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To Conform with Recent Supreme Court Decision, EPA and Army Amend “Waters of the United States” Rule

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Contact Information

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WASHINGTON – Today, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (the agencies) announced a final rule amending the 2023 definition of “waters of the United States” to conform with the recent Supreme Court decision in *Sackett v. EPA*. The agencies are committed to following the law and implementing the Clean Water Act to deliver the essential protections that safeguard the nation’s waters from pollution and degradation. This action provides the clarity that is needed to advance these goals, while moving forward with infrastructure projects, economic opportunities, and agricultural activities.

“While I am disappointed by the Supreme Court’s decision in the *Sackett* case, EPA and Army have an obligation to apply this decision alongside our state co-regulators, Tribes, and partners,” said **EPA Administrator Michael S. Regan**. “We’ve moved quickly to finalize amendments to the definition of ‘waters of the United States’ to provide a clear path forward that adheres to the Supreme Court’s ruling. EPA will never waver from our responsibility to ensure clean water for all. Moving forward, we will do everything we can with our existing authorities and resources to help communities, states, and Tribes protect the clean water upon which we all depend.”

“We have worked with EPA to expeditiously develop a rule to incorporate changes required as a result of the Supreme Court’s decision in *Sackett*,” said **Michael L. Connor, Assistant Secretary of the Army for Civil Works**. “With this final rule, the Corps can resume issuing approved jurisdictional determinations that were paused in light of the *Sackett* decision. Moving forward, the Corps will continue to protect and restore the nation’s waters in support of jobs and healthy communities.

While EPA’s and Army’s 2023 rule defining “waters of the United States” was not directly before the Supreme Court, the decision in *Sackett* made clear that certain aspects of the 2023 rule are invalid. The amendments issued today are limited and change only parts of the 2023 rule that are invalid under the *Sackett v. EPA* decision. For example, today’s final rule removes the significant nexus test from consideration when identifying tributaries and other waters as federally protected.

The Supreme Court’s Decision in *Sackett v. EPA*, issued on May 25, 2023, created uncertainty for Clean Water Act implementation. The agencies are issuing this amendment to the 2023 rule expeditiously—three months after the Supreme Court decision—to provide clarity and a path forward consistent with the ruling. With this action, the Army Corps of Engineers will resume issuing all jurisdictional determinations. Because the sole purpose of this rule is to amend specific provisions of the 2023 Rule that are invalid under *Sackett*, the rule will take effect immediately.

The agencies will work with state, Tribal and local partners to safeguard waters in need of protection following the *Sackett v. EPA* decision and will continue to use all available tools to protect public health and provide clarity for stakeholders.

The agencies will host a public webinar on September 12, 2023 to provide updates on the definition of “waters of the United States.” For registration information, please visit EPA’s webpage for the amendments rule <<https://epa.gov/wotus/amendments-2023-rule>>. The agencies also plan to host listening sessions this fall with co-regulators and stakeholders, focusing on identifying issues that may arise outside this limited rule to conform the definition of “waters of the United States” with the *Sackett v. EPA* decision.

Learn more about this action on EPA’s “waters of the United States” website <<https://epa.gov/wotus>>.

Background

On January 18, 2023, the agencies published a final rule <<https://epa.gov/wotus/revising-definition-waters-united-states>> revising the definition of “waters of the United States”, which became effective on March 20, 2023. On May 25, 2023, the Supreme Court issued a decision in the case of *Sackett v. EPA*.

The Clean Water Act prohibits the discharge of pollutants from a point source into “navigable waters” unless otherwise authorized under the Act. “Navigable waters” are defined in the Act as “the waters of the United States, including the territorial seas.” Thus, “waters of the United States” is a threshold term establishing the geographic scope of federal jurisdiction under the Clean Water Act. The term “waters of the United States” is not defined by the Act but has been defined by the agencies in regulations since the 1970s and jointly implemented in the agencies’ respective programmatic activities.

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