



Native Plant Society of New Mexico

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October 9, 2026

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

Submitted via Regulations.gov

Docket EPA ID No. EPA-HQ-OW-2025-0322; FRL 11132.1-04-OW

Re: U.S. Environmental Protection Agency's and Department of the Army's Supplemental Notice of Proposed Rulemaking (SNPRM) - Updated Definition of "Waters of the United States"; 91 Fed. Reg. 57,284 (September 9, 2026) – Docket EPA ID No. EPA-HQ-OW-2025-0322; FRL 11132.1-04-OW

To the US EPA and Army Corps of Engineers:

The Native Plant Society of New Mexico (NPSNM) respectfully submits these comments into the public record, strongly disagreeing with the Environmental Protection Agency and Army Corps of Engineers (the Agencies) proposed alternative definitions that further limit Clean Water Act (CWA) jurisdiction over the waterbodies that need its protection. Specifically, the SNPRM would tighten the definitions of "relatively permanent" waters and "continuous surface connection." In the ongoing drought in New Mexico, many waterbodies would no longer meet these revised definitions at a moment when jurisdictional protection is increasingly important. The NPSNM strongly recommends that the Agencies NOT implement these revised definitions.

The NPSNM is a 501(c)(3) organization that works to educate the public about native plants by promoting knowledge of plant identification, ecology, and uses; fostering plant conservation and the preservation of natural habitats; supporting botanical research; and encouraging the appropriate use of native plants to conserve water, land, and wildlife. Our interest in the reach of Clean Water Act coverage stems from the damage that native plant communities will suffer without the protections of the Act. Because plants are important mediators of water quality, the degradation or loss of native plant communities will, in turn, have significant deleterious effects on the integrity of downstream navigable waters.

We reiterate the concerns we expressed in our letter of December 18, 2025 (Docket ID No. EPA-HQ-OW-2025-A322, Updated Definition of Waters of the United States) regarding the proposed revision of the regulations defining the scope of waters federally covered under the Clean Water Act. Under that proposed rulemaking revision, several major categories of NM waters would be excluded from protection. The newly proposed and even more restrictive "supplemental options" for the definitions of "relatively permanent," "perennial," and "continuous surface connection" will have more deleterious impacts on water and plant communities in the arid west.

The distressingly short time frame allowed for responding to this SNPRM does not allow us the opportunity to respond in detail to this new assault on the protection of the increasingly fragile waters of the west.

We would simply note that the newly proposed definition of “relatively permanent” perennial water identifies a vague threshold of permanence that the agencies state has “no precise, scientifically-grounded, nationally consistent time limits” for the identification of temporary interruptions. The announcement says thirty days was chosen because it is “roughly the length of a month.” There is a further stipulation that such a disruption may only occur one time in a year. According to the Federal Register: “A waterbody that does not meet this proposed interpretation of “relatively permanent,” would be the type of “intermittent” or “ephemeral” feature that does not meet the definition of “waters” under the Clean Water Act.” Implementation of this restrictive definition for “relatively permanent” will be devastating to waterbodies throughout the west.

Levick and colleagues prepared an exhaustive report that they believed represented “a state-of-the-art synthesis of current knowledge of the ecology and hydrology of ephemeral (dry washes) and intermittent streams in the American Southwest.” The 2018 report used data from the USGS to document that at least 88% of the streams of New Mexico were ephemeral and intermittent a decade ago; the numbers can only be higher today. Loss of protection of many of our waterbodies is damaging on many levels both economic and ecological.

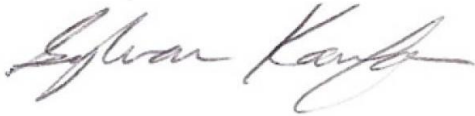
In our December 2025 letter, we provided specific examples of such ecological damage. We provided three examples of plant communities, their typical vegetation, and the ways they provide critical water quality services, often for the ephemeral water sources that the arid west depends on.

- a. perennial waters above ephemeral stretches: support cottonwood/willow riparian forests, are often the location of population centers and, hence, wastewater treatment discharge; provide habitat refugia for aquatic organisms; deliver organic material to downstream reaches; provide shade that reduces water temperature and canopy and ground cover that slow runoff velocity and reduce sedimentation
- b. high altitude wet meadows, a form of wetland: support sedges and grass-like species; store large quantities of water below ground and keep it cool; can take up and sequester excess nutrients, metals and other chemicals; and support root systems that retain productive organic soil that would otherwise wash away
- c. ephemeral headwaters networks: convey a high percentage of flow during precipitation events; support an increased density of upland plants, including more specialized species adapted to sub-irrigation of the root zone; provide canopy and ground cover to slow runoff velocity and reduce sedimentation; and recharge shallow aquifers that support the baseflow of perennial streams

If this proposed supplemental definition revision is adopted by the Agencies, the biodiversity and the water quality of the waters of the United States (by any definition) will decline, especially in the arid and semi-arid western states. These deleterious effects will only increase over time as climate change pushes more waterbodies toward the ephemerality end of the spectrum.

In summary, the NPSNM recommends that the Agencies not adopt the proposed revised definition of Waters of the United States as proposed in the original notice and especially not as proposed in this SNPRM.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sylvan Kaufman". The signature is fluid and cursive, with the first name "Sylvan" being more prominent than the last name "Kaufman".

Dr. Sylvan Kaufman
NPSNM Conservation Committee Chair

Reference

Levick, L., et al. (2008). The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest. U.S. EPA and USDA/ARS Southwest Watershed Research Center, EPA/600/R-08/134.