



TINA KOTEK  
GOVERNOR

January 2, 2026

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

The Honorable Ryan A. Fisher  
Acting Director of Civil Works  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20001

Re: Docket ID No. EPA-HQ-OW-2025-0322, Updated Definition of "Waters of the United States"

Dear Administrator Zeldin and Acting Director Fisher,

The State of Oregon is writing in response to the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers' (Corps) November 20, 2025 request for comments on the proposed federal Waters of the U.S. rule. Oregon values its longstanding and productive partnership with the EPA and the Corps to collectively safeguard water quality and aquatic resources in Oregon. The proposed revisions to the rule, however, have the potential to undermine this partnership and the progress we have made together to promote healthy and resilient waters in Oregon. I urge the EPA and the Corps to consider the comments and recommendations provided by Oregon's state agencies, included herein.

Oregon's ecosystems span a wide hydrologic spectrum - from lush coastal rainforests to the arid deserts of eastern Oregon. Human activities such as urban development, channelization, and waterway diversions have significantly altered these natural systems. Addressing these impacts requires coordinated efforts among multiple state agencies, which share responsibility for implementing federal and state environmental laws, including the Clean Water Act and Endangered Species Act. These agencies work to protect Oregon's natural resources and restore ecosystems where needed.

Oregon appreciates your agencies' commitment to implementing the Supreme Court's guidance and ensuring consistency in Clean Water Act programs. However, the proposed rule goes beyond the Supreme Court's *Sackett v. EPA* decision by further narrowing federal jurisdiction compared to the current rule. This approach would strip protections from many Oregon wetlands and streams that are vital for water quality, fish and wildlife habitat, and flood mitigation - creating risks for communities and ecosystems across the state. As outlined in the enclosed letter from

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agency directors whose work would be directly impacted, the 2023 Waters of the U.S. rule already reflects the Supreme Court's *Sackett v. EPA* decision and provides a clear, stable framework for protecting water resources. Additional changes are unnecessary and risk creating confusion and regulatory uncertainty which runs counter to Oregon's economic priorities and your agencies' goal of providing clarity and predictability.

Additionally, shifting responsibility to states and tribes without evaluating the administrative and economic burdens on their programs is not a viable long-term strategy for safeguarding the nation's waters. Should the proposed rule be finalized, it is essential that the Corps and EPA develop a clear framework for reconciling overlapping regulatory processes and ensuring states and tribes have the tools and guidance needed to fill these gaps effectively.

Thank you for your consideration of the State of Oregon's concerns and recommendations. Please address any written correspondence to the Oregon Department of Environmental Quality, Attention: Jennifer Wigal, Water Quality Division Administrator, 700 NE Multnomah Street, Suite 600, Portland, OR 97232-4100.

Sincerely,



Governor Tina Kotek

Enclosure: Oregon Comments - Proposed WOTUS Rule

cc: The Honorable Ron Wyden, Senator, Oregon  
The Honorable Jeff Merkley, Senator, Oregon  
The Honorable Suzanne Bonamici, Representative, Oregon's 1st District  
The Honorable Cliff Bentz, Representative, Oregon's 2nd District  
The Honorable Maxine Dexter, Representative, Oregon's 3rd District  
The Honorable Valerie Hoyle, Representative, Oregon's 4th District  
The Honorable Janelle Bynum, Representative, Oregon's 5th District  
The Honorable Andrea Salinas, Representative, Oregon's 6th District



# Oregon

Tina Kotek, Governor

January 5, 2026

Stacey Jensen  
Office of Wetlands, Oceans and Watersheds  
U.S. Environmental Protection Agency Docket Center  
Water Docket, Mail Code 28221T  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

Milton Boyd  
Office of the Assistant Secretary of the Army for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310-0104

Re: Docket ID No. EPA-HQ-OW-2025-0322  
Updated Definition of "Waters of the United States"

Dear Stacey Jensen and Milton Boyd:

The Oregon Departments of Environmental Quality (DEQ), Fish and Wildlife (ODFW), Land Conservation and Development (DLCD), and State Lands (DSL) are providing these comments in response to the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineer's (USACE) (collectively "the agencies") November 20, 2025 request for comments on the proposed federal Waters of the United States (WOTUS) rule. We appreciate the opportunity to provide Oregon's perspective on the proposed rule and its implications for our collective efforts to protect the nation's waters. Upon reviewing this latest iteration of federal regulations proposing revisions to the definition of WOTUS, Oregon concludes this proposed rule is unnecessary and should be revoked. The existing "Revised Definition of 'Waters of the United States'; Conforming" that became effective on September 8, 2023, was revised to conform with the U.S. Supreme Court's decision in the case of *Sackett v. EPA*. The Conforming 2023 rule is consistent with the Supreme Court's decision and should remain untouched.

Despite this conclusion, Oregon's agencies responsible for protection of Oregon's aquatic resources have compiled the following comments on the specifics of the proposed rule and offer the following general comments followed by comments on specific topics and provisions in the proposed rule. The EPA and the USACE, should they continue to finalize this rulemaking, have the latitude to make the revisions recommended here and remain consistent with the *Sackett v. EPA* ruling.

For the basis of this proposed new rule, the criteria for WOTUS should be grounded in science, the law, and clarity to effectively support state and tribal implementation of the federal Clean Water Act (CWA). This proposed rule should maintain guidance and authority under the CWA and not mirror provisions in other regulatory areas such as The Food Security Act. The EPA and the USACE must place a priority on consistency and broad interpretation of the U.S. Supreme Court's decision. It is the role of both EPA and USACE in this process to collaborate with states, tribes, local governments and interested parties.

To effectively implement any new rule and ensure appropriate protections for Oregon's aquatic resources, the agencies must include and address the following in any new WOTUS rule:

- Clear, measurable, definitions and criteria based on science and existing USACE manuals
- Protection of waters and swales that have relatively permanent flow during the "wet season"
- Development of an Economic Analysis prepared by the agencies to characterize the economic impacts to state and federal agencies based on the deregulatory nature of the proposed rule, not the cost savings to project proponents
- The promulgation of the new rule should consider reasonable timelines for states, tribes, and USACE to evaluate and establish any appropriate regulations or approaches for changes to WOTUS jurisdiction
- Development of technical assistance and training on the new definition that is targeted to all interested parties.

#### NON-CONTIGUOUS WETLANDS AND WATERWAYS IN OREGON

Oregon's Section 401 water quality certification (WQC) program reviews and evaluates the water quality impacts of projects that require a federal permit or license to conduct any activity that may result in a discharge in waters of the United States. The role of Section 401 of the CWA is to ensure the project or activity will be protective of state water quality standards. The proposed rule takes a narrower interpretation of the *Sackett v. EPA* conclusion, and current 2023 WOTUS rule. The result will be a larger proportion of Oregon's wetlands and waters will lose federal jurisdiction depending on what is defined in the proposed rule as "continuous surface water connection" and "relative permanency." Oregon will no longer have the opportunity to review and condition permits for activities that impact these waters under the 401 WQC program, and important environmental protections will be lost.

The federal coastal zone consistency authority in Oregon is a key component of the National Coastal Zone Management Act. Under this authority, if a proposed activity is not consistent with Oregon's coastal program, the federal permit may not be issued. With this proposed rule, this authority would be reduced along with other major federal laws that are triggered by federal permit applications that, when taken together, protect the resources of the coastal zone that our coastal communities depend upon. Oregon will no longer have the opportunity to review these projects under federal consistency, potentially resulting in projects that are not consistent with the enforceable policies of the state.

Oregon is home to a significant number of non-contiguous wetlands - wetlands not directly connected to larger waterbodies - that play crucial roles in biodiversity, water filtration, and flood mitigation. While specific data on the number of wetlands in Oregon affected by this change are limited, there are approximately 1,317,491 acres of regulatory wetlands in the state. Table 3-1 of the agencies'

*Regulatory Impact Analysis for the Proposed Updated Definition of WOTUS Rule*<sup>1</sup> estimates that only 9.5% of wetlands in Oregon may have a surface water connection during the wet season and would be regulated as a WOTUS. The Environmental Defense Council estimates 37-46% of Oregon's non-tidal wetlands are at risk due to the *Sackett v. EPA* decision. Oregon's basins at greatest risk are the South Coast, John Day, and Powder Basins.

Non-contiguous wetlands are increasingly recognized as critical components of the Pacific Northwest's ecological and water quality health. Despite their apparent isolation, these wetlands provide a wide array of essential water quality functions and wildlife habitat and warrant greater protection and inclusion in our regulatory strategies. These wetlands act as natural filters, capturing pollutants, excess nutrients, and sediments before they can reach larger waterways. Their role in maintaining clean groundwater and surface water is significant, even without direct hydrologic connectivity. By storing rainfall and snowmelt, isolated wetlands help to reduce the risk and severity of flooding. This function is especially important given the increasing intensity of storm events associated with climate change. Without required mitigation for impacts to non-WOTUS wetlands, the potential loss of flood storage is a significant concern. The Environmental Defense Fund estimates non-contiguous wetlands at risk could potentially store up to 1.23 trillion gallons of floodwater in Oregon<sup>2</sup>.

Non-contiguous wetlands also provide essential life-history functions for wildlife, including waterfowl. Migrating waterfowl, such as Dusky Canada Geese, depend on seasonal wetlands in the fall and winter, and isolated wetlands that support high-quality forage are essential for summer brood-rearing for several species of dabbling ducks. High-quality forage in sufficient spatial and temporal distribution in these wet habitats is necessary to sustain migratory and wintering populations of many species, and these conditions influence migration patterns and habitat use. If these wetlands, and the high-quality forage they produce were unavailable or scarce during migration, waterfowl may reach wintering or breeding grounds in poor condition which may affect reproductive success<sup>3</sup> and future wildlife viewing and hunting opportunities.

Wetlands and waters in drier climates, such as in Eastern Oregon, vary spatially and temporally. In semiarid regions of eastern Oregon, the distribution of many terrestrial species is related to the presence of water. For example, the distribution of Greater Sage-Grouse, listed as Sensitive in Oregon and federally as a Species of Conservation Concern, is correlated to the proximity to wet habitats, such as seasonal wet meadows, playas, and streamside habitats. These seasonal wet meadows and playas, especially with native forbs, are essential during brood rearing.<sup>4</sup> Oregon's State Wildlife Action Plan identifies the significance and need to restore seasonal wetlands in Eastern Oregon to support many Species of Greatest Conservation Need, such as Greater Sage-Grouse.

### Mosaic Wetlands

The proposed rule requires agencies and applicants to delineate wetland mosaics individually. Wetland mosaics are wetlands with upland inclusions classified as "...a landscape where wetland and non-wetland components are *too closely associated to be easily delineated or mapped separately* (emphasis

<sup>1</sup> USACE. November 2025. [Regulatory Impact Analysis for the Proposed Updated Definition of WOTUS Rule](#).

<sup>2</sup> Environmental Defense Fund. 2025. <https://www.edf.org/maps/wetlands-protections/>

<sup>3</sup> J. Patrick Donnelly. July 2021. <https://ifrmp.org/file/synchronizing-conservation-to-seasonal-wetland-hydrology-and-waterbird-migration-in-semi-arid-landscapes-managing-risk-and-maximizing-return-decision-support-for-conservation-of-dynamic-wetland-la/>

<sup>4</sup> ODFW. Sept. 2025. [Final Sage-Grouse CAAS Sept 2025.pdf](#)

added). These areas often have complex microtopography, with repeated small changes in elevation occurring over short distances.”<sup>5</sup> As a result of these complexities, delineating wetland mosaics individually is a waste of resources and staff time, and the additional time required to determine surface water hydrology and jurisdictional determinations may result in inaccurate cost estimates, causing further challenges and frustrations for applicants. Consequently, bidding for construction materials and other associated project costs will be meaningless if surface hydrology cannot be determined in a timely manner. In addition, the *1987 USACE Wetlands Delineation Manual* would be obsolete and USACE Regional Supplements would require updates. The diversity of mosaic wetlands creates crucial, varied habitats that support a wide range of plants and animals and can improve ecosystem functions like flood control and water purification. The agencies’ proposed rule should be consistent with guidance and manuals already published by USACE.

The revised WOTUS definition presents a significant challenge to wetlands protection in Oregon. Since 2021, Oregon has worked with many applicants to enter into water quality protection agreements under state law, however, some projects may have moved forward without these agreements in place leading to currently unknown water quality impacts in Oregon. Oregon supports adding definitions of “relatively permanent” and “continuous surface connection” in the new rule, however, the definitions, if interpreted incorrectly, could remove federal protections from ecologically and economically important Oregon resources.

#### RELATIVELY PERMANENT DEFINITION

The agencies are soliciting comments on whether “relatively permanent” should be limited to perennial waters only or defined differently. Oregon supports the proposal of regionally specific criteria for jurisdictional waters and recommends that the interpretation of relatively permanent includes intermittent (including seasonal and temporary flooding), saturated water regimes and perennial waters. Intermittent waters should be defined as relatively permanent if they contain surface water for a minimum duration of time during the regional wet season. Discrete features such as culverts and berms do not sever hydrological connection from wetlands and therefore, should not be the basis by which to determine whether the wetlands are jurisdictional for the purposes of WOTUS. Ditches that function as natural, relatively permanent features should be jurisdictional. Relatively permanent waters, as written in the proposed rule, provides only a limited seasonal site investigation window to demonstrate presence or absence. When site visit follow up is required by federal staff, waiting additional year(s) for the correct atmospheric conditions to be present is a costly, inefficient way to conduct field operations.

Using the Web-based, Water-budget, Interactive, Modeling Program (WebWIMP) tool to establish when “wet season” conditions are present is useful, and is used now across Oregon, however, variances in recent rainfall, the last 3 months of rainfall (Antecedent Precipitation) and Water Year to Date rainfall can create false positives or negatives in the relatively permanent water determination. Weather and precipitation variables are the normal operating conditions, and natural variances will lead to a shortened window of investigation and expectations of false positive and negative evaluations for relatively permanent waters. This will create time delays and cost increases for landowners hiring consultants, result in construction delays, and increase regulatory confusion due to the inaccuracies and imprecise considerations of what relatively permanent waters constitute.

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<sup>5</sup> USACE. May 2010. [Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region \(Version 2.0\)](#).

Moving to include seasonal and temporary flooding and saturated water regimes allows for the use of a wide range of reliable field indicators of hydrology, already established by USACE. This allows for year-round field work, desktop evaluation for federal regulators, and will reduce costs to landowners and Oregon agencies. Reliable costs and timelines lock construction projects into predictable timelines and outcomes.

Regional differences in hydrologic variability not only occur across the county, but even within state lines. For example, the USACE *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*<sup>6</sup> and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0)*<sup>7</sup> are used in Oregon. These manual supplements are based on regional hydrologic and vegetation differences. The agencies are seeking comments on the duration of relative permanency. Oregon is concerned that a bright line test could result in a water becoming non-jurisdictional that has relative permanence. For example, intermittent tributaries commonly have periodic flow during the wet season but still meet the intent of “relatively” permanent. With a minimum duration requirement, a single site visit during an unseasonably dry spell between winter storms could be sufficient to demonstrate non-permanence and sever jurisdiction. If the agencies proceed with a bright line quantitative test, Oregon recommends a metric that acknowledges this variability over time and over any given wet season.

Stream networks with significant intermittent extents are commonplace in eastern Oregon and throughout the arid West. These waters are essential to protecting the overall health of a watershed including the protection of drinking water, recreation, fish, wildlife and their habitats, as well as economies dependent on those systems. Aquatic habitat that is periodically and unpredictably dry does not necessarily cease to be important habitat for Oregon’s fish and wildlife. For example, intermittent streams in Oregon are essential spawning and rearing habitat for many listed fish species, even though they only provide water for part of the year. When considered cumulatively across the drainage network, intermittent waters are vital for determining the quality of perennial water and, hence, the beneficial uses supported in downstream perennial reaches and the health of economies tied to these resources.

#### CONTINUOUS SURFACE WATER CONNECTION

Oregon supports the agencies’ proposal to use a category of tributaries and adjacent wetlands based on the plain meaning of the term “waters” (informed by the qualifier “navigable”) and the continuous surface connection between such waters and wetlands. Oregon also supports the proposal of regionally specific criteria for jurisdictional waters.

The agencies seek comment on whether wetlands, lakes, ponds shall only be jurisdictional if they have continuous surface connection to a WOTUS. Among the alternatives presented, DEQ supports this alternative if the “continuous surface water connection” is for the duration of the determined “wet season”, and not based on “perennial presence,” as the term “perennial presence” is not used elsewhere in the proposed rule. Oregon also supports including entirety of wetlands that abut a jurisdictional water as jurisdictional if *any* of the wetland has a continuous surface connection to a qualifying jurisdictional

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<sup>6</sup> USACE. September 2008. [Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region \(Version 2.0\)](#)

<sup>7</sup> USACE. May 2010. [Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region \(Version 2.0\)](#).

water regardless of surface hydrology. Sectioning off jurisdiction of a hydrologically whole and intact wetland based on surface waters presence is illogical hydrologically and as a practical matter, will increase staff resources and processing time for jurisdictional determinations; create indirect impacts for any part of the wetland deemed not a WOTUS; and pose risk to complications from it being a drier than normal year during the wet season.

Floodplain wetlands are another example where there may be ecologically meaningful hydrologic connectivity, and the agencies should assure that these wetlands with relative permanency, at a minimum, are considered and remain part of the proposed WOTUS definition. Floodplain wetlands serve as important water reservoirs, withholding waters from mainstem flow during periods of high flow and gradually returning waters during periods of lower flow. Maintaining baseflows during hotter, drier portions of the year may reduce the need for reservoir drawdowns required for maintaining operational navigation.

### **TRIBUTARIES**

The agencies' proposed rule excludes waters that do not have a defined bed and bank. The tributary definition should be consistent with the definition of an ordinary high-water mark, defined in 33 CFR 328.3(c)(4), and through the use of the USACE *National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams*<sup>8</sup> manual. These references include tributaries with a grassy bottom and no defined bed and bank, therefore, these waterways must be included as a WOTUS. Excluding these relatively permanent waterbodies will also exclude wetlands with a continuous surface water connection regularly found together with grassy swale waterbodies that collectively function as a tributary. Even without a defined bed and bank, a grassy swale with relatively permanent surface water flow maintains its relevance as part of a water transfer (applied under 40 CFR 122.3) and should retain jurisdiction.

### **INTRASTATE WETLANDS AND INTERSTATE WATERS**

To conform with the *Sackett v. EPA* decision, the agencies have removed "interstate waters" and "intrastate" from the rule. This is a significant change from longstanding current practice, where relatively permanent tributaries of interstate waters are jurisdictional without the need to also be tributaries of a navigable water. This is problematic as it will inevitably lead to neighboring states having different state-regulatory protections on non-WOTUS that cross state boundaries, creating confusion and inconsistent regulatory authority within the same stream orders. For example, a seasonally flowing water that crosses state boundaries may be regulated in one state under state laws but not the other state. The absence of an adequate and consistent federal regulatory floor for CWA protections will create gaps between federal and state agencies and tribes, setting up the potential for disputes among states and real-world implications for migratory species like salmon, steelhead, and waterfowl that will be subject to a patchwork of varying protections across the interstate extent of their ranges. Relying on states and tribes to fill the gap, without adequately assessing the administrative challenges and economic impacts on state and tribal programs is neither a sufficient nor sustainable approach to protecting the nation's waters. The agencies should continue to include interstate waters in its final rule. The agencies provide regulatory oversight on traditional navigable waters for the benefit of consistency and streamlined processes. The same should apply to intrastate wetlands and interstate waters. Should the agencies not include this definition, it is incumbent on the agencies to explicitly

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<sup>8</sup> USACE. January 2025. [National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams](#)

evaluate how the conflicting regulatory processes will be reconciled so that states and tribes have clear administrative pathways to fill these gaps.

#### PRIOR CONVERTED CROPLAND

Oregon recommends changing the Prior Converted Cropland (PCC) definition to include only those lands that are in agricultural production and are certified by the Natural Resources Conservation Service on form CPA-026 signed and dated after July 3, 1996. This would eliminate site by site review work based on a vague definition of PCC as “land making an agricultural crop possible.” This open-ended definition appears to require a detailed historic aerial imagery review, and consulting services to analyze land changes. It lacks clarity on what “making an agricultural crop possible” really means. Using form CPA-026 would mean no additional work, trainings, and documents need to be established. Reducing this paperwork burden of historical analysis, reduces costs to applicants and keeps Oregon agency staff working on delivering permits on pre-existing and vetted criteria.

#### STATE REVENUE IMPACTS FOR WOTUS CHANGE

The CWA programs are vitally important to not only the nation’s ecological wellbeing, but economic wellbeing too. Section III.C. of the proposed rule discusses incremental cost savings and forgone benefits of this action through the reduction of project proponent needed permitting and mitigation activities, as well as potential indirect benefits from reduction in regulatory oversight. Oregon disagrees and concludes that this proposed rule will have a negative economic impact. The proposed rule states “The agencies anticipate that the impacts of the proposed rule, as a result of implementing the *Sackett v. EPA* decision, would be most significant for the CWA section 404 program, reducing the number of 404 permits issued and acres of wetland impacts mitigated relative to the baseline” (90 Fed. Reg. 52500). The reduction in the number of 404 permits will also reduce the number of CWA Section 401 water quality certifications (WQC) required from state and tribal certifying agencies as well as the number of accompanying Endangered Species Act consultations and Historic Preservation Act Section 106 consultations, which may create costly independent requirements for states to ensure compliance with those other federal obligations. The proposal states that the agencies seek to avoid “impairing or in any manner affecting any right or jurisdiction of the States with respect to waters[...]”. This proposal is in direct conflict with the goal to avoid impairing states’ rights or jurisdictions given that the proposed rule would decrease the geographic scope of waters of the US and thus the states’ opportunity to review projects, particularly through Section 401, which is a congressionally delegated authority for states and tribes to regulate water quality within their jurisdiction.

Under a future with decreased federal jurisdiction, more states and tribes may create their own wetlands and waters permitting programs. These new programs may enable them to continue to exercise their longstanding authority over land and water, and benefit from continued use of proactive state-level measures that are essential to mitigating the loss of these valuable ecosystems and ensure their continued ecological and hydrological functions. Oregon has a history of implementing state-level wetland and waterway protections. However, the proposed rule may negatively impact these programs’ effectiveness and limit program resources. New permitting programs in lieu of Section 404 coverage may result in additional costs to applicants that were not present with the Section 404 review by the federal permitting agency. The agencies acknowledge potential cost increases in the proposed rule that states “The agencies acknowledge that States and Tribes that seek to cover waters no longer jurisdictional under this proposed rule may incur new costs and administrative burdens.” Oregon urges the agencies to conduct a cost evaluation for this proposed rule.

In addition to the economic impact from a direct reduction in Section 404 and 401 authorizations, the proposed rule will impact the purchase of mitigation banking credits for WOTUS impacts and is discussed as a forgone benefit. In Oregon, many projects with impacts over a tenth of an acre to wetlands and waters require a no-net-loss mitigation plan and often require the purchase of banking credits. Oregon has private and state-owned mitigation banks throughout the state that allow applicants to purchase credits to mitigate for impacts to WOTUS. The assumed, but not quantitatively evaluated, cost savings from avoided permit applications and mitigation may not exceed forgone benefits of wetlands.

### CULTURAL PROTECTIONS

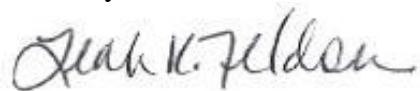
The proposed WOTUS rule could significantly impact cultural protections by narrowing the scope of federal jurisdiction under the CWA, leading to less federal protection for streams and wetlands that are vital to Tribal reserved rights, including hunting, fishing, and gathering, as well as reduced protections for cultural artifacts located within those streams and wetlands. The proposed rule's definition of "relatively permanent" waters and wetlands with a "continuous surface connection" to such waters could remove safeguards from millions of acres of wetlands, leaving only a small percentage eligible for federal protection. This shift could pose serious challenges for Tribal governments and their ability to regulate waters within their lands if they lack authority over upstream polluters. Oregon urges the agencies to conduct a thorough collaborative analysis with Tribal governments on how the proposed WOTUS rule will impact cultural protections.

### ENDANGERED SPECIES ACT PROTECTIONS

The proposed WOTUS rule would significantly impact Endangered Species Act (ESA) protections in Oregon by narrowing the scope of WOTUS and thereby removing the federal nexus triggering ESA Section 7 consultation for many projects affecting wetlands and waterways. The absence of Section 7 consultation will result in many impacts to waters and wetlands not receiving input from the federal services and put project proponents at legal risk for non-compliance with the ESA, while leaving critical economically valuable species at risk of endangerment or extinction.

Thank you for your consideration of Oregon's comments and recommendations regarding the proposed updated definition of Waters of the United States.

Sincerely,



Leah Feldon, Director  
Department of Environmental Quality



Debbie Colbert, Ph.D., Director  
Department of Fish & Wildlife

Brenda D Bateman

Brenda Bateman, Ph.D., Director  
Department of Land Conservation & Development

Kaitlin Lovell

Kaitlin Lovell, Director  
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