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Waters of the United States/Clean Water Act: Federal Court (Mississippi) Addresses U.S. Army Corps of Engineers Request for Stay of Challenge to Approved Jurisdictional Determination

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A United States District Court (S.D., Miss.) addressed in a July 31st Order the United States Army Corps of Engineers ("Corps") requesting a stay pending publication of a final rule revising the definition of "waters of the United States" ("WOTUS"). *See Ward Gulfport Properties, L.P., et al., v. United States Army Corps of Engineers, et al.*, 2026 WL 2211521.

Ward Gulfport Properties, L.P. and an individual (collectively, "WGP") opposed the motion.

WGP filed suit in federal court seeking injunctive relief after the Corps issued Approved Jurisdictional Determinations ("AJDs") for two parcels of WGP's property. The AJDs determined that Property A and Property B were required to obtain a permit under Section 404 of the Clean Water Act prior to any development.

The AJDs identified the presence of WOTUS. However, the federal court later granted the Corps' motion for partial dismissal of WGP's claim as to Property A without prejudice for lack of subject-matter jurisdiction.

WGP asserted that the Corps' finding of wetland and tributary jurisdiction as to Property B is "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law." They challenged the Corps' finding of a "continuous surface connection" between the onsite wetlands and Turkey Creek along with the designation of a "relatively permanent tributary."

The federal court notes that on November 20, 2025, The U.S. Environmental Protection Agency ("EPA") and the Corps published a proposed rule in light of the U.S. Supreme Court decision in *Sackett*. *See Updated Definition of 'Waters of the United States*, 90 Fed. Reg. 52498 (Nov. 20, 2025).

The Corps informed the court that the agencies have received more than 200,000 comments on the proposed rule and believes that final agency action will likely occur in "months up to a year" from now. The Corps sought to stay the case in light of this rulemaking, arguing that the federal court should place GWP's remaining challenge as to Property B in abeyance:

... pending the Agencies' final action concerning a proposed rule to modify the definition of 'waters of the United States', with the USACE providing status reports every 60 days.

After publication of the final rule, the court states that the challenged ADJ could be reopened at GWP's request which could resolve the litigation.

GWP opposed the stay, arguing that:

... the possibility that the USACE could reconsider its decision after the final rule is published is speculative, that the requested stay is indefinite, and that nothing about the pending rulemaking prevents the Court from reviewing the USACE's final agency action under the Administrative Procedures Act.

The court states:

- Power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.
- Proponent of a stay bears the burden of establishing its need.
- A trial court's "judgment range" in making a scheduling decision "is exceedingly wide."

The court describes the case as remaining in its infancy, and states that a request to reconsider at a future date would render whatever actions the court, the parties, and their counsel had taken up until that point a waste of resources. It further states that a stay would alleviate those concerns and would conserve resources, and GWP can later decide whether to seek reconsideration before the USACE, which would obviate the need for judicial review, or in the alternative simply move to lift the stay and resume this case. Further, the court stated that if GWP sought to develop Property B, it could seek a Section 404 permit.

The federal court holds that it agrees that staying the case would result in the most efficient and productive use of time and effort for itself, the parties, and their counsel.

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