



EPN Oral Testimony on EPA's Proposed New Definitions for Waters of the U.S.

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I am Betsy Southerland, former director of the Office of Science and Technology in EPA's Office of Water, representing the Environmental Protection Network, a non-partisan organization of over 700 former EPA scientists, regulators, and political appointees. EPN will also be submitting written comments on this proposed rule.

I will start my comments by expressing my admiration for the professionalism of EPA career staff who have persevered through four different versions of this rule in 10 years.

EPN finds that this new proposal will prevent achievement of the Congressionally-mandated objective to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." This rule proposes scientifically indefensible definitions of relatively permanent flow and continuous surface connection that would impermissibly remove Clean Water Act (CWA) protections from many intermittent streams and most of the wetlands in the U.S. The rule also proposes removing interstate waters as Waters of the U.S., in direct conflict with Section 303 of the CWA, which has treated interstate waters as jurisdictional since 1972.

This rule's proposed definition for relatively permanent flow will result in CWA protections only for waters that have surface water flows during the exact time and duration of a "wet season," calculated using a deeply-flawed model that does not apply in all hydrologic regions of the U.S. The rule also severs protection for all upstream reaches if at any point downstream a tributary loses wet season flow when passing through a manmade or natural barrier, a frequent occurrence in the Arid West and mountainous regions.

EPN will also provide written comments on how this rule's indefensible definition of continuous surface connection will result in even greater loss of wetland protection than the agencies' estimate of over 80%. The Economic Analysis for this rule is entirely inadequate as the agencies assign no value to the dramatic increase in pollution, flooding, and habitat loss that will result in loss of fishing, hunting and swimming uses, increased water and sewer bills, and extensive property damage.

The agencies dismiss these impacts by maintaining that states will be able to protect all those waters and wetlands no longer covered by the CWA. In our written comments, EPN will submit our analysis demonstrating how unlikely that will be.

In conclusion, the agencies' proposed "bright line" definitions of relatively permanent flow and continuous surface connection are scientifically indefensible and will be subject to unending litigation on case specific determinations. Decades of research and field experience have taught us that multiple lines of evidence are needed to accurately determine whether an intermittent stream or abutting wetland should be protected by the CWA consistent with the Sackett decision. In addition, interstate waters must be protected as the CWA has always intended.