



**2026 Winter Convention
Portland, Oregon**

RESOLUTION # 2026 – 011

**“CALLING ON THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND ARMY CORPS OF ENGINEERS TO
WITHDRAW THE 2025 PROPOSED 'UPDATED DEFINITION OF
WATERS OF THE UNITED STATES' RULE AND TO STRENGTHEN
CLEAN WATER ACT PROTECTIONS FOR TRIBAL WATERS, TREATY
RIGHTS, AND TRIBAL SOVEREIGNTY”**

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and Constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following Resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are the representatives and advocates for national, regional, and specific Tribal concerns; and

WHEREAS, the ATNI is a regional organization comprised of American Indians/Alaska Natives and Indian Tribal governments in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, ATNI Tribes are the original stewards of the lands, waters, rivers, and salmon of this region since time immemorial, and water protection is fundamental to our identity, lifeways, culture, spirituality, survival, and rights as Native peoples; and

WHEREAS, the United States has a trust responsibility to protect Tribal lands, waters, natural resources, and the health and welfare of Tribal citizens, arising from treaties, statutes, executive orders, and the government-to-government relationship between the United States and Tribal governments; and

WHEREAS, many ATNI member Tribes hold reserved treaty rights to fish, hunt, and gather in usual and accustomed places throughout ceded territories, and the exercise of these rights depends on clean, cold water and healthy, functioning ecosystems, including intact headwaters, wetlands, tributaries, and floodplains; and

WHEREAS, the Clean Water Act establishes as its objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and has served as a critical federal backstop protecting Tribal waters, treaty resources, and downstream reservation communities from upstream pollution and development for over fifty years; and

WHEREAS, on November 20, 2025, the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (the Corps) published a proposed rule titled "Updated Definition of 'Waters of the United States'" that would substantially narrow Clean Water Act jurisdiction and remove federal protections from waters critical to Tribal reserved rights and resources; and

WHEREAS, ATNI opposes any revisions to the definition of waters of the United States that further weaken protections for wetlands, ephemeral or intermittent streams, tributaries, or other waters upon which Tribal communities and treaty rights depend; and

WHEREAS, neither EPA nor the Corps engaged in meaningful government-to-government consultation with Tribal governments prior to publication of the proposed rule on November 20, 2025, and many Tribes have expressed that the consultation period has been insufficient to jointly evaluate the potential impacts of the proposed rule on Tribal lands, waters, and resources; and

WHEREAS, Tribal governments possess traditional knowledge relevant to the protection of wetlands and other waters that support salmon and other important cultural and subsistence species, and this knowledge has not been adequately sought or considered in the development of the proposed rule; and

WHEREAS, wetlands and non-perennial waters are essential to Tribal communities and to the earth—naturally controlling flood waters, reducing the risk of mega wildfires and aiding

wildfire recovery, filtering pollution, increasing summer stream flows, moderating stream temperatures, and holding water on the landscape in ways that reduce the impacts of drought; and

WHEREAS, wetlands and non-perennial waters provide habitat for many cultural resources, including birds, big game, plants, and other wildlife, and these waters and the waters they are connected to support subsistence hunting and fishing rights as well as the gathering of traditional roots, berries, and other culturally significant foods and medicinal plants; and

WHEREAS, all water is connected, and while Tribal governments can regulate waters within their lands, they lack authority over upstream polluters, making federal Clean Water Act protections critical for preserving cultural practices, treaty rights, and water quality tied to Tribal waters; and

WHEREAS, tributaries, irrespective of the frequency of flow, are the dominant source of water in most rivers—rather than direct precipitation or groundwater input to main stem river segments—and any reduction in the protection of non-perennial waters or tributaries threatens the integrity of entire river systems upon which ATNI member Tribes depend; and

WHEREAS, preliminary estimates indicate that the proposed requirement that wetlands maintain surface hydrology for the duration of the "wet season" would reduce measured acres of wetlands protected in Alaska by 90 percent, in Montana by 96 percent, in Colorado by 97 percent, and in Nevada by 98 percent, with similarly severe reductions likely throughout the Pacific Northwest; and

WHEREAS, mosaic wetlands—landscapes common in Alaska and much of the Northwest where wetland and surrounding land are too closely connected to be mapped separately—should be treated as one ecological unit and protected, yet the proposed rule's narrow tests would fragment these landscape-scale wetland systems and remove large portions from federal protection; and

WHEREAS, the proposed rule would eliminate "interstate waters" as an independently protected category, thereby undermining protections for major river systems including the Columbia, Snake, and other waters that cross state and international boundaries and are essential to salmon, lamprey, sturgeon, and other species upon which ATNI member Tribes depend; and

WHEREAS, the proposed rule includes an "upstream severance" provision under which any non-relatively-permanent segment in a watershed would break federal jurisdiction for all upstream tributaries, potentially leaving vast reaches of headwaters and small streams without Clean Water Act protection despite their contribution to downstream water quality and fisheries; and

WHEREAS, the proposed rule requires that tributaries have a defined bed and banks to qualify for protection, thereby excluding many small channels, headwater swales, and seasonal streams that provide essential hydrological and ecological functions in salmon and steelhead habitat throughout the Pacific Northwest; and

WHEREAS, the proposed rule applies a restrictive test for adjacent wetlands that would protect only those portions of wetlands that both physically abut a covered water and have surface water throughout the entire wet season, thereby excluding many floodplain wetlands, estuarine wetlands, prairie potholes, and vernal pools that filter pollutants, recharge groundwater, moderate flooding, and provide critical habitat; and

WHEREAS, the proposed rule expands the "prior converted cropland" exclusion by providing a five-year safe harbor even when agricultural land use is changing to development, and expands ditch exclusions so that all ditches and canals constructed in uplands are excluded from protection even if they flow year-round, creating additional pathways for pollution to reach Tribal waters; and

WHEREAS, reducing the waters protected by the United States has direct impacts on the meaningful exercise of Tribal rights, including rights to fish, hunt, and gather, and narrowing the definition of waters of the United States constitutes a violation of the federal government's trust responsibility to Tribes as well as a violation of treaty and other Tribal rights; and

WHEREAS, removing large areas of wetlands from federal protection eliminates opportunities for Tribal governments to be involved in permitting decisions that may impact Tribal resources and communities, and Tribal governments cannot depend on state governments for consultation, as many states do not have permitting programs covering certain waters or certain discharges, and the relationship between Tribes and the United States is a government-to-government relationship that cannot be delegated to states; and

WHEREAS, Columbia and Snake River Basin treaty Tribes depend on cold, clean water and intact headwaters, wetlands, and tributaries for salmon, steelhead, lamprey, and other first foods, and would face heightened threats to treaty fisheries if the proposed rule takes effect; and

WHEREAS, Puget Sound and coastal Tribes depend on robust protections for small streams, estuarine wetlands, and nearshore habitats to support shellfish harvests, salmon recovery, and orca protection, and many of these waters would lose federal protection under the proposed rule; and

WHEREAS, Alaska Tribal partners in ATNI's regional collaborations face permafrost thaw, coastal erosion, and loss of permafrost wetlands, and federal agencies have acknowledged that they lack adequate data to analyze the impacts of the proposed rule on permafrost wetlands, leaving Alaska Native communities without meaningful analysis of how the rule would affect their waters and subsistence resources; and

WHEREAS, Tribal governments across the nation have submitted comments or advocated in opposition to the proposed rule, documenting threats to wild rice waters, prairie pothole wetlands, subsistence fishing, and Tribal drinking water sources; and

WHEREAS, Nimiipuu Protecting the Environment, the Inter Tribal Association of Arizona, the Bering Sea Interior Tribal Commission, the National Congress of American Indians,

the National Tribal Water Council, and the Region 10 Tribal Operations Committee Tribal Caucus have submitted comments or formal statements opposing the proposed rule and calling for extended comment periods and meaningful Tribal consultation; and

WHEREAS, many ATNI member Tribes and other Tribal governments have obtained Treatment-as-a-State (TAS) status under the Clean Water Act and have adopted EPA-approved water quality standards that protect traditional and cultural uses—including fish consumption rates reflecting actual Tribal subsistence practices—and these standards depend on robust federal jurisdiction over upstream waters and wetlands that affect water quality in downstream reservation and treaty-protected waters; and

WHEREAS, the proposed rule's 45-day comment period—running from November 20, 2025 to January 5, 2026 and spanning Thanksgiving, Christmas, and New Year's holidays—was unreasonably short, contrary to Executive Order 12866's standard of at least 60 days for significant regulatory actions, inconsistent with the Clean Water Act's mandate for public participation, and failed to allow adequate time for Tribal governments to conduct technical review, coordinate internally, and prepare meaningful comments; and

WHEREAS, multiple Tribal governments and Tribal organizations—including the National Tribal Water Council, the Region 10 Tribal Operations Committee Tribal Caucus, and individual Tribes—formally requested that EPA and the Corps extend the comment period to at least 90 days to allow meaningful Tribal participation, and these requests were denied, undermining good-faith government-to-government consultation; and

WHEREAS, ATNI has previously adopted Resolution #24-24 calling for immediate action to extend federal comment period timelines from 30 days to 90 days to allow meaningful Tribal review and participation in federal rulemakings affecting Tribal interests; and

WHEREAS, the proposed rule's Regulatory Impact Assessment does not include a Tribal-specific analysis of economic, cultural, or public health impacts, despite the unique circumstances of Tribal communities and the federal trust responsibility, leaving Tribal governments without adequate information to assess how the rule would affect their citizens, lands, and resources; and

WHEREAS, approximately half of households in Indian Country lack access to safe drinking water and adequate sanitation, and Tribal communities face a multibillion-dollar water infrastructure gap, making protection of source waters, wetlands, and headwaters essential to Tribal public health even as Tribal governments work to build adequate treatment and distribution systems; and

WHEREAS, Tribal communities bear disproportionate pollution burdens due to higher subsistence fish and shellfish consumption, proximity to legacy mining, timber, agricultural, and industrial sites, reliance on surface water and groundwater sources, and limited alternative water and food sources, and narrowing Clean Water Act jurisdiction will worsen these inequities by removing federal oversight of discharges into wetlands and headwaters that protect Tribal drinking water and cultural resources; and

WHEREAS, the Supreme Court's 2023 decision in *Sackett v. EPA* addressed the jurisdictional reach of the Clean Water Act, but the 2025 proposed rule goes beyond what the *Sackett* decision requires, representing discretionary policy choices by EPA and the Corps to further narrow protections in ways not compelled by the Court; and

WHEREAS, ATNI has consistently advocated for climate resilience, salmon and river restoration, and strengthened federal engagement with Tribal governments, including through Resolution 2021-23 on climate and salmon and Resolution #24-22 on the Bureau of Land Management conservation rule, and the protection of wetlands, headwaters, and clean water is essential to these priorities; now

THEREFORE, BE IT RESOLVED, that the Affiliated Tribes of Northwest Indians strongly opposes the November 2025 proposed "Updated Definition of 'Waters of the United States'" rule and urges EPA and the Army Corps of Engineers to withdraw the proposed rule in its entirety; and

BE IT FURTHER RESOLVED, that ATNI calls on EPA and the Army Corps of Engineers to engage in meaningful, early, and ongoing government-to-government consultation with Tribal governments—including ATNI member Tribes, the National Tribal Water Council, and regional Tribal organizations—before proposing any future revisions to the definition of "waters of the United States," and to ensure that any such consultation:

- (a) Occurs prior to publication of any proposed rule, not merely during the comment period;
- (b) Includes adequate time for Tribal governments to review technical materials, coordinate internally, and engage in genuine dialogue with federal officials;
- (c) Incorporates Tribal traditional knowledge relevant to the protection of wetlands and waters that support salmon and other cultural and subsistence species;
- (d) Results in a Tribal-specific impact analysis addressing economic, cultural, subsistence, treaty, and public health impacts on Tribal communities; and
- (e) Reflects genuine consideration of Tribal concerns in any final agency action; and

BE IT FURTHER RESOLVED, that ATNI urges EPA and the Army Corps of Engineers in any future rulemaking to:

- (a) Retain "interstate waters" as an independent jurisdictional category protected under the Clean Water Act;
- (b) Reject the undefined "wet season" test, the "upstream severance" provision, and the restrictive bed-and-banks requirement for tributaries;
- (c) Maintain strong protections for tributaries regardless of flow frequency, recognizing that tributaries are the dominant source of water in most rivers;
- (d) Maintain strong protections for adjacent wetlands, headwater streams, seasonal waters, and mosaic wetlands consistent with best available science, the Clean Water Act's objective to restore and maintain the integrity of the Nation's waters, and the federal trust responsibility to Tribal governments;
- (e) Analyze impacts on permafrost wetlands and Alaska Native communities using adequate data and methodology; and

- (f) Ensure that any jurisdictional determinations preserve Tribal opportunities to participate in permitting decisions that affect Tribal resources and communities; and

BE IT FURTHER RESOLVED, that ATNI calls on the United States Congress to:

- (a) Enact a statutory definition of "waters of the United States" that fully protects Tribal reserved rights, treaty resources, and downstream Tribal waters from upstream pollution and habitat degradation;
- (b) Enact and fully fund the Tribal Access to Clean Water Act and related infrastructure initiatives to close the water and sanitation infrastructure gap in Indian Country; and
- (c) Ensure that any Clean Water Act amendments include meaningful Tribal consultation requirements, respect for Tribal sovereignty, and recognition of the federal trust responsibility; and

BE IT FURTHER RESOLVED, that ATNI supports coordinated efforts by the National Congress of American Indians, the National Tribal Water Council, the Native American Rights Fund, and regional Tribal organizations to defend Tribal water rights and Clean Water Act authority, and authorizes ATNI representatives to participate in such efforts as capacity allows; and

BE IT FURTHER RESOLVED, that ATNI encourages member Tribes to submit supplemental comments, technical analyses, and testimony related to the proposed WOTUS rule, and will integrate protection of Tribal waters and Clean Water Act jurisdiction into ATNI's Natural Resources, Climate, and Water Summit workplans and ongoing policy priorities; and

BE IT FURTHER RESOLVED, that ATNI encourages its member Tribes to:

- (a) Pursue or strengthen Treatment-as-a-State status for water quality standards and Clean Water Act Section 401 certification authority where appropriate to their circumstances;
- (b) Engage with state governments and state environmental agencies to establish or strengthen state-level wetlands and headwaters protections where federal protections are weakened, while recognizing that such state engagement cannot substitute for the government-to-government relationship with the federal government; and
- (c) Document and communicate to federal agencies the specific impacts of weakened Clean Water Act jurisdiction on Tribal treaty rights, cultural practices, subsistence resources, traditional knowledge, and public health; and

BE IT FURTHER RESOLVED, that ATNI reaffirms its commitment to clean water, healthy ecosystems, salmon recovery, and climate resilience, and declares that the protection of wetlands, headwaters, tributaries, and all waters upon which ATNI member Tribes depend is essential to the exercise of Tribal sovereignty, the fulfillment of the federal trust responsibility, and the well-being of Tribal communities for generations to come; and

BE IT FINALLY RESOLVED, that this will be the policy of ATNI until it is withdrawn or modified by subsequent resolution(s).

CERTIFICATION

The foregoing Resolution was adopted at the Affiliated Tribes of Northwest Indians 2026 Winter Convention held at the Hilton Portland Downtown in Portland, Oregon, on February 1-5, 2026, with a quorum present.



Leonard Forsman, President



Norma Jean Louie, Secretary