# Waters of the United States/Clean Water Act: Arkansas Farm Bureau Comments on the U.S. EPA Proposed Rule



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The Arkansas Farm Bureau ("ARFB") submitted January 5th comments to the United States Environmental Protection Agency and United States Corps of Engineers (collectively, "Corps") on the proposed rule to revise the definition of "Waters of the United States" ("WOTUS"). See Docket (EPA-HQ-OW-2025-0322).

ARFB was formed in 1935 and states it represents more than 190,000 member families in the State of Arkansas and is a:

… grassroots organization that advocates for and promotes agriculture throughout Arkansas, the region, and the country.

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 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.

ARFB comments include points such as:

- Agriculture (like any other economic sector) needs removal of uncertainty and the mitigation of risk.
- Farmers need clear, practical rules to protect water quality that will allow them to continue producing the safest and most affordable food, fuel and fiber in the world.
- The definition of WOTUS has been confusing, unpredictable, and, at times, adversarial.
- Unclear rules expose farmers to the risk of major fines or penalties from overzealous federal employees and/or private citizens for routine work such as:
- Tillage;
- Planting;
- Fencing;
- Installing conservation practices.
- The Supreme Court's 2023 decision in *Sackett v. EPA* provided essential clarity by rejecting the "significant nexus" test and directing the agencies to rely on the "relatively permanent" standard.
- The *Sackett* decision includes a requirement for a continuous surface connection to assert federal jurisdiction.
- Rejecting this significant nexus test and relying on the "relatively permanent" standard better reflects the Clean Water Act's intention and provides a clearer framework for farmers and landowners.

A copy of the comments can be found here.