



National Association of State Departments of Agriculture  
4350 North Fairfax Drive  
Suite 810  
Arlington, VA 22203  
Tel: 202-296-9680  
[www.nasda.org](http://www.nasda.org)

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

*Submitted via Regulations.gov*

**Re: Request for Recommendations, EPA-HQ-OW- 2025-0322**

The National Association of State Departments of Agriculture (NASDA) appreciates the opportunity to provide comments on the United States Environmental Protection Agency's (EPA) and United States Army Corps of Engineers' (Corps) (collectively, the "Agencies") Request for Comments regarding the proposed final rule defining "Waters of the United States" (WOTUS) under the Clean Water Act (CWA).

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs, including conservation, environmental protection, food safety, plant and animal disease prevention, and fostering the economic vitality of our rural communities. Several state departments of agriculture also administer or partner in administering Section 402 National Pollutant Discharge Elimination System permitting programs for Concentrated Animal Feeding Operations.

NASDA's policies related to WOTUS support regulatory approaches that offer predictability to regulated entities and property owners while rejecting overly broad interpretations of federal authority. The CWA established a cooperative approach between the federal and state governments to restore and maintain the chemical, physical, and biological integrity of the nation's waters. It is imperative that the federal government respect that the primary responsibility for planning, development, and use of water resources rests with the states. Federal policies must ensure that state laws regarding water rights and allocations are honored and that states are given maximum flexibility in managing both their water resources and their water quality programs.

The role of the federal government should be to establish national water quality goals that are achievable, support state efforts for implementing water programs, provide technical and financial assistance, support research and development, and provide appropriate oversight of state programs. The federal government should also recognize state certification and assurance programs. EPA's implementation of the CWA must avoid overly prescriptive requirements on states, be financially feasible for states and the regulated community, and be based on sound science.

NASDA appreciates and supports the Agencies' steadfast determination to align federal regulations with the decisions of the Supreme Court of the United States, including in the case *Sackett v. EPA*,

which affirmed the States' authority to regulate intrastate waterways. As an organization of state government agencies, we have a strong interest in maintaining a robust relationship with our federal partners and ensuring that the guiding principle of cooperative federalism is adhered to in the regulation of water and other natural resources. We believe the proposed rule trends strongly in this direction.

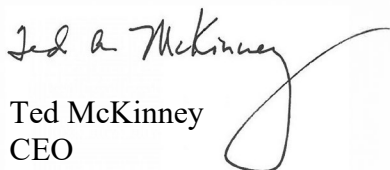
In particular, NASDA supports the proposed definitions of key terms that are consistent with the statute and Supreme Court precedent and preserve states' traditional authority over land and water use. We support the elimination of the standalone interstate waters category. NASDA likewise endorses the detailed technical comments of the Waters Advocacy Coalition, of which we are members. These comments, which include actions such as putting guardrails on implementation/use of tools; revisit/tighten traditional navigable waters category; to create a single "relatively permanent waters" (a)(3) category; and to clarify certain exclusions, we support.

The previous final regulation issued on September 8, 2023, defining the scope of waters federally covered under the Clean Water Act, implemented a sweeping policy that impermissibly imposed federal jurisdiction over intrastate waters. The September 2023 final rule, like the preceding rules, effectively negated the State's ability to regulate waters which should be under state jurisdiction. This policy ignored the regulatory authority and effectiveness of state review processes in overseeing non-jurisdictional waters. Unfortunately, in response to the Supreme Court's decision in *Sackett*, EPA and the Corps issued a "Conforming Rule", which was not subject to a notice-and-comment period. This rulemaking lacked the necessary transparency and deliberation that should be a bedrock of the administrative process.

In this proposed rule, the Agencies correctly reject the notion of federal intrusion on state sovereignty and instead advance a policy of adherence to the principles of cooperative federalism. The previous misstep is corrected by the process currently being advanced by the agencies through a thorough comment-and-public-consultation period, during which many of our members have participated. The Agencies should use the robust input period to mold this rule into a durable, legally defensible policy that maximizes environmental protection without unnecessarily restricting economic activity, including farming, forestry, and other vital industries.

NASDA appreciates the opportunity to continue working with EPA and the Corps throughout this process to ensure the rule maintains the same level of clarity as achieved by the NWPR. Thank you again for the opportunity to comment. Please contact Logan Moss, Associate Director of Public Policy ([logan.moss@nasda.org](mailto:logan.moss@nasda.org)) if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted McKinney", with a long, sweeping horizontal line extending to the right.

Ted McKinney  
CEO  
NASDA