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Indigenous conservation nonprofit
<https://thepnwlf.org/>

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Comment submitted electronically to
<https://www.regulations.gov/commenton/EPA-HQ-OW-2025-0322-0001>

RE: Proposed Updated Definition of “Waters of the United States”
Docket ID No. EPA-HQ-OW-2025-0322

The [L.I.G.H.T. Foundation \(LF\)](https://thepnwlf.org/) is an independent, Indigenous-led, conservation 501(c)(3) nonprofit established on the Colville Indian Reservation in the traditional territory of the Nespelem Tribe within Washington State. We support the restoration and cultivation of native **Plant and Pollinator Relatives**¹ and the culturally respectful conservation of habitats and ecosystems which are climate resilient and adaptive. LF is interested in the hydrologic cycles, ecosystem health, and biodiversity of all surface and subsurface waters of the United States and transboundary watersheds.

Indigenous Peoples (IP)² and the ecosystems we have stewarded for time immemorial have been adversely impacted by the industrialization and privatization of resources for commodification, commercialization, and extraction. This has manifested in many forms since contact with Euro-Americans and has resulted with fractionated lands, piecemeal protections for environmental and public health, and reduced the resiliency of Indigenous socio-cultural ecologies.

¹ There are countless terrestrial and aquatic native plant species, fungi, and lichens used for food, medicine, cultural, spiritual, fabric, fiber, artistic, and construction purposes which are important to Indigenous Peoples. The LF refers to these inclusively as “Plant Relatives” and recognizes that several of them rely upon the health and abundance of “Elder” trees (commonly referred to as mature and old-growth trees) and “Pollinator Relatives” like bees, birds, bats, butterflies, beetles, other insects, and small mammals. In this comment, LF also may refer to “Animal Relatives” which may include salmon, steelhead, trout, crayfish, deer, elk, moose, grouse and other aquatic and terrestrial species. Many Plant and Animal Relatives are referred to as “First Foods” by Indigenous Peoples.

² Indigenous Peoples: Native Americans, Alaska Natives, Native Hawaiians, Pacific Islanders (e.g., American Samoans, Chamorros and Carolinians of Guam and the Northern Mariana Islanders, and others), and Caribbean Islander (e.g., Taino and others) descent, and others whose ancestors have occupied what is now known as the United States and its territories since time immemorial, including citizens of Tribal Nations and non-federally recognized Tribes. See Department of the Interior (DOI) Part 301 Department Manual Chapter 7 (301 DM 7) at: <https://www.doi.gov/document-library/departamental-manual/301-dm-7-departamental-responsibilities-consideration-and>



The proposed update to the definition of the “Waters of the United States” (WOTUS, Proposed Rule) poses a pivotal opportunity to address these challenges to socio-cultural ecologies by reaffirming the objective of the Clean Water Act (CWA), which is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. § 1251. As original stewards of the waters now managed by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE), we as IP have nurtured these ecosystems for millennia, maintaining reciprocal balance and resilience with the **Spirit Relatives**³ that sustain our worldviews and ways of life. LF acknowledges Spirit Relatives as including subsistence, traditional and First Foods; sacred and spiritual plants, animals, and places; medicinal plants and animals; fibers, dyes, and other materials.

LF urges the Agencies to retain the current WOTUS definition without further changes, for the reasons outlined in the sections that follow. LF sees this Proposed Rule process as an opportunity to correct the historical exclusion of **Tribal Nations**⁴ and IP (TIP) from the original CWA and to implement meaningful commitments to **Tribal Sovereignty**⁵ and co-stewardship. Water quality, quantity, and access directly impacts TIP health and welfare, cultural, governance, and economic interests. The federal government’s **trust responsibility**⁶, as enshrined in **Tribal treaties**⁷ and **reserved rights**⁸, obligates the EPA and USACE (collectively, the Agencies) to ensure that Tribes are full partners in managing the water resources that are the ancestral inheritance and responsibility of TIP.

EPA’s 1984 Indian Policy⁹, reaffirmed in 2025, and the **USACE 2000 Tribal Policy Principles**¹⁰, reaffirmed in 2019, explicitly recognize Tribal Nations’ inherent sovereignty to

³ Spirit Relatives: Subsistence, traditional, and First Foods; sacred and spiritual plants, animals, and places; medicinal plants and animals; fibers, dyes, and materials. See: 2024 LF Annual Report at: <https://thepnwlf.org/2022-annual-report-1>.

⁴ Tribal Nation or Tribe: An Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or community that the Secretary of the Interior acknowledges as a federally recognized Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130.

⁵ Tribal Sovereignty: The most basic principle of all Indian Law, that which Tribal Nations retain the right to self-government as inherent powers which have never been extinguished. See also Library of Congress, American Indian Law: A Beginner’s Guide at: <https://guides.loc.gov/american-indian-law/Federal-Law>.

⁶ Trust Responsibility: The legal obligation of the federal government, including all departments and agencies, to ensure the protection of Native American Tribes and Tribal lands, assets, resources, treaty, and reserved rights. Given the fiduciary obligation, agency officials must advocate for the Tribe, act in good faith towards the Tribe, and seek to make Tribal resources under the agency’s control productive and profitable (*Cherokee Nation v. Georgia*, 30 U.S. 1, 16 [1831], *Seminole Nation v. United States*, 316 U.S. 286, 296-97 [1942], *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2324-25 [2011], Secretarial Order 3335).

⁷ See: American Indian Treaties: Catalog Links 1722-1868, National Archives at: <https://www.archives.gov/research/native-americans/treaties/catalog-links>. See also: Bureau of Indian Affairs: List of Indian Treaties, Department of the Interior (DOI) at: https://www.bia.gov/sites/default/files/media_document/vol_ii_appendix_i_list_of_indian_treaties_508_final.pdf

⁸ Reserved Rights: Rights not addressed by Tribal treaty provisions are presumptively reserved, so long as the rights retained are consistent with federal law and the Tribe’s sovereign status, agencies should generally interpret silence in a Tribal treaty in accordance with the reserved-rights doctrine. Tribal treaties are to be interpreted as a grant of rights from the Tribes, and a reservation of those rights not granted; thus, Tribes possess proprietary and use rights and sovereign control not conveyed away by the Tribal treaty or other federal law. See: *Best Practices for Identifying and Protecting Tribal Treaty Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making* (30 November 2022) at: https://www.bia.gov/sites/default/files/media_document/best_practices_guide.pdf.

⁹ EPA Indian Policy for the Administration of Environmental Programs on Indian Reservations (8 November 1984), see: <https://www.epa.gov/system/files/documents/2025-07/1984-epa-indian-policy.pdf>

¹⁰ USACE Tribal Policy Principles: Sovereignty and Government-to-Government Relations with American Indian and Alaska Native Tribal Governments (10 May 2000), see: <https://share.google/YYNHdQuoZV3uCMuG>



manage and protect Tribal resources and promise agency assistance in **government-to-government (G2G) consultation**¹¹ fashion for developing Tribal capacity as part of the federal government's trust responsibility.

Clean water protections are essential to the health of our rivers, communities, and drinking water systems. Every river relies on networks of small streams and wetlands which play a vital role in protecting water quality, reducing flooding, sustaining biodiversity and downstream ecosystems. **Indigenous Knowledges (IK)**¹² and scientific research are crystal clear: when small streams and wetlands are damaged or destroyed, the impacts cascade far downstream in space and time. This degrades water quality, increases flood risk, harms the homes and habitats of our Spirit Relatives, and raises the costs and health risks for TIP that depend upon clean reliable water.

Section A. Treaty Rights and Reserved Rights

LF unequivocally supports the sovereign status of TIP to hunt, fish, gather, and protect Spirit Relatives. These **Treaty Rights and Reserved Rights (TRR)**, enshrined in treaties, case law, and federal documents previously cited, represent legal and moral commitments that are integral to the cultural, spiritual, and economic well-being of TIP citizens. These are not privileges granted by the federal government, but retained sovereign rights that predate the United States itself. Federal trust responsibilities, including those reinforced by the EPA Indian Policy, USACE Tribal Policy Priorities, and the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**¹³, demand that the United States prioritize and uphold these rights in all water management decisions.

The Proposed Rule threatens TRR through disregard of functioning, healthy, and intact ecosystems. Generally, this Proposed Rule would impact TRR subsistence and traditional

¹¹ Government-to-Government (G2G) Consultation (i.e., Nation-to-Nation consultation): A formal component of the Tribal consultation process that engages federally-recognized Tribal leaders and incorporates their input into decisions. A formal G2G meeting, between Tribal leaders and similarly high-level federal or state decision makers, is customarily part of this process, and may include multiple meetings, discussions, and the reciprocal sharing of information. More than one formal G2G meeting among decision makers may be required in a G2G consultation. See: West Coast Ocean Tribal Caucus (WCOTC) for more information:

https://www.oregon.gov/lcd/Commission/Documents/2022-03_Item-4_TSPPart3_Attachment-B_West-Coast-Tribal-Engagement-Guidance-March-2020.pdf. See also: The White House (9 November 2000). Executive Order 13175:

"Consultation and Coordination with Indian Tribal Governments." Available at:

<https://www.federalregister.gov/documents/2021/01/29/2021-02075/tribal-consultation-and-strengthening-nation-to-nation-relationships> and The White House (29 January 2021). Presidential Memorandum: "Tribal Consultation and Strengthening Nation-to-Nation Relationships." Available at:

<https://www.federalregister.gov/documents/2021/01/29/2021-02075/tribal-consultation-and-strengthening-nation-to-nation-relationships>

¹² Indigenous Knowledges (IK)": A body of observations, oral and written knowledge, innovations, technologies, practices, and beliefs developed by Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed, held, and stewarded by Indigenous Peoples and is often intrinsic within Indigenous legal traditions, including customary law or traditional governance structures and decision-making processes. Other terms such as Traditional Knowledge(s), Traditional Ecological Knowledge, Genetic Resources associated with Traditional Knowledge, Traditional Cultural Expression, Tribal Ecological Knowledge, Native Science, Indigenous Applied Science, Indigenous Science, and others, are sometimes used to describe this knowledge system. See also Note 3 at 301 DM 7.

¹³ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Department of Economic and Social Affairs, see:

<https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>.



use resources, disrupting TIP food access, security, and sovereignty dependent upon intact hydrologic ecosystems which support:

- Spirit Relatives and First Foods of the riparian, aquatic, and wetland ecosystems
- Plant and Pollinator Relatives requiring undisturbed riparian and aquatic conditions
- Materials for traditional crafts, regalia, and ceremonial items
- First Foods central to our nutritional, cultural, and spiritual health

Increasing exclusions and reducing protections of WOTUS would introduce construction, resource extraction, and development in previously protected areas, which would:

- Reduce abundance and accessibility of subsistence resources and First Foods
- Introduce invasive and noxious weed species through road construction, development, and other ground-disturbing activities, which harm Spirit Relatives and their homes
- Introduce harmful competition and extraction activities from non-Tribal commercial and recreational users
- Contaminate First Foods through increasing chemical applications, pollutants, and contaminants into the hydrologic cycle
- Disrupt **Intangible Cultural Heritage (ICH)**¹⁴ practices, traditional harvest cycles, and ecological relationships TIP have with streams, rivers, and wetlands
- Directly threaten the access, availability, security, and sovereignty of TIP First Foods and Spirit Relatives

In particular, LF is compelled to bring forward issues about this Proposed Rule's impacts to TIP in Alaska and the Pacific Northwest.

Proposed WOTUS Rule & TRR in Alaska

The state of Alaska contains more than half of all the protected river miles in the country, playing an outsized role in ensuring clean, safe, reliable drinking water for people and wildlife. Over a million miles of rivers cross Alaska, supporting local economies, TIP, and the fishing and hunting traditions that so many Americans enjoy. Specifically, LF is opposed to the Agencies' proposal to break up mosaic wetlands into distinct segments, despite previously being considered a single, hydrologically connected wetland.

This proposal would significantly impact jurisdictional determinations in Alaska, resulting in permafrost wetlands (which are common mosaic wetlands) being excluded from the definition of "adjacent" wetland, thereby eliminating regulation for the overwhelming majority of wetlands in the state. The resulting impact to Alaska Native TIP citizens would be severe, as they depend upon seasonal wetlands - especially permafrost melts - as sources of drinking water, for subsistence activities, and for the preservation of ICH. As it is, the

¹⁴ Intangible Cultural Heritage (ICH): The practices, representations, expressions, knowledge, skills (as well as the instruments, objectives, artifacts, and cultural spaces associated therewith) that communities, groups, and in some cases, individuals recognize as part of their cultural heritage. It is transmitted from generation to generation, constantly evolved by communities and groups in response to their environment, interactions with nature and unique histories, and provides identity and continuity. See: United Nations Educational, Scientific, and Cultural Organization (UNESCO) Intangible Cultural Heritage at: <https://ich.unesco.org/en/home>.



Proposed Rule may exclude from the WOTUS definition thaw-related waters, which hold crucial ecological and cultural significance, due to their intermittent or subterranean nature.

Additionally, under **Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA)**¹⁵, Alaska Tribal governments possess federally protected subsistence rights which are dependent upon ecosystems of that classification. The Proposed Rule further threatens these TRR without analysis or consultation.

To resolve these issues, LF recommends that the Agencies adopt alternative protection measures that consider the unique hydrological, ecological, and cultural importance of mosaic wetlands in Alaska specifically, and others throughout the country. Additionally, LF recommends that the Agencies implement G2G consultation procedures outlined in Section B below.

Proposed WOTUS Rule and TRR in the Pacific Northwest

It is well documented and beyond dispute that water resources which maintain and perpetuate Tribal water rights, sustain TRR fisheries and provide clean water for TIP communities are at significant risk from climate change. Specifically, waterways within Alaska, Washington, Oregon, Idaho, Montana, and California are critical for:

- Spawning and rearing habitat for Salmon, Lamprey, Steelhead, Bull Trout and other aquatic Animal and Plant Relatives
- Cold, clean water essential for Animal Relative survival in a warming climate
- Intact riparian vegetation maintaining stream temperatures and preventing sedimentation
- Natural hydrology supporting traditional and subsistence hunting, fishing and gathering for Spirit Relatives
- Clean drinking water for TIP and downstream communities, many of which may already lack adequate water infrastructure

The Proposed Rule would reduce protections for WOTUS and increase rates of road construction, land use change, and pollution inputs into waterways. Scientific evidence demonstrates that road construction is the primary source of sediment pollution in forest streams, with roads contributing up to 90% of total sediment yield. The Proposed Rule would eliminate protections for previously protected waterways, increasing the risk of upland and forest road construction. Such construction would result in:

- Increase sedimentation, destroying anadromous species' spawning gravels and smothering eggs
- Elevate stream temperatures beyond tolerance levels for cold-water species
- Fragment aquatic habitats through culverts and stream crossings
- In some places introduce, and in others substantially increase, pollutants and contaminants from vehicle traffic and industrial operations

¹⁵ Alaska National Interest Lands Conservation Act (ANILCA). Pub. L. No. 96-487, 16 U.S.C. 3101 (2 December 1980).



Specifically, LF is primarily concerned that ephemeral and intermittent streams are categorically excluded from this Proposed Rule. These waters are as equally important and valuable as perennial streams, to which they are hydrologically and ecologically connected. “For the Columbia River, which is historically the most productive salmon and steelhead system in the world, 52% of the flow of the Columbia River is contributed, is coming from ephemeral streams upriver¹⁶.” TIP TRR species such as Chinook Salmon, Coho, Chum, and Steelhead - all listed under the Endangered Species Act - will be at an even greater risk of extinction if this Proposed Rule is implemented.

Through NOAA¹⁷ and the Interior and Commerce Departments¹⁸, the federal government has invested billions of dollars in salmon restoration since 2000, focusing heavily on habitat, fish passage, and TIP programs in the Pacific Northwest and Alaska. As it is, the Proposed Rule specifically targets these regions of the country and the TIP within these regions by eliminating critical WOTUS protections for hydrologic, ecosystem, environmental and human health, effectively placing a death sentence upon ESA-listed anadromous species and the cultural, social, and economic values and priorities TIP have with these Animal Relatives.

It is beyond comprehension why the Agencies tasked with fulfilling the objective of the CWA “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 USC § 1251 would propose a definition which so clearly is adverse to the objective. Specifically, the Proposed Rule is in direct contradiction to the CWA’s national goal “that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water,” 33 USC § 1251(2).

¹⁶ Trout Unlimited “Clean Water Act Briefing - December 2025.” See: <https://vimeo.com/1147490241>

¹⁷ NOAA Fisheries (14 July 2022). \$95 Million in NOAA Pacific Coastal Salmon Recovery Funding Recommended to Reverse the Declines of West Coast Salmon and Steelhead. Available at: <https://www.fisheries.noaa.gov/feature-story/95-million-noaa-pacific-coastal-salmon-recovery-funding-recommended-reverse-declines#:~:text=Since%20the%20program's%20inception%20in,miles%20to%20salmon%20and%20steelhead.> See also NOAA Fisheries (25 June 2025). Priority Climate Change Investments Under the Inflation Reduction Act. Available at:

([https://www.fisheries.noaa.gov/national/climate/priority-climate-change-investments-under-inflation-reduction-act#:~:text=Non%2DMitchell%20Act%20Hatcheries%20\(\\$,This%20includes](https://www.fisheries.noaa.gov/national/climate/priority-climate-change-investments-under-inflation-reduction-act#:~:text=Non%2DMitchell%20Act%20Hatcheries%20($,This%20includes) and NOAA Fisheries (4 December 2024).

Biden-Harris Administration, NOAA Make \$99 Million Available for Pacific Coastal Salmon Recovery Fund. Available at:

<https://www.fisheries.noaa.gov/media-release/biden-harris-administration-noaa-make-99-million-available-pacific-coastal-salmon#:~:text=This%20announcement%20builds%20on%2025,for%20salmon%20and%20steelhead%20passage.>

¹⁸ Department of the Interior (25 July 2024). Interior and Commerce Departments Announce \$240 Million from President Biden’s Investing in America Agenda for Fish Hatcheries to Support Pacific Northwest Tribes. Available at: ([https://www.doi.gov/pressreleases/interior-and-commerce-departments-announce-240-million-president-bidens-investing#:~:text=The%20Departments%20of%20the%20Interior%20and%20Commerce,Department's%20National%20Oceanic%20and%20Atmospheric%20Administration%20\(NOAA\)](https://www.doi.gov/pressreleases/interior-and-commerce-departments-announce-240-million-president-bidens-investing#:~:text=The%20Departments%20of%20the%20Interior%20and%20Commerce,Department's%20National%20Oceanic%20and%20Atmospheric%20Administration%20(NOAA)) See also Strout, N. (5 December 2024). Biden Admin Announces 99 Million for Pacific Coastal Salmon Recovery Fund. Available at:

<https://www.seafoodsource.com/news/environment-sustainability/biden-admin-announces-usd-99m-for-pacific-coastal-salmon-recovery-fund#:~:text=6%20Min,16%20C000%20individual%20projects%20since%202000.>



Section B. Importance of Consultation & Necessity to Extend Comment Period

Meaningful, G2G consultation is not merely a procedural requirement, but a cornerstone of federal trust responsibilities and the acknowledgement and exercise of Tribal sovereignty. **Executive Order 13175**¹⁹, the EPA Indian Policy, and the USACE Tribal Policy Priorities stipulate that consultation for this Proposed Rule must be timely, transparent, and substantive, with the intent to reach mutual understanding and agreement.

LF reiterates the request of numerous TIP and inter-Tribal organizations (ITOs) that have requested an extension of this 45-day comment period and we encourage the EPA and USACE to engage TIP in ways which advance positive precedence for meaningful and good faith engagement and consultation to address TRR priorities and other interests. It is expected that that this and future federal actions shall ensure consultation is comprehensive, ongoing, and respectful by including and implementing:

1. Funding set-asides for capacity and program implementation for all of Indian Country for Tribal “treatment as state” (TAS) activities under the proposal, since the federal government is abrogating their federal duty to implement the overall objectives of the CWA;
2. Early notification and engagement in federal processes of decision-making for policy, project, or regulatory planning and development;
3. Providing adequate time for TIP review and feedback on management proposals, respecting TIP schedules and resource constraints;
4. Maintaining regular communication throughout all phases of applicable planning, implementation, and monitoring;
5. The incorporation of TIP input into policy, project or regulatory plans and implementation;
6. Ensuring consultation outcomes are actionable and enforceable, with commitments formalized through agreements and protocols co-developed with TIP; and
7. Accountability in consultation by requiring written records of consultation outcomes, timelines, and actions to ensure accountability.

Section C. Key Position Points Regarding *Sackett II* Decision

LF believes that the current WOTUS rule, amended in 2023 to comply with the Supreme Court’s *Sackett II*²⁰ decision; already reflects the Court’s constraints while preserving protections for waters to the maximum extent legally allowable. *Sackett II* limited the scope of the CWA by imposing narrow definitions of what constitutes WOTUS and an “adjacent” wetland. The Court held that WOTUS must be a “relatively permanent body of water connected to traditional interstate navigable waters” and that to be an adjacent wetland, the wetland must have a “continuous surface connection” to a WOTUS,²¹ “making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins²².” This ruling overturned the “significant nexus” test articulated by Justice Kennedy in *Rapanos v. United States*²³.

¹⁹ Executive Order (EO) 13175 Consultation and Coordination with Indian Tribal Governments (6 November 2000): <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>

²⁰ *Sackett v. EPA*, 598 U.S. (2023).

²¹ 598 U.S. at 678.

²² *Ibid* Note 16 at 678-679.

²³ 547 U.S. 715, 759 (2006).



The Agencies' Proposed Rule relies on imaginatively new legal interpretations and technical concepts which unnecessarily and dramatically narrows definitions and expands exemptions, and reduces the number and extent of streams, wetlands, and other waters subject to pollution prevention, control, and cleanup requirements of the CWA. This rollback proposal would leave vast areas of streams and wetlands unprotected, especially in Western states where *Sackett II* has already eliminated most federal protections, increasing risks to Spirit Relatives, biodiversity, public health, and safety.

If the Proposed Rule is implemented, the Agencies will still be obligated to honor Tribal sovereignty, fulfill TRR responsibilities, and implement the EPA and USACE policies previously discussed. Additionally, LF further encourages the Agencies to consider these additional points in the event the Proposed Rule is implemented:

1. Avoid establishing a minimum period of flow or specific flow volume in its use of the term "relatively permanent." Instead, it should identify factors for consideration, allowing a case-by-case determination within that framework to account for regional hydrology, flow duration, topography, and other relevant scientific factors.
2. Establish a clear, science-based hydrologic definition of "wet season" which accounts for dramatic shifts in precipitation regimes under climate change and regional variability due to environmental conditions to reduce the exclusion of healthy and ecologically important streams. As it is now, the Proposed Rule requires that streams and wetlands have surface water "at least during the wet season" in order to qualify for protection, but does not require that the wet season is hydrologically defined.
3. Avoid establishing the restrictive, proposed definition of "tributary," which would exclude intermittent and ephemeral streams, as well as those bodies of water which lack a bed and bank. As it is now, the Proposed Rule would eliminate protections for many intermittent streams and man-made infrastructure that function like natural streams, opening the door to more unregulated pollution and adversely harming nationally significant waters like the Florida Everglades.
4. Avoid use of the Strahler stream order methodology to assess the permanence of a stream within a given reach, which lacks transparency, efficiency, and predictability. Under the Proposed Rule, repeated field tests and delineations would be required to verify wet season flow and relative permanence, resulting with frequent site visits and case-by-case determinations which is likely not administratively feasible for TIP. This is another reason why funding set-asides for TIP TAS activities is necessary for capacity and program implementation for all of Indian Country.
5. Avoid expanding exclusions for ditches and artificial drainage structures, which suggest that any artificial or natural break in flow cuts off upstream CWA protection. As it is now, the Proposed Rule would sever jurisdiction where a culvert, pipe, stormwater channel, or short dry stretch is present, meaning that upstream waters which feed larger rivers would no longer receive CWA protection.
6. Avoid expanding the exclusion of waste treatment systems to apply to those constructed before 1972, which are those most in need of maintenance, management, and renovation to prohibit pollution.
7. Avoid expanding the exclusion of prior converted cropland (PCC) to WOTUS areas, as it does not account for dramatic shifts in precipitation regimes under climate change, regional or local temperature variability which significantly impact environmental conditions, or altering economic interests and priorities of the agricultural industry. Additionally, the Proposed Rule should not remove or replace



the U.S. Department of Agriculture with EPA or USACE as the determining federal agency for agricultural use on PCCs.

8. Avoid expanding the definition of ditches to exclude and maintain the 2008 regulatory language which specifies the definition of ditches to “drain only dry land.” Ditches exhibiting a relatively permanent flow should remain to be classified as WOTUS, regardless of their construction, location, or method, including whether the ditch was fully excavated in dry land or not. As it is, the Proposed Rule would allow an excluded ditch to drain non-dry land, which could potentially drain wetlands or other bodies of water, making this exclusion much broader.
9. Avoid including groundwater in the list of exclusions, as there are situations when groundwater is subject to CWA jurisdiction. One such example are “surface expressions of groundwater,” including when groundwater emerges from the ground and contributes to baseflow in a relatively permanent stream, and situations like the one described in *Hawaii Wildlife Fund v. Maui*, 590 U.S. 165 (2020), where pollutants released to groundwater are shown to reach surface water.²⁴ Thus, although groundwater is naturally non-navigable, and its regulation is primarily addressed by other federal, state, Tribal, and local authorities, there are scientific and reasonable feasible times when it falls within CWA jurisdiction.
10. Avoid removing “interstate waters” from the existing five-part definition of WOTUS, since the 2023 revisions after *Sackett II* already eliminated “interstate wetlands” from the WOTUS definition. As it is, the Proposed Rule’s removal of “interstate waters” would have no impact on the jurisdictional status of interstate wetlands and may only cause confusion and uncertainty, adding to the implementation burdens on EPA and the USACE and making it harder for TIP with waters that cross jurisdictional lines to enforce their water quality protection laws.

Section D. Regulatory Impact Analysis

The Regulatory Impact Analysis summarized in Section VI.A of the Proposed Rule focuses solely on economic cost savings of the federal government and completely ignores the negative consequences associated with decreased protection of wetlands and tributaries for both TIP and states throughout the country. The Agencies acknowledge that the Proposed Rule “would result in an increase in non-jurisdictional findings,” but does not examine the impacts on WOTUS or on TIP and states left carrying the burden of water quality protection. LF requests that a thorough, full analysis be completed which addresses the following:

1. The reduction in permit activity is projected to be greatest for the Section 404 Dredge and Fill permitting program, administered by the USACE and EPA. Agencies estimate that approximately 80% (73.5 million acres) of wetlands mapped in the National Wetlands Inventory will lose protection under this Proposed Rule.²⁵ The Proposed Rule will also reduce the scope of federal jurisdiction for other CWA programs, including Section 402 (National Pollutant Discharge Elimination System permitting), Section 303 (water quality standards, assessment, and total maximum daily loads), Section 311 (oil spills), and Section 401 (water quality certifications).

²⁴ See 90 Fed. Reg. at 52,504 n. 8.

²⁵ Gaddis, E., Garner, H., Jones, N., Aguilar, L., King, S. (20 November 2025). Ten Things to Know About the Proposed 2025 WOTUS Rule. SWCA. Available at: <https://www.swca.com/news-insights/ten-things-to-know-about-the-proposed-2025-wotus-rule/> and Waterkeeper Alliance. (9 December 2025). “Eighty Percent of U.S. Wetlands at Risk: Why WOTUS Matters to You. Available at: <https://waterkeeper.org/news/eighty-percent-of-u-s-wetlands-at-risk-why-wotus-matters-to-you/>.



- a. EPA reports that out of 575 federally recognized Tribes, only 85 have TAS Water Quality Standards (WQS) program authorization for CWA Sections 303(c) and 401.²⁶ The Proposed Rule would decrease the number of CWA Section 401 water quality certifications that will be required, which will likely reduce the opportunities of those 85 Tribes to successfully implement their own water protection actions for Spirit Relatives.
 - b. At present, no TIP have applied for authorization to manage the CWA Section 404 dredge and fill permitting program, due to their lack of resources to implement it. Yet, by removing waters from CWA coverage, the Proposed Rule would significantly decrease the issuance of CWA Section 404 permits, leaving an even larger gap for TIP to fill in protecting Spirit Relatives and an increased burden on already financially challenged Tribal environmental programs.
 - c. This increase in water quality protection responsibility falls upon TIP who are already lacking resources, capacity, and funding. Even before this Proposed Rule was posted in the Federal Register, the FY26 federal budget proposed eliminating numerous projects specifically designed to provide clean, safe, reliable drinking water to Tribal communities. It is anticipated that these funding allocations for programs focused on supporting Tribal clean water projects will decrease by over half a billion dollars under the FY26 proposed budget²⁷, and as of this comment's composition, there is no federal funding plan to address this deficit.
2. The impacts of weather and climate disasters impacting communities and infrastructure that result with flood and erosion damage are well documented by the EPA, USACE, the U.S. Geological Survey (USGS), and the National Oceanic and Atmospheric Administration (NOAA). The importance of natural systems like wetlands and floodplains to reduce flooding risks from heavy precipitation events like atmospheric rivers is also well documented. When wetlands and floodplains are drained, replaced with levees and developed, those natural systems categorically fail. In the past 15 years rivers have overtopped (poured over) levees in 487 cases in the United States, with one of the most recent breaches occurring along the Green River in Washington state within the month of December 2025 while this Proposed Rule was accepting comments.²⁸ The December flooding resulted with Governor Ferguson directing \$3.5 million to support flood-impacted communities across fourteen counties in Washington.²⁹ As extreme weather events continue to increase in intensity and unpredictability, flood risks continue to grow nationwide. The federal

²⁶ See EPA "Tribes Approved for Treatment as a State (TAS)" at:

<https://www.epa.gov/tribal/tribes-approved-treatment-state-tas#:~:text=The%20charts%20below%20identify%20the,administrative%20functions%2C%20and%20grant%20programs..>

²⁷ See Universal Access to Clean Water for Tribal Communities "Toolkit: Understanding Funding Cuts to Tribal Water Programs." Available at:

<https://static1.squarespace.com/static/6931ca704bf32c207cf34b93/t/6936b66ff82d611c8b1a3b0f/1765193327426/FY26+Federal+Funding+ToolKit.pdf>

²⁸ Vahedifard, F. (29 December 2025). West Coast Levee Failures Show Growing Risks from America's Aging Flood Defenses. The Conversation, available at:

<https://theconversation.com/west-coast-levee-failures-show-growing-risks-from-americas-aging-flood-defenses-272556>

²⁹ Washington State Governor's Office. (16 December 2025). Governor Ferguson Amends Emergency Proclamation, Directs \$3.5M in Support to Flood-Impacted Washingtonians. Available at:

<https://governor.wa.gov/news/2025/governor-ferguson-amends-emergency-proclamation-directs-35m-support-flood-impacted-washingtonians>.



government must value and prioritize the protection of floodplain and wetland ecosystem functions for human health and safety, which this Regulatory Impact Analysis completely overlooks.

Conclusion

LF urges you to retain the current WOTUS definition without further changes. The Proposed Rule would allow polluters to have an increased, detrimental impact on the Nation's waterways, impacting Indian Country and TRR. This rulemaking represents the sixth proposed change to the WOTUS definition over the last thirty years, with no end in sight to the controversy that ensues after every rule change. TIP governments, citizens, and our Spirit Relatives need consistency and protection - not another seismic shift in federal water rules which burdens TIP, harms environmental and human health and safety, and threatens IK, ICH, Tribal water rights, and species extinction. The EPA's 2023 rule conforming to the *Sackett II* decision remains the best way to approach the issue, consistent with the Supreme Court's decision and relying on the case-by-case decision-making authority of the Agencies to implement it in accordance with TRR and the federal trust responsibilities, rather than catering to development or polluting interests.

Thank you for this opportunity to provide comments to the Proposed Updated Definition of "Waters of the United States." Implementing actions such as those outlined here have been shown to effectively improve biodiversity, which in turn creates health and food security, helps fight disease, grows economies and business opportunities, provides livelihoods, and protects humanity's existence. The L.I.G.H.T. Foundation appreciates your consideration and is committed to working with all government entities, partners, and allies to ensure that the Plant, Pollinator, and Animal Relatives associated with TIP traditional homelands remain resilient and strong for the next Seven Generations.

Limlmt, qeciye'wew', thank you,



Amelia AM Marchand, MELP

Executive Director

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