Waters of the United States/Clean Water Act: Restore the Mississippi River Delta's Comments on the U.S. EPA Proposed Rule

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Restore the Mississippi River Delta coalition ("Delta Coalition") submitted December 29, 2025 comments to the United States Environmental Protection Agency ("EPA") and Untied States Corps of Engineers ("Corps") on the proposed rule to revise the definition of "waters of the United States" ("WOTUS"). See Docket (EPA-HQ-OW-2025-0322).

The Delta Coalition is stated to include:

- Environmental Defense Fund.
- National Audubon Society.
- The National Wildlife Federation.
- Pontchartrain Conservancy.

Delta Coalition describes its collective organizations as having partnered with local, state, and federal officials to confront Louisiana's longstanding land-loss crisis and advance restoration of the Mississippi River Delta.

The EPA and Corps in announcing the proposed revisions to the WOTUS stated that the intent included:

- Amending the definition of "waters of the United States" ("WOTUS") in light of the United States Supreme Court's 2023 decision in Sackett v. Environmental Protection Agency.
- Provide greater regulatory certainty/predictability/consistency by clarifying the definition of WOTUS.
- Implement the overall objective of the Clean Water Act to restore and maintain the quality of the Nation's waters while respecting State and Tribal authority over their own land and water resources.

The Trump Administration has sought to narrow aspects of the Biden-era rulemaking addressing this definition in regard to a determination of Sackett's outline of when adjacent wetlands are jurisdictional.

EPA describes the key revisions in the proposed rule as including:

- Defining key terms like "relatively permanent," "continuous surface connection," and "tributary" to appropriately delineate the scope of WOTUS consistent with the Clean Water Act and Supreme Court precedent;
- Establishing that jurisdictional tributaries must connect to traditional navigable waters either directly or through other features that provide predictable and consistent flow;

- Reaffirming that wetlands must be indistinguishable from jurisdictional waters through a continuous surface connection, which means that they must touch a jurisdictional water and hold surface water for a requisite duration year after year;
- Strengthening state and tribal decision-making authority by providing clear regulatory guidelines while recognizing their expertise in local land and water resources;
- Preserving and clarifying exclusions for certain ditches, prior converted cropland, and waste treatment systems; Adding a new exclusion for groundwater; and
- Incorporating locally familiar terminology, such as "wet season," to help determine whether a water body qualifies as WOTUS;
- In addition, the limitation to wetlands that have surface water at least during the wet season and abut a jurisdictional water will further limit the scope of permafrost wetlands that are considered to have a continuous surface connection under the proposed rule. These proposed changes are intended to provide clarity and consistency to the continuous surface connection definition.

EPA states by way of introduction to the proposed rule that in September 2023, the agencies issued a final rule without notice and comment amending the regulations defining WOTUS to conform to the Supreme Court's Sackett decision. They state that numerous concerns raised by stakeholders about the Amended 2023 Rule, including that the Amended 2023 Rule does not adequately comply with the Supreme Court's interpretation in Sackett of the scope of Federal jurisdiction under the Act as well as identifying implementation-related issues. The agencies argue that in this proposed rule they are revising the 2023 rule to:

- Implement the Sackett decision.
- Provide greater regulatory certainty.
- Increase Clean Water Act program predictability and consistency.

The Delta Coalition states by way of introduction that since the 1930's Louisiana has lost over 2,000 square miles of land. As a result, they argue that:

… Any efforts to dilute Clean Water Act (CWA) protections will accelerate Louisiana's catastrophic land loss, weaken safeguards for coastal communities, and undermine decades of coordinated restoration work essential to sustaining our economy, industries, and wildlife.

The comments by way of overview argue that the proposed rule:

- Misapplies the Sackett decision, introducing arbitrary requirements that would strip protections from the wetlands most essential to Louisiana's resilience;
- Disregards the national significance of Louisiana's coast;
- Puts communities at greater risk by stripping away natural flood protections; and,
- Undermines Louisiana's leadership in coastal restoration.

Each of these arguments are discussed in greater detail in the Delta Coalition comments.

A copy of the Delta Coalition comments can be found here.