flowing and dry phases of intermittent and ephemeral streams may provide flood control and storm protection. *Id.*

The proposed removal of wetlands or streams that lack a continuous and obvious surface water connection from WOTUS is unsupported by scientific evidence. It would elevate polluter convenience above evidence, clean water, flood control, and ecosystem and human health.

3. The 2025 Proposed WOTUS Rule would Create Widespread Economic Costs.

The 2025 Proposed WOTUS Rule would create significant costs due to loss of protection from flooding. In the Midwest, one acre of inland wetlands prevents \$745 in residential flooding every year.⁷ Specifically, recent research by the Union of Concerned Scientists found that 10,787,865 acres of wetlands in Minnesota provide \$8.03 billion in annual residential flood mitigation value. *Id.* at 5. Over time, if Minnesota wetlands are not drained or damaged, they are estimated to provide between \$115 billion and \$268 billion in residential flood mitigation. *Id.*

In addition, across the United States, more than half of commercially harvested fish and shellfish

⁴ See e.g., Wu, X., *et al.* (2020) Surface water and groundwater interactions in wetlands, *J. Earth Science* 31(5): 1016-1028, <https://link.springer.com/article/10.1007/s12583-020-1333-7>.

⁵ See e.g., Daltry, T. *et al.* (2020) Flow intermittence and ecosystem services in rivers of the Anthropocene, *J. Appl. Ecol.* 55(1)353-364, <https://pmc.ncbi.nlm.nih.gov/articles/PMC5907507/pdf/nihms954513.pdf>.

⁶ See e.g., Koundouri, P., *et al.*, Ecosystem services, values, and societal perceptions of intermittent rivers and ephemeral streams, Chapter 5.2 in *Intermittent River and Ephemeral Streams*, Academic Press (2017), <https://www.sciencedirect.com/science/chapter/edited-volume/abs/pii/B9780128038352000188?via%3Dihub>.

⁷ Woods, S., Union of Concerned Scientists, Wetlands in Peril: How Industrial Agriculture Damages Critical Ecosystems, Increasing Flood Risk in the Upper Midwest (2024) at 4, <https://www.ucs.org/resources/wetlands-peril#ucs-report-downloads>.

live in wetlands for at least part of their lifecycle, making wetlands fundamental to the \$5.6 billion dollar United States commercial seafood industry.⁸ The U. S. Department of the Interior Fish and Wildlife Service has concluded that wetlands contribute more than \$7.7 trillion per year to fishing, recreation, water quality, and flood control.⁹

Minnesota is home to approximately 10.6 million acres of wetlands, 11,800 lakes and 92,000 miles of rivers and streams. Weakening federal water protections threatens Minnesotans' jobs and prosperity sustained by fishing, hunting, gathering, recreation, and tourism. Outdoor recreation contributes about 2.8 percent of Minnesota's gross domestic product, generating roughly \$13.5 billion in value added and supporting about 96,000 jobs.¹⁰ In fact, outdoor recreation accounts for around 3.1 percent of all jobs in Minnesota. Tourism, much of which is related to environmental quality, creates a large economic benefit, generating a total of \$24.2 billion in 2023 and more than 180,000 jobs (roughly 1 in 21 jobs in Minnesota), including direct and induced effects.¹¹ These categories overlap, so they can't be summed, but if the economic benefits and harms to upstream polluters and the State as a whole are compared, the folly of narrowing protections of wetlands and intermittent streams is evident.

4. The 2025 Proposed WOTUS Rule Would Unfairly and Irresponsibly Shift Burdens.

The 2025 Proposed WOTUS Rule would not only create more harm than benefits in Minnesota and other states across the nation. Its weakened water protection rules will result in unfair and irresponsible shifting of burdens from those with the most power and financial resources to invest in control of harm to individuals and communities with little power or ability to protect themselves. The 2025 Proposed WOTUS Rule will lead to more water pollution, which will increase costs for local wastewater treatment¹² and raise families' water bills. Weaker rules will also further jeopardize limited water supplies that communities depend on for drinking water and health. In various parts of Minnesota, health threats are posed by elevated pollutants in drinking water, including nitrates ("blue baby syndrome" anoxia), manganese and lead (neurological deficits), and arsenic (cancer). The Minnesota Department of Health found mercury contamination of fish

⁸ NOAA Fisheries, 5 Reasons Why We Love Wetlands (2020), <https://www.fisheries.noaa.gov/feature-story/5-reasons-why-we-love-wetlands>.

⁹ Lang, M.W., *et al.*, U.S. Fish and Wildlife Service Status and Trends of Wetlands in the Conterminous United States 2009 to 2019 (2024), https://www.fws.gov/sites/default/files/documents/2024-04/wetlands-status-and-trends-report-2009-to-2019_0.pdf.

¹⁰ Explore Minnesota, Outdoor Recreation, Industry Partnership, August 2025, <https://content.govdelivery.com/accounts/MNEXPLORE/bulletins/3ec8dac?utm>.

¹¹ Explore Minnesota, Minnesota 2023/2024 Annual Travel Indicators, inclusive of data available as of March 5, 2025, https://mn.gov/tourism-industry/assets/2024%20Annual%20Minnesota%20Travel%20Indicators%20-%20Final_tcm1135-671877.pdf?utm.

¹² Woods, *supra*, at 2.

exceeding levels that reduce intelligence quotient (IQ) in 10 percent of more than 1,400 newborns in Minnesota's Lake Superior Region.¹³

Changes that reduce wetland protections under the Clean Water Act will impact tribal nations and tribal members in Minnesota and across the country who rely on clean water to sustain fish, wildlife, and aquatic plants that are abundant and uncontaminated. The 2025 Proposed WOTUS Rule would unfairly and disproportionately burden the exercise of treaty-reserved rights by tribal nations to hunt, fish, and gather plants, thereby undermining food sovereignty, nutrition, and the essence of their culture.

The Rule would also place a disproportionate burden on Minnesota's rural, low-income, and minority communities who depend on fishing, hunting, and gathering wild rice and other aquatic plants for nutritious protein, food for their families, jobs, and to sustain their way of life. There are many communities in Minnesota that rely on fishing, hunting, and clean water to support tourism, jobs, tax base, in-migration of residents, and a high quality of life based on connection to the natural world. The 2025 Proposed WOTUS Rule would put their clean water and communities under the thumb of huge foreign extraction conglomerates, corporate feedlots, and wealthy landowners, the most significant threats to Minnesota's wetlands and streams.

We emphasize effects on Minnesota because protecting our State's water resources is central to WaterLegacy's mission. But nearly every other state in the United States of America derives similar benefits from wetlands and streams.

WaterLegacy hopes that these comments will be read and thoughtfully considered. The 2025 Proposed WOTUS Rule is unreasonable, economically irresponsible, and unfairly shifts the burdens of pollution and destruction from wealthy landowners and powerful special interests that have the capacity to control them to watersheds, communities, and economies that will suffer without recourse. Please reject the 2025 Proposed WOTUS Rule.

Sincerely yours,



Paula G. Maccabee

WaterLegacy Executive Director and Counsel



Janet Keough, Ph.D.

WaterLegacy Board President and Past President, [International] Society of Wetland Scientists

¹³ Minnesota Department of Health, Mercury in Newborns in the Lake Superior Basin, <https://www.health.state.mn.us/communities/environment/fish/techinfo/newbornhgisp.html>.