



April 23, 2025

Stacey Jensen  
Oceans, Wetlands and Communities Division  
Office of Water (4504-T)  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Subject: Comments regarding Waters of the United States, Docket ID EPA-HQ-OW-2025-0093

Dear Ms. Jensen,

The National Ground Water Association (NGWA) appreciates the opportunity to provide this input for consideration in defining "Waters of the United States" (WOTUS) for the purposes of commerce and decisions involving economic and environmental tradeoffs. NGWA's mission is to advocate for and support the responsible development, management, and use of groundwater.

The NGWA believes that groundwater should not be included in the definition of "Waters of the United States". Groundwater should continue to be regulated and managed by states.

NGWA's full comments are attached. Please let us know if you have any questions or need further information from us. You can contact me ([tmorse@ngwa.org](mailto:tmorse@ngwa.org)) or Charles Job, NGWA Regulatory Affairs Manager ([cjob@ngwa.org](mailto:cjob@ngwa.org)) for further follow up.

Thank you for considering NGWA's perspective regarding regulation and management of groundwater.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Morse", is written over a light blue horizontal line.

Terry S. Morse, CAE, CIC  
Chief Executive Officer  
National Ground Water Association

Attachment

cc: Robyn S. Colosimo, Senior Official, Department of the Army, DOD  
Benita Best-Wong, Deputy Assistant Administrator for Management, Office of Water, EPA



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## **Attachment**

### **National Ground Water Association**

#### **Comments on**

#### **WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations**

#### **Docket ID EPA-HQ-OW-2025-0093**

On March 24<sup>th</sup>, 2025, The Environmental Protection Agency announced a request for public comment from interested stakeholders on their perspectives on defining "waters of the United States" and how to implement that definition as the agencies pursue this process consistent with the Supreme Court decision in *Sackett v Environmental Protection Agency* (598 U.S. 651 (2023)).

**Basis for the Interest of the National Ground Water Association (NGWA) in the reconsideration of the Navigable Waters Protection Rule defining the term "waters of the United States".**

NGWA, the largest trade association and professional society of groundwater professionals in the world, represents over 10,000 groundwater professionals within the United States and internationally. NGWA represents four key sectors: scientists and engineers; water-well contractors; the manufacturers and the suppliers providing the equipment needed to make groundwater development possible. NGWA's mission is to advocate for and support the responsible development, management, and use of groundwater.

#### **Comments of the National Ground Water Association**

##### General Comments

- (1) NGWA believes that groundwater, including groundwater drained through subsurface drainage systems, should not be included in the definition of "waters of the United States" and should continue to be regulated and managed by states. Clarification of Federal and State jurisdiction is important to commerce and decisions involving economic and environmental tradeoffs.

##### Specific Comments

###### **Exclusion of Groundwater**

- The exclusion of groundwater should not apply to surface expressions of groundwater, such as where groundwater emerges on the surface and becomes baseflow of a stream. The proposed regulation should clarify that waters transmitted through a stream, lake or coastal bed and effluent to surface water are included in the definition of "waters of the United States." The essence of the proposed rule is to distinguish federal and state jurisdictional control over waters for regulatory purposes and should be as explicit as possible.



The Groundwater Association

#### Exclusion of wetlands not adjacent or touching jurisdictional waters

- Most wetlands are locations of groundwater discharge.<sup>1</sup>
- Isolated wetlands (wetlands not adjacent to, connecting to or touching jurisdictional waters) not receiving surface or subsurface flow from jurisdictional waters should be regulated by states as points of groundwater discharge affecting local water supply.

#### Exclusion of wastewater recycling structures

- Wastewater recycling structures, such as upland detention, retention and infiltration basins and ponds and groundwater recharge basins, should be under state control as the water recycling contributes to local water supply.
- Impacts of emerging contaminants such as PFAS should be considered in the exclusion of wastewater recycling structures. The extent to which contaminants survive treatment techniques in a particular case should be determined by appropriate testing before allowing wastewater recycling structures to not be regulated as 'waters of the United States' under the Clean Water Act. Otherwise, unintended adverse impacts may occur affecting local and interstate water supply.

#### Exclusion of surface expression of groundwater

- Zones where groundwater emerges on the ground surface or discharges through stream channel or lake beds to provide baseflow to intermittent or perennial streams are the interfacing planes or surfaces that define the jurisdictional boundaries or limits of federal surface water control and state groundwater control. It is in the interest of both federal and state jurisdictions to collaborate in the management of the respective resources over which they exercise control, particularly at the interfaces of groundwater and surface water.

#### Exclusion of artificially irrigated areas including fields flooded to support the production of wetland crop species

- Flooding and discharge from fields used for wetland crop species is regulated by states and does not need further federal regulation. Federal regulation should focus on the control and use of pesticides that may be used in this production.

#### Exclusion of stormwater control features

- Generally stormwater control features should be excluded in the definition if they apply to detention, retention and infiltration basins and ponds and groundwater recharge basins, but are

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<sup>1</sup> Winter, T. 1989. Hydrologic function of wetlands. US Geologic Survey Yearbook. Reston, VA.



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structures at the interface of surface water and groundwater. As such, the specific type of stormwater control structure should be regulated to ensure that groundwater under state jurisdiction is protected for safe local use and may in some cases involve the application of the Underground Injection Control requirements for the quality of water to be injected underground under the Safe Drinking Water Act that could lead to different results than application of the Clean Water Act for surface water quality protection. Many states do not have delegation to control discharges to groundwater under the UIC/SDWA program. Federally regulated stormwater controls under the Clean Water Act to prevent surface water degradation should ensure that groundwater is protected and contamination is not being moved from one water source to another.

The National Ground Water Association looks forward to reviewing additional guidance that the Environmental Protection Agency may provide on responding to wetlands and other water features not connecting to or touching jurisdictional waters as the guidance may affect state management and control of groundwaters that states manage.

Thank you for the opportunity to review and comment on these proposed regulations.