



# National Association of Wetland Managers

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

July 15, 2025

**Executive Director**

Marla J. Stelk  
500 Washington Avenue, Suite 201  
Portland, ME 04103  
(207) 892-3399

**Chair**

Mark Biddle  
DE Dept. of Natural Resources  
and Environmental Control  
285 Beiser Boulevard, Suite 102  
Dover, DE 19904  
(302) 739-9939

**Vice Chair**

Samantha Vogeler  
KY Division of Water  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, KY 40601  
(502) 782-6995

**Secretary**

Amy Lounds  
MI Dept. of Environment,  
Great Lakes, and Energy  
525 W. Allegan Street  
Lansing, MI 48933  
(517) 331-7966

**Treasurer**

Lauren Driscoll  
WA State Dept. of Ecology  
PO Box 47600  
Olympia, WA 98504  
(360) 407-7045

**Past Chair**

Collis Adams  
Adams Environmental Consulting, LLC  
110 Pattee Hill Road  
Goffstown, NH 03045  
(603) 660-9797

**Members at Large**

Stacia Bax  
MO Dept. of Natural Resources

Denise Clearwater  
MD Dept. of the Environment

Andrew Robertson  
Saint Mary's Univ. of Minnesota

Bill Ryan  
OR Dept. of State Lands

Mr. David Taggart

U.S. Department of Energy  
Office of the General Counsel, GC-1  
1000 Independence Avenue SW  
Washington, DC 20585-0121

**RE: Docket ID No. DOE-HQ-2025-0020, Compliance with  
Floodplain and Wetland Environmental Review  
Requirements**

Dear Mr. Taggart:

The National Association of Wetland Managers (NAWM) submits the following comments in response to the U.S. Department of Energy (DOE) proposal to rescind certain regulations for compliance with floodplain and wetland environmental review requirements.

NAWM is a non-partisan 501(c)(3) professional organization that supports the use of sound science, law, and policy in development and implementation of state and Tribal wetland and aquatic resource protection programs. We have worked for many years together with federal, state, and Tribal agencies in the implementation of regulatory and non-regulatory programs designed to protect our nation's critical wetland and floodplain resources.

NAWM strongly opposes the rescission of regulations at 10 CFR part 1022, which implement the requirements of Executive Order (EO) 11988 - Floodplain Management, and EO 11990 - Protection of Wetlands, for the reasons outlined below.

1) Flooding is the nation's most costly and frequent natural hazard. Notwithstanding the immense economic cost of flooding, including both nuisance flooding and catastrophic flooding, the cost in lives lost is immeasurable. The travesty unraveling in Texas and New Mexico right now is a painful example of worst-case scenarios when governments fail to protect natural infrastructure resources, such as wetlands and floodplains, that reduce flooding velocities and impacts. Economically, the NFIP is currently \$22.5 billion in debt to the U.S. Treasury, from being forced to borrow U.S. Treasury funds to pay claims from flooding events whose costs exceed revenues from premiums collected. This is a perennial federal budgetary problem. Interest alone on that debt today

is costing an estimated \$618 million annually according to FEMA. Under the Stafford Act for post-disaster public assistance for infrastructure damaged or destroyed, the Federal government spends 75-100 percent to replace public facilities with the rest drawn from states or local governments, including energy infrastructure when damaged or destroyed from flooding and other major natural resource-related hazards and storms. Environmental impacts from flooding, especially the areas identified by EO 11988, EO 11990, are universally well-known and are often highly exacerbated by continuing development and occupation of floodplains.

- 2) The finding of consistency for the review under EO 12866<sup>1</sup> which requires agencies, to the extent permitted by law, to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs” and “tailor regulations to impose the least burden on society” is incorrect because rescinding regulations at 10 CFR part 1022, which implements EO 11988 and EO 11990, would result in a significant burden on society and the benefits in no way justify the costs as explained above under #1.
- 3) The finding under section II B: Review under the Regulatory Flexibility Act<sup>2</sup>, that the proposed rule would not have a “significant impact on a substantial number of small entities” is incorrect as small businesses have the least ability to recover after catastrophic flood damage as opposed to large corporations.
- 4) The review under EO 13132 (section II E)<sup>3</sup> is also incorrect in stating that “it would not have a substantial direct effect on the States”. This action will directly impact states and their ability to manage their aquatic resources within their own boundaries if its implementation preempts State law.
- 5) The review under the Treasury and General Government Appropriations Act, 1999<sup>4</sup> that finds that “the proposed rule would not have any impact on the autonomy or integrity of the family as an institution” is completely off base – to think that the families in Texas and New Mexico are unaffected by the loss of their children and loved ones is inconceivable. The Treasury and General Government Appropriations Act of 1999 requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being.” This proposed action would most definitely affect family well-being.
- 6) This action would violate the Administrative Procedure Act (APA). Under the APA’s arbitrary and capricious standard, an agency must examine the relevant data and articulate a satisfactory explanation for its action, including a “rational connection between the facts found and the choices made.” DOE’s proposed repeal does not satisfy the APA’s notice requirement as it does not include sufficient detail or data upon which that rule is based. Without any rationale, the public cannot meaningfully comment on DOE’s proposed rule.
- 7) DOE has not explained this extreme policy shift and why it now finds that this action is necessary when it was on record previously<sup>5</sup> as being in support of EOs 11988 and 11990. DOE does not explain how this proposed rescission will help “reduce the risk of flood loss, minimize the impacts of floods on human safety, restore and preserve natural and beneficial

---

<sup>1</sup> DOE-HQ-2025-0020, II. Procedural Issues and Regulatory Review, A. Review Under Executive Orders, pg. 20948.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> DOE-HQ-2025\_0020, II. Procedural Issues and Regulatory Review, J. Review Under the Treasury and General Appropriations Act, 2001, pg. 20949.

<sup>5</sup> Compliance with Floodplain and Wetland Environmental Review Requirements, 43 Fed. Reg. 31108 (July 19, 1978).

values served by floodplains, promote public awareness of flood hazards, and minimize the destruction, loss, or degradation of wetlands” as was DOE’s rationale previously for supporting the existing regulations.<sup>6</sup>

- 8) DOE’s proposed rescission is not consistent with applicable law. EOs 11988 and 11990 are still in effect. Federal agencies are required to comply with executive orders that have a statutory foundation<sup>7</sup> and if it can lawfully implement an executive order, it must do so. Both executive orders require agencies, including DOE, to adopt or amend procedures to ensure compliance with the order and directs them to integrate floodplain and wetlands considerations into decision-making. EOs 11988 and 11990 have served several times as the basis of a series of Congressionally-passed laws and programs that are applicable to all federal agencies as federal law and policy. For example, in establishing rules and regulations for FEMA’s NFIP and Stafford Act, these EO’s are prominently cited as a key basis of the regulations implementing these laws.

For all of these reasons, NAWM opposes this proposed rescission. If the DOE intends to move forward with this initiative, then at the very least it should require a full rulemaking set of procedures in compliance with the APA, including full consultation with states, Tribes, and local governments and an opportunity for full public participation with notice and comment.

Although these comments have been prepared by NAWM with input from the NAWM Board of Directors, they do not necessarily represent the individual views of all states and tribes. We encourage your full consideration of the comments of individual states and tribes, and other state and tribal associations.

Sincerely,



Marla J. Stelk  
Executive Director

Cc. NAWM Board of Directors

---

<sup>6</sup> 10 C.F.R. § 1022.3(a).

<sup>7</sup> Harris v. United States, 19 F.3d 1090, 1093 (5th Cir. 1994) (holding that Executive Order 11990 binds the Farmers Home Administration where no statute overrides it); Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503, 1514-15 (11th Cir. 1985) (holding Executive Orders issued under statutory authority have the force of law).