Waters of the United States/Clean Water Act: Arkansas Wildlife Federation/National Wildlife Federation Comments on the U.S. EPA Proposed Rule

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The National Wildlife Federation, Arkansas Wildlife Federation, and 24 other environmental organizations (collectively, "NWF") submitted January 5th comments to the United States Environmental Protection Agency and United States Corps of Engineers the collectively, "Corps") on the proposed rule to revise the definition of "Waters of the United States" ("WOTUS"). See Docket (EPA-HQ-OW-2025-0322).

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.

By way of introduction, NWF states that it is writing in:

… strong opposition to the Environmental Protection Agency's (EPA) and Army Corps of Engineers' (Corps) proposal to redefine the scope of waters federally covered under the Clean Water Act.

The organizations acknowledge the need for durability and certainty in crafting a definition of "WOTUS," but expressed concern that the proposal:

… will lead to greater regulatory uncertainty and confusion, as well as the unnecessary removal of protections for countless wetlands and streams.

Concern is also expressed that by:

… abandoning science and common sense, this proposal recklessly targets waters upon which we all rely, potentially leaving more waters open to federally unregulated pollution and destruction than at any other time in history since the passage of the Clean Water Act in 1972.

Components of the NWF comment include:

- Further Clarification of *Sackett* is Not Necessary (proposed rulemaking will unnecessarily erode protections already curtailed by *Sackett* further by imposing new and confusing standards that resist protections in a manner not required by the decision and in contravention of science and the purpose of the Clean Water Act to restore and maintain the chemical, physical, and biological integrity of the Nation's waters).
- Creates More Uncertainty and Harm (the concept of “wet season” to determine jurisdiction is not defined and the proposal would eliminate protections from ephemeral streams, which provide over 50% of the flow to our most treasured rivers used in drinking water supplies, and from some intermittent streams).
- Fails to Account for Impact on Communities, Wildlife, and the Economy (fails to quantify any of the potential impacts from this rule of losing protections for countless waters).
- Abandons Cooperative Federalism (many states simply do not have protections for at-risk waters - meaning that the waters are effectively left open for unregulated destruction or dumping without federal safeguards).

A copy of the NWF comments can be found here.