

EDGI Environmental Data & Governance Initiative

Proposed Definitions for Waters of the United States Fail to Consider Climate Change and Best Available Science

Environmental Data and Governance Initiative's Comment on Supplemental notice of proposed
rulemaking for the Updated Definition of "Waters of the United States" Docket ID No.
EPA-HQ-OW-2025-0322

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The Environmental Data and Governance Initiative (EDGI) is a network of academics, technologists, and non-profit professionals that promotes communities' right to know, evidence-based policy-making, and public interest science. We document, contextualize, and analyze environmental data, information, and governance practices through multidisciplinary and cross-professional collaborative work. EDGI includes more than 100 members in North America residing in 15 U.S. states.

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The Environmental Data & Governance Initiative (EDGI) appreciates the opportunity to comment on the Environmental Protection Agency’s Supplemental notice of proposed rulemaking for the Updated Definition of “Waters of the United States” (Docket ID No. EPA-HQ-OW-2025-0322).

Introduction

The Environmental Data & Governance Initiative (EDGI) opposes the regulatory alternatives presented in the Supplemental Notice of Proposed Rulemaking (SNPRM) on the basis that they do not address concerns raised in our public comment on the original Notice of Proposed Rulemaking (NPRM, or “proposed rule”) for an updated definition of “Waters of the United States.”¹ In that comment, we discussed how the proposed redefinition of WOTUS disregards established hydrology and would exclude many hydrologically connected waters from those that are considered jurisdictional. Further, the 2025 NPRM does not account for climate change’s impacts on water flow during wet and dry seasons, including worsening drought conditions in arid regions of the U.S. As such, the proposed definitions of “relatively permanent” and “continuous surface connection” in the NRPM would increasingly eliminate more water bodies from being covered under the Clean Water Act (CWA) over time as climate change creates drier conditions. The regulatory options proposed in the SNPRM once again fail to consider these factors.

Adopting scientifically unsound definitions of jurisdictional waters chips away at the authority of the CWA, leaving room for unmonitored contamination and pollution in water bodies that would no longer be covered, and increasing risks to human and environmental health. Surface waters accumulate hazardous chemicals as they flow downstream and receive contaminated tributaries and other surface and subsurface outflows.² Narrowing the scope of jurisdictional waters removes those waters from the Environmental Protection Agency’s (EPA’s) regulatory programs under the CWA. By EPA’s own metrics in its most recent National Water Quality Inventory Report, over half of the surveyed rivers and streams in the United States were “impaired or threatened” water bodies, meaning they cannot support one or more of their state-designated beneficial uses.³ The 2025 proposed rule would therefore further undermine the CWA’s ability to achieve its goals of restoring and maintaining the “chemical, physical, and biological integrity of the Nation’s waters.”⁴

¹ Isabella Pacenza et al., “Information Removals Inhibit Full Analysis of the Proposed Redefinition of ‘Waters of the United States,’” Environmental Data & Governance Initiative, January 5, 2026, <https://envirodatagov.org/wp-content/uploads/2026/01/EDGI-WOTUS-Public-Comment.pdf>.

² Kyle Carney et al., “Surface Waters under Threat – Environmental Data and Governance Initiative,” Environmental Data & Governance Initiative, October 21, 2025, <https://envirodatagov.org/surface-waters-under-threat/>.

³ Environmental Protection Agency, “2017 National Water Quality Inventory Report to Congress,” <https://www.epa.gov/waterdata/2017-national-water-quality-inventory-report-congress>.

⁴ Clean Water Act Section 101 (a) <https://www.epa.gov/sites/default/files/2017-08/documents/federal-water-pollution-control-act-508full.pdf>

Proposed definitions threaten water quality and do not account for climate change

The definition options in this SNPRM do not appropriately address the impacts of climate change on hydrology and are too narrow in outlining what constitutes jurisdictional waters. The elimination of water bodies covered under the Clean Water Act as proposed will have significant implications for water quality and monitoring, and undermine the goals of the CWA by harming downstream water.

We oppose the supplemental option for the definitions of “perennial” and “relatively permanent” as they are not in line with scientific consensus and would undermine the Clean Water Act. The proposed rule fails to consider the impacts that climate change will have on hydrology, especially as climate change impacts the nature of both “anomalous” and “non-anomalous” hydrological events.⁵ In particular, climate change destabilizes historically predictable seasonal precipitation patterns and disrupts continuous water flow.⁶ Hydrologic variability in many regions of the U.S. will exacerbate under climate change as drought periods extend and winters become wetter.⁷ As such, defining “anomalous” events as “something that is unusual or caused by unforeseen circumstances or conditions,” or as “extraordinary departures from ordinary conditions,”⁸ as the supplemental rule does, is insufficient and unprotective of our nation’s waters as extraordinary departures from previous conditions become standard under a changing climate.

Furthermore, the agencies’ approach to “non-anomalous” events is far too restrictive when considering the aforementioned impacts of climate change. For example, a body of water would lose its relatively permanent status if flow is interrupted more than once due to a “non-anomalous” event, which is especially concerning as dry spells in parts of the United States are expected to intensify.⁹ This is expected to have a significant impact in the arid West, where intermittent (or seasonal) streams make up an essential part of the hydrology, but under the proposed definitions would not satisfy the requirements to be jurisdictional.¹⁰ We urge the agencies to reconsider the definitions of “anomalous” and “non-anomalous” events, as well as the impact of these events on a water’s jurisdiction under the CWA, in a manner that accounts for the impacts of climate change.

⁵ Trenberth, K.E. (2008). The Impact of Climate Change and Variability on Heavy Precipitation, Floods, and Droughts. In *Encyclopedia of Hydrological Sciences* (eds M.G. Anderson and J.J. McDonnell). <https://doi.org/10.1002/0470848944.hsa211>

⁶ UCAR, “The Water Cycle and Climate Change,” UCAR | Center for Science Education, accessed January 5, 2026, <https://scied.ucar.edu/learning-zone/climate-change-impacts/water-cycle-climate-change>.

⁷ Cook, B.I., Mankin, J.S. & Anchukaitis, K.J. Climate Change and Drought: From Past to Future. *Curr Clim Change Rep* 4, 164–179 (2018). <https://doi.org/10.1007/s40641-018-0093-2>

⁸ Engineers Corps, Environmental Protection Agency, Updated Definition of “Waters of the United States.” September 9, 2026. <https://www.federalregister.gov/d/2026-18317/p-73>

⁹ Cook, B.I., Mankin, J.S. & Anchukaitis, K.J. Climate Change and Drought: From Past to Future. *Curr Clim Change Rep* 4, 164–179 (2018). <https://doi.org/10.1007/s40641-018-0093-2>

¹⁰ Engineers Corps, Environmental Protection Agency, Updated Definition of “Waters of the United States.” September 9, 2026. <https://www.federalregister.gov/d/2026-18317/p-146>

Further, the SNPRM states that water bodies experiencing extreme (D3) and exceptional (D4) drought conditions would be jurisdictional up until five years of such conditions, at which point they would no longer be jurisdictional.¹¹ This approach is inappropriate as it would mean that the bodies most severely impacted by drought, often as a result of climate change, would not be protected under the CWA. We urge the agencies to remove the five-year time limit from the definitions of “perennial” and “relatively permanent” and maintain protections for water bodies experiencing the longest and most severe droughts.

Beyond its impact on seasonal precipitation, climate change also increases extreme weather events. This places stress on already aging water infrastructure, including combined sewer overflow systems, which flush nutrients and other pollutants into hydrologic systems during storms.¹² Climate change should inform a more careful approach to protecting our nation’s waters, not a more lenient one.

The SNPRM’s proposed definition of “continuous surface connection” would also have adverse effects on downstream water, undermining the goals of the Clean Water Act. The 2023 *Sackett v. EPA* ruling leaves 19% of nontidal wetlands in the conterminous U.S. at risk of being without federal protections.¹³ Given wetlands’ vital role in intercepting, filtering, and purifying runoff, the removal of nearly 1/5 of the nation’s freshwater wetlands from CWA protection would have a devastating impact on the water quality of hydrologically connected creeks, rivers, and streams.¹⁴

For these reasons, we oppose the supplemental proposal’s definitions of “perennial,” “relatively permanent,” and “continuous surface connection” and ask that the agencies propose less restrictive definitions that account for water conditions as they relate to pre-anthropogenic climate change realities. Additionally, we urge the agencies to complete a comprehensive analysis of climate change impacts on seasonal precipitation and historical wet and dry seasons, and to meaningfully consider the results of this analysis for the final rule.

Information removals undermine public comments

Additionally, information removals on federal websites hampers the public’s ability to provide public comments on this SNPRM. As noted in our public comment on the 2025 “Waters of the

¹¹ Engineers Corps, Environmental Protection Agency, Updated Definition of “Waters of the United States.” September 9, 2026. <https://www.federalregister.gov/d/2026-18317/page-57290>

¹² WHITEHEAD, P. G., R. L. WILBY, R. W. BATTARBEE, M. KERNAN, and A. J. WADE. 2009. “A Review of the Potential Impacts of Climate Change on Surface Water Quality.” *Hydrological Sciences Journal* 54 (1): 101–23. doi:10.1623/hysj.54.1.101.

¹³ Science, “How wet must a wetland be to have federal protections in post-Sackett US?” Vol. 385, No. 6716, September 26, 2024. <https://www.science.org/doi/10.1126/science.adp3222?referrer=https%3A%2F%2Fenvirodatagov.org%2F>

¹⁴ 1. Gaurav Rawat et al., “Wetlands and Water Quality: Ecological Functions, Threats, and Conservation Strategies,” *Wetlands: Biodiversity, Health and Their Role in Ecosystem Services*, 2026, 31–45, <https://doi.org/10.1016/b978-0-443-34222-6.00011-5>.

United States” proposed rule, EPA removed its [20-Watersheds Interactive Tool](#) in July 2025. This tool previously summarized the results of simulations modeling watershed quality in different regions in response to various climate change and urban development scenarios.¹⁵ The removal of this tool undermines the public’s ability to analyze the impacts of climate change on water quality and prevents fully informed public comments on this SNPRM.

These information removals and the SNPRM’s lack of incorporation of widely accepted science undermine bedrock laws like the Clean Water Act, which legally require the use of the best available science in proposed rules that establish federal jurisdiction.

Conclusion

The proposed definitions within this SNPRM disregard scientific evidence of the impacts of climate change on the hydrologic cycle, disregard widely accepted principles of hydrology, and, ultimately, threaten water quality. The supplemental proposal still fails to consider the role of climate change in present and future hydrologic connectivity, making it impossible to consider the full impact and scenarios of the implementation of the proposed definitions. As a result, the Environmental Data and Governance Initiative opposes the Environmental Protection Agency and the Department of the Army’s supplemental definition options in this proposed rule and the associated changes they would have on the scope of jurisdictional waters under the Clean Water Act.

¹⁵ US Environmental Protection Agency, “About the 20-Watersheds Tool”, US EPA, September 21, 2020, https://19january2021snapshot.epa.gov/gcx/about-20-watersheds-tool_.html