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

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The Arkansas Rice Federation (“ARF”) submitted January 15th comments to the United States Environmental Protection Agency and United States Army 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 ARF describes itself as the umbrella organization representing the state’s entire rice industry comprised of:

- Arkansas Rice Farmers.
- Arkansas Rice Council.
- Arkansas Rice Millers.
- Arkansas Rice Merchants.

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, the ARF comments note that Arkansas leads the United States in rice production by producing almost 50% of the rice produced in the country. The organization further notes that over the past several years the rice industry has reduced:

- Water use by 52%
- Energy use by 34%
- Greenhouse emissions by 41%
- Soil erosion by 28%

ARF asserts that simultaneously land efficiency has increased by 39%.

Points raised by the ARF comments include:

- Appreciation of the Corps commitment to abiding by the decision of *Sackett v. EPA*.
- Request that EPA establish a definition that is durable, legally sustainable, protective of water quality and the environment.
- Simultaneously facilitate economic activity (including the production of food and fiber) because of its critical importance for the continued security of the United States.

ARF recognizes that the proposed rule would make the following changes to the 2023 definition:

- Eliminates the (a)(1)(iii) interstate waters category.
- Deletes the term “intrastate” from the (a)(5) lakes and ponds category.
- Adds definitions of several key terms and phrases:
 - (i) continuous surface connection.
 - (ii) ditch.
 - (iii) prior converted cropland.
 - (iv) relatively permanent.
 - (v) tributary.
 - (vi) waste treatment system.
- Adds an exclusion for groundwater.

The ARF also endorses the comments submitted by USA Rice and Waters Advocacy Coalition.

A copy of the ARF comments can be found [here](#).