



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically

January 5, 2026

Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Adam Telle
Assistant Secretary for the Army – Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310

Re: USET SPF Comments to EPA and Department of the Army Proposed Rule to Update the Definition of “Waters of the United States”, Docket ID No. EPA-HQ-OW-2025-0322

Dear Administrator Zeldin and Assistant Secretary Telle,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments to the Environmental Protection Agency and the Department of the Army (“the Agencies”) in response to the proposed rule to revise the definition and scope of “waters of the United States” (WOTUS). This proposed rule was developed by the Agencies following issuance of a Notice and Request for Recommendations on March 21, 2023. Throughout April and May 2025, the Agencies held nine public Listening Sessions—with one dedicated to Tribal Nations—to receive input on the definition of WOTUS following the United States’ Supreme Court opinion in *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023). Through numerous rulemakings on revising the definition and scope of WOTUS in prior years, USET SPF has continued to assert that any revisions to the definition of WOTUS must move forward in a manner that respects Tribal sovereignty and upholds federal trust and treaty obligations to protect Tribal water resources, public health, natural environments, and cultural resources. USET SPF reiterates these previous concerns raised with the Agencies’ proposals to revise definitions and the scope of WOTUS, especially as they pertain and apply to the protection of wetlands.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Reiterating Previous USET SPF Comments on Revising the Definition of WOTUS

For several years, USET SPF has participated in prior rulemakings to revise the definition and scope of WOTUS, which are referenced in our last [comments](#) submitted to the Agencies on May 20, 2025. In response to all these proposals to revise WOTUS, USET SPF has repeatedly asserted that any narrowing in the interpretation of the scope of WOTUS could have detrimental effects on the authority of Tribal Nations to protect critical water resources and environments for our citizens and communities. Specifically, we noted the lack of language acknowledging federal trust and treaty obligations and meaningful Tribal consultation during the previous Administration's rulemaking to revise the definition and scope of WOTUS. We also expressed concerns related to the potential costs that would be incurred by Tribal Nations if the Clean Water Act's (CWA) authority was weakened by changes in Environmental Protection Agency (EPA) and Tribal Nation jurisdiction under WOTUS. Further, USET SPF expressed concerns with rescinding or revising regulations related to the, "2016 Revised Interpretation of Clean Water Act Tribal Provision", which authorizes EPA to treat eligible Tribal Nations in a manner similar to states (Treatment as a State or "TAS"). We emphasized that the TAS authority empowers Tribal Nations' exercise of sovereignty to administer regulatory programs over the lands within our jurisdictional boundaries and provides a streamlined process for application.

For purposes of this rulemaking, USET SPF reiterates that any revisions to the definition and scope of WOTUS must not harm the ecological well-being of water resources critical to protecting wildlife and aquatic ecosystems, public health and property, and Tribal natural and cultural resources. We remind the Agencies that, through enactment and prior refinement of the CWA, Congress authorized Tribal Nations to administer CWA programs within our jurisdictional boundaries and expressed a preference for Tribal TAS to regulate surface water quality and ensure compliance with the goals of the statute. This process upholds trust and treaty obligations to promote inherent Tribal sovereignty and removes unnecessary and unintended barriers to the exercise of Tribal Nation authority to regulate and protect our waters, the environment, and natural and cultural resources.

While USET SPF appreciates that the Agencies' new November 20, 2025 proposed rule includes language recognizing the autonomy and authority of Tribal Nations to address pollution and plan the development and use of Tribal lands and resources, it raises concerns regarding the protection of certain waters, especially pertaining to wetlands. Further, proposed changes to the definitions and scope of continuous surface connection and relatively permanent waters must take into consideration the natural and cultural resource protection and management of water resources by Tribal Nations. USET SPF asserts that any revisions to these definitions in WOTUS that result in the removal of certain waters from federal jurisdiction will ultimately raise costs for Tribal Nations to manage these waters and protect critical ecosystems that are important to our cultural lifeways. Therefore, as a matter of upholding trust and treaty obligations, the Agencies must ensure that the appropriate resources and technical assistance are provided to Tribal Nations to appropriately protect these waters—and our affected cultural and environmental resources—within our jurisdictional boundaries.

Revised WOTUS Definitions Must Apply in an Ecological Context that Protects Tribal Resources

Protecting water quality and the ecosystems supported by water is imperative to realizing the goals of the CWA. As the Agencies determine the scope of water resources eligible under WOTUS, there must be an understanding of the unique ecological contexts in which they exist. For these reasons, USET SPF has specific concerns regarding the Agencies' proposed updated definitions for WOTUS and the removal of certain protections from federal jurisdiction—

- **The Agencies' proposed changes to the definition of wetlands removes critical federal protections for wildlife and aquatic plant life.** In the proposed rule, the Agencies propose to define wetlands as having a continuous surface connection to a water of the United States to be under federal jurisdiction. For the first time, the Agencies have proposed defining "continuous surface connection" to mean "having a surface water at least during the wet season and abutting (*i.e.*, touching) a jurisdictional water." The phrase "abutting" would be implemented consistent with the [March 2025 Continuous Surface Connection Guidance](#) to mean "touching." The phrase "having surface water at least during the wet season" in the proposed definition is meant to include wetlands that have at least semi-permanent surface hydrology that is persistent and uninterrupted throughout the wet season (except in times of extreme drought). These updated definitions would not include wetlands without semi-permanent surface hydrology, such as wetlands with only saturated soil conditions supported by groundwater. Under the Agencies' proposed definitions, only those portions of a wetland with continuous surface hydrology at least during the wet season, and that are abutting, would be jurisdictional as adjacent wetlands no matter the full delineated scope of the wetland.

The Agencies are correct in recognizing that wetlands having a continuous surface connection to a water of WOTUS are under federal jurisdiction since few waters and wetlands are truly "isolated" in an ecological sense. Nearly all streams, rivers, lakes, oceans, and wetlands have a connection to other waters, which means that these waters all connect and impact each other. These connections may occur underground, occur for only a portion of the year, or may be hard to discern or define without a detailed local investigation.

It is important to understand that these waters are still a critical feature of a waterbody or wetland, and thus, hydrological resources must be interpreted more broadly. Therefore, this revised definition of WOTUS must be based on the best available science. The Agencies must recognize the relative permanence of the physical components of a water feature itself, rather than the relative permanence of surface water within said feature, to define "relatively permanent" waters. Non-perennial waters play a critical role in the cumulative health of waterbodies and species dependent on this habitat.

However, the Agencies' proposed change to the definition of wetlands removes critical federal protections for wildlife and aquatic plant life across the country that exist endemic to wetland ecosystems that are uniquely not connected via a semi-permanent surface water connection. Some of these systems only have sub-surface water connections and are some of the most bio-diverse wetlands currently considered in the WOTUS definition. Many of these species have cultural value to USET SPF member Tribal Nations and other Tribal citizens across the U.S.—plant and wildlife species we have fostered relationships with since time immemorial to align with the physical and emotional well-being of these ecosystems and our cultural lifeways. These relationships are inherently medical, spiritual, or utilitarian in purpose. Failure to account for these cultural resources in the definition of WOTUS puts these critical cultural values at risk to human development, hydrological alteration or functional loss, and pollution leading to water quality loss. These will likely have cascading effects across the landscape to waters that would be aligned with the current WOTUS definition.

USET SPF does not support the exclusion of wetlands without semi-permanent surface hydrology, including wetlands with only saturated soil conditions supported by groundwater, from the definition of continuous surface connection under WOTUS. Headwaters, including wetlands fed by

groundwater, small streams with impermanent or intermittent flows, and ephemeral streams, are integral to the ecological functions, water quality, and water quantity of downstream, rivers, lakes, and coastal waters. In fact, wetlands meeting such parameters, including some bogs, fens, and vernal pools, provide unique habitats that often support high levels of biodiversity and endangered species. For example, many Tribal Nations have critical cultural ties to Black/Brown Ash trees (*Fraxinus nigra*), considered “critically endangered” by the IUCN and listed by two states, and which often live in bogs with irregular surface waters but consistently high soil moisture. Other species, including several amphibians listed under the Endangered Species Act (ESA), rely on intermittent wetlands without obvious surface water connections for reproduction.

- **The proposed definitions of WOTUS omits an entire sub-category of wetlands in bogs.** Bogs, also known as mires and muskegs, are isolated, sensitive ecosystems that are largely filled by precipitation and can on occasion, show no visible surface waters (e.g. peat bogs). Several designated, and un-designated bogs, fall within the USET SPF region and, as aforementioned, many Tribal Nations have critical cultural ties to Black/Brown Ash trees (*Fraxinus nigra*) that are considered “critically endangered” and are located in these unique habitats.
- **Discrete features—such as natural or man-made features—do not inherently sever federal jurisdiction under the CWA.** These require a case-by-case consideration of seasonal dry period variations as well as precipitation-driven connectivity, whether the continuous surface connection has characteristics of relatively permanent waters, and evidence of a continuous surface connection. USET SPF recommends an inclusive interpretation of continuous surface connection in recognition that all water has connectivity, even in dry periods as cited in the [EPA's 2015 Connectivity Report](#).

Further, regarding man-made features, Tribal Nations know that human activities have always influenced environmental systems, and vice versa; the origin of the feature does not determine its impact on the waters or other species that interact with it. Protecting wetlands and intermittent streams is crucial to protecting water quality and losing these protections will result in costing millions in flood mitigation activities. With the current WOTUS definition we should re-affirm that these discrete features may sever surface water connections, in some cases, but not lead to their exclusion from the definition. Instead, they should be reviewed on a case-by-case basis, as some of these examples may have sub-surface or less than semi-permanent surface water connections that establish a wetland as a WOTUS and alterations to that definition may exclude it and put it at risk. Connectivity must not be only physical and visible but must include ecological connectivity. Without this, several isolated wetlands will lose protection under the CWA. Additionally, if a wetland is separated from a surface water vector via man-made construction, as can be typical for tidal wetlands, it must be assessed on overall ecological connectivity (e.g., speciation, migration, functionality) rather than a simplistic visual connectivity test.

- **“Seasonal” streams and wetlands should remain under CWA jurisdiction.** These features are no less vital simply because of the seasonal nature of their hydroperiods. Such seasonality is very difficult to define on a national scale, as some regions are “wettest” at the time of maximum snowmelt, rather than maximum precipitation, or may have multiple periods of high precipitation in a calendar year. This is especially important when considering their unique location and the surrounding landscape, as they may be even more critical in providing hydrologic, habitat, and water quality functions than more frequently wetted features. Wetlands that have a continuous

hydrologic connection between the wetland and jurisdictional water through natural seepage, overflow, pipe, flood gate, or tide gate should also remain protected by the CWA.

Wetlands are often significantly supported by water movement that occurs underground. Removing them from CWA jurisdiction simply because one of their key components is not visible on top of the ground is arbitrary and not based on science. These broader connections are recognized by both western science and by Indigenous Knowledges (IK) and must be taken into consideration in understanding and defining WOTUS. The Agencies should not forgo methodologies that account for the inherent complexities of naturally occurring systems or environmental systems that are “man made” or “man influenced.” Many of these ephemeral and seasonal wetlands are home to fragile and sensitive amphibian breeding habitats. These vernal pools are also subject to precipitation refill and therefore typically not connected to other surface waters. Losing the protection of seasonal waters would be detrimental to the ecological connectivity beginning with amphibian biodiversity loss. Protecting the well-being of amphibians and their ecosystems is critical to our cultural lifeways as many species hold significant cultural value and also provide sustenance for our Tribal citizens and communities.

Support Funding and Technical Assistance for Tribal Nations to Manage our Water Resources

Tribal Nations may choose to expand coverage of waters within our jurisdictional boundaries beyond WOTUS to include other waters as “waters of the Tribe” (similar to TAS). In its proposed rule, the Agencies acknowledge that Tribal Nations seeking to cover waters no longer under federal jurisdiction in this proposed rule may incur new costs and administrative burdens. The Agencies solicit input on whether Tribal Nations might incur such financial burdens. In response to this request, USET SPF asserts that any changes to WOTUS that would impact the protection and management of waters on Tribal lands—and require us to assume the financial responsibility of such actions—must include the necessary federal resources and technical assistance required to effectively conduct these activities.

Changes to definitions under WOTUS to reduce CWA jurisdiction on Tribal lands jeopardizes the physical, biological, and chemical integrity of those waters that sustain Tribal culture, citizens, and lands. Any limitations to protection of these waters undermines federal trust and treaty obligations to Tribal Nations that ensure the protection of Tribal resources in perpetuity. This includes solemn legal trust and treaty obligations to fully fund federal programs and provide technical assistance for Tribal Nations to appropriately protect the public health of our citizens and communities and manage our natural and environmental resources. This is especially important for Tribal governments relying on EPA’s water pollution prevention programs to protect water quality on Tribal lands by administering programs for the prevention, reduction and elimination of water pollution, and to support the implementation of nonpoint source management programs.

Conclusion

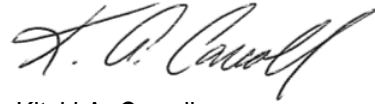
The federal government must not limit the definition of waters protected in fulfillment of trust and treaty obligations, especially those waters to which we have inherent cultural connections that are located outside of our current jurisdictional boundaries. Rather, we urge the Agencies to fully support the protection of Tribal lands and waters, as well as support our inherent sovereignty and self-determination to fully facilitate Tribal management of environmental and natural resources and programs. While USET SPF appreciates the Agencies’ recognition of Tribal authority to manage our water resources, we remain concerned with changes to the definition of WOTUS that could lead to contamination of waters that Tribal citizens, Tribal communities, and native species depend upon. This would further destabilize delicate ecological systems that Tribal Nations have worked hard to protect and restore. The Agencies must fulfill trust and treaty

obligations to protect Tribal sovereignty and the exercise of culture, Water Rights, the public health of our citizens and communities, and our natural and environmental resources. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal stroke extending to the right.

Chief Kirk Francis
President

A handwritten signature in black ink, appearing to read 'Kitcki A. Carroll', with a stylized, cursive script.

Kitcki A. Carroll
Executive Director