

In Support of Amending the Clean Water Act to Promote Regulatory Certainty

1 The Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA), was enacted
2 in 1972 to restore and maintain waterway quality across the United States. The statute vests states with
3 the primary responsibility for protecting waterways within their jurisdictions, under guidance issued by
4 the Environmental Protection Agency (EPA). Permits are required to discharge into waters of the United
5 States (WOTUS) from point sources under the National Pollutant Discharge Elimination System
6 (NPDES) and non-exempt nonpoint sources. Public power utilities must obtain CWA permits when
7 discharging into WOTUS, including discharges that cool power infrastructure, and when constructing
8 linear infrastructure, such as power lines, that cross a protected body of water.

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10 A key term under the CWA is the regulatory definition of WOTUS. Several administrations have
11 proposed and implemented changes to the regulatory definition of WOTUS, with varying requirements
12 that have created uncertainty. Several recent U.S. Supreme Court decisions affect WOTUS, including
13 *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023), and *Loper Bright Enterprises v.*
14 *Raimondo*, 603 U.S. 369 (2024). In *Sackett*, the court significantly limited the scope of EPA’s authority to
15 regulate wetlands under the CWA. The court ruled that the CWA's jurisdiction extends only to wetlands
16 with a “continuous surface connection” to a permanent body of water, such that they are
17 “indistinguishable” from those waters. The *Loper Bright* case challenged the longstanding doctrine
18 established by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* that afforded federal
19 agencies substantial deference to interpret statutes with ambiguous language. The *Loper Bright* ruling
20 bars courts from affording substantial deference to federal agencies when statutes are ambiguous and
21 requires courts to exercise their independent judgement in deciding whether an agency has acted within
22 its statutory authority. Codifying longstanding practices, like the exemption from the regulatory definition
23 of WOTUS for waste treatment systems, is now required to prevent legal challenges to EPA’s authority to
24 promulgate an exception to the WOTUS definition. Waste treatment systems, such as treatment ponds,
25 lagoons, infiltration systems, and settling ponds, ensure the water public power utilities use meets
26 discharge standards, and a statutorily defined exemption would provide regulatory certainty as utilities
27 build and maintain the infrastructure needed to meet the rising electricity demand.

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29 The Nationwide Permit (NWP) Program is administered under section 404 of the CWA and/or section 10
30 of the Rivers and Harbors Act of 1899. NWPs authorize activities that have minimal individual and
31 cumulative adverse effects on the aquatic environment. NWPs authorize a variety of activities, such as
32 aids to navigation, utility lines, bank stabilization activities, road crossings, and stream and wetland

33 restoration activities. Modernizing the NWP Program to allow larger projects to qualify for permits would
34 increase regulatory certainty and avoid requiring individual permits for actions with negligible
35 environmental impact. The power sector relies extensively on these NWPs to provide timely and reliable
36 installation and maintenance of transmission and distribution power lines, which are critical to system
37 reliability. A streamlined NWP process supports the secure integration and delivery of a balanced mix of
38 central and distributed energy resources.

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40 CWA permits and authorizations are consistently challenged in the courts, delaying project design and
41 construction. Limiting litigation by establishing decision timelines and requiring participation in the
42 public notice-and-comment period would prevent frivolous lawsuits and enable public power
43 infrastructure to move forward on timelines that reflect the desire to meet the growing electricity demand
44 while remaining good stewards of the nation's waterways.

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46 In the 119th Congress, the House Transportation & Infrastructure Committee passed H.R. 3898, the
47 Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act, which would streamline
48 CWA certification and permitting processes and establish judicial review requirements. APPA supports
49 congressional efforts to address inefficiencies in the CWA permitting process and encourages the full
50 House of Representatives and the Senate to consider H.R. 3898 further.

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52 **NOW, THEREFORE, LET IT BE RESOLVED:** That the American Public Power Association (APPA)
53 supports efforts to streamline Clean Water Act permitting processes, including clarifying the scope of
54 section 401 State Water Quality Certifications; and

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56 **BE IT FURTHER RESOLVED:** That APPA supports modernizing and streamlining the Nationwide
57 Permit Program to provide regulatory certainty for electric utility infrastructure projects that have
58 minimal environmental effects; and

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60 **BE IT FURTHER RESOLVED:** That APPA supports codifying the Environmental Protection Agency's
61 longstanding exclusion for waste treatment systems from the regulatory definition of waters of the United
62 States; and

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64 **BE IT FURTHER RESOLVED:** That APPA supports judicial review requirements and deadlines that
65 ensure project delays are minimized where possible without compromising public power's commitment to
66 being stewards of the nation's natural resources.

Adopted at the Legislative & Resolutions Committee Meeting

February 24, 2026

Sunsets in March 2034