



LOUISIANA WILDLIFE FEDERATION

The voice of Louisiana's wildlife and natural resources since 1940.

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U.S. Environmental Protection Agency, Office of Water
U.S. Department of the Army, Office of the Assistant Secretary of the Army for Civil Works
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Comments on the Supplemental Notice of Proposed Rulemaking, "Definition of 'Waters of the United States,'" Docket No. EPA-HQ-OW-2025-0322

Dear Administrator Zeldin and Assistant Secretary Telle:

The Louisiana Wildlife Federation (LWF) submits these comments on the Supplemental Notice of Proposed Rulemaking (SNPRM) concerning the definition of "waters of the United States" (WOTUS) under the Clean Water Act, and specifically on the additional alternatives the agencies have put forward for the terms "perennial," "relatively permanent," and "continuous surface connection." Founded in 1940, LWF is one of Louisiana's oldest and largest conservation organizations, representing more than 10,000 members and 23 affiliate organizations of hunters, anglers, birders, and outdoor enthusiasts committed to science-based stewardship of Louisiana's natural resources.

LWF recognizes that EPA and the Department of the Army must implement the Supreme Court's 2023 decision in *Sackett v. EPA*. We do not ask the agencies to restore the significant-nexus standard the Court rejected, or to extend federal jurisdiction beyond the limits set by the Clean Water Act and *Sackett*. Our concern is narrower and specific. The supplemental alternatives would further restrict jurisdiction by generally limiting "relatively permanent" waters to perennial waters, and by defining "continuous surface connection" to require perennial surface water in a wetland, subject to limited interruptions. The agencies are considering these options alongside, not in place of, the November 2025 proposal. LWF urges the agencies to implement *Sackett* faithfully, and not to adopt additional restrictions the Court did not require and that would unnecessarily exclude functioning waters and wetlands from Clean Water Act jurisdiction.

I. The Supplemental Proposal Presents a Narrow but Consequential Choice

The scope of this supplemental rulemaking should stay at the center of the agencies' consideration. The September notice does not reopen every aspect of the November 2025 proposal, it seeks comment on new alternatives for specific terms, "perennial," "relatively permanent," and "continuous surface connection", and the agencies state expressly that these options do not replace the November alternatives. The question is therefore not whether the

agencies must implement Sackett. They must. The narrower question is whether Sackett requires them to move from a definition that recognizes meaningful seasonal flow to one built substantially on perennial water. LWF does not believe the agencies have established that it does.

That distinction carries weight beyond a single program. The WOTUS definition sets the geographic reach of multiple Clean Water Act authorities, including Sections 301, 311, 401, 402, and 404, which the agencies identify as implicated by this rulemaking. A narrower jurisdictional line therefore has consequences well beyond Section 404 permitting alone.

II. “Relatively Permanent” Should Not Be Converted Into “Perennial”

The November 2025 proposal allowed “relatively permanent” waters to include those standing or continuously flowing year-round or at least during the wet season. The supplemental alternative is substantially narrower: under one option now on the table, “perennial” would mean having standing or flowing water every day of the year under ordinary conditions, and “relatively permanent” would then focus on perennial bodies of water, subject to limited exceptions for irregular events or temporary interruptions. That is a significant and substantive change, and it should not be made casually. Sackett used the term “relatively permanent.” It did not replace that term with “perennial,” and the two should not be treated as interchangeable.

Many natural waters are predictable, persistent parts of a watershed even though their surface flow varies with the season. A tributary that carries continuous water through the ordinary wet season and predictably diminishes in drier conditions is fundamentally different from a temporary feature that flows only in direct response to rainfall. A perennial-only definition risks treating the two alike the moment seasonal flow ceases. The agencies should retain a definition capable of telling them apart, one that keeps a meaningful seasonal or wet-season component in “relatively permanent” so that predictable seasonal waters are not swept out alongside the truly ephemeral.

III. “Continuous Surface Connection” Should Reflect Ordinary Hydrologic Conditions

The same concern applies to the supplemental alternative for “continuous surface connection.” The agencies are considering a definition requiring perennial surface water in a wetland, continuously connected with jurisdictional water such that it is difficult to tell where the water ends and the wetland begins, subject to specified temporary interruptions. LWF agrees the final rule must satisfy Sackett’s continuous-surface-connection requirement. The question is whether meeting that requirement also demands perennial surface water, and we do not believe it does.

Wetlands naturally expand and contract with rainfall, river stages, tides, and season. A temporary reduction in surface water under ordinary conditions does not necessarily change the underlying physical relationship between a wetland and the water beside it. The agencies should not adopt a test under which an otherwise qualifying wetland loses jurisdiction simply because its ordinary hydrologic cycle includes a seasonal drawdown. The relevant question should remain whether the wetland satisfies the physical relationship Sackett requires under ordinary conditions, not whether water is present every single day of the year.

IV. The Agencies Should Distinguish What Sackett Requires from What Is a Policy Choice

This is the point LWF most wants the agencies to take from this comment. Not every exclusion under consideration appears to be compelled by Sackett. Some of the narrowing in the

supplemental alternatives reflects discretionary policy judgment by the agencies, not a command from the Court. The agencies acknowledge they cannot reliably quantify the national effect of these alternatives, while also recognizing the changes could be significant for jurisdiction over streams and wetlands. That combination – large potential effect and uncertain magnitude – counsels caution and it makes the required-versus-chosen distinction essential.

Regulatory certainty is a legitimate goal, and landowners, producers, businesses, agencies, and conservation groups all benefit from clear, predictable standards. But certainty and contraction are not the same thing, and a standard can be clear without being unnecessarily narrow. Before selecting a perennial-only approach, the agencies should determine, as far as reasonably possible, what categories of waters and wetlands would lose jurisdiction relative to the November 2025 proposal, the regional distribution of those changes, how they would affect the Clean Water Act programs that depend on the WOTUS definition, and most importantly, whether each resulting exclusion is required by Sackett or is instead represents a discretionary agency choice.

V. The Consequences Reach Beyond the Jurisdictional Line

The significance of WOTUS is not simply whether a feature is labeled federal or non-federal. Jurisdiction determines whether the Act's substantive requirements apply at all. Section 404 provides the permitting framework for discharges of dredged or fill material into jurisdictional waters, a process that can require evaluation of alternatives, avoidance and minimization of impacts, and compensatory mitigation for unavoidable losses. Sections 401 and 402 likewise depend on the scope of covered waters. When federal jurisdiction is removed, that review does not automatically transfer to another level of government. In some states, state law provides comparable protection. In others, it does not.

The agencies' public description of the supplemental proposal notes that waters outside federal jurisdiction may remain subject to state, Tribal, or local law. That is correct as a matter of legal authority, but it should not be read to mean that every excluded water is subject to an equivalent state permitting program. Removing federal jurisdiction is not, in every case, a transfer of regulation from one government to another. In some circumstances it is a net reduction in regulation, and the agencies should say so honestly in evaluating these alternatives.

VI. Louisiana Illustrates Gaps in State Regulation

Louisiana exercises statewide water-quality regulatory authority through the Louisiana Department of Environmental Quality and within the coastal zone, a coastal permitting and management framework that provides additional review for many activities affecting coastal resources. But outside the coastal zone, Louisiana does not operate a comprehensive statewide dredge-and-fill permitting program equivalent to Section 404, and it has not assumed the federal 404 program. The State's recently-created CURRENT Authority coordinates inland flood and water-resource planning, and may improve statewide water management, but it is a planning body, not a substitute wetland permitting program. Louisiana exercises statewide water-quality regulatory authority through the Louisiana Department of Environmental Quality

The consequence is straightforward. When a Louisiana wetland outside the coastal zone loses federal jurisdiction, it should not be assumed that an equivalent state wetland permit takes its place. Depending on location and activity, the result may instead be the loss of the permitting process that previously required avoidance, minimization, mitigation, and public review. LWF

does not raise this to ask the agencies to expand Louisiana law or to define what the state's future framework should be. We raise it because the agencies should accurately describe the real-world effect of their own jurisdictional decision, and because this state, with roughly 40 percent of the coastal wetlands in the lower 48 states and billions of dollars committed to rebuilding its coast, is precisely where an inaccurate assumption about "transfer" to the state would do real damage.

VII. Regional Hydrology Matters to a National Definition

A durable national WOTUS definition must work across very different hydrologic regions, and a rigid perennial threshold makes that harder. A tributary in the Gulf Coastal Plain may follow a predictable annual cycle that looks nothing like a stream elsewhere in the country. That its surface flow predictably diminishes for part of the year does not make it temporary, isolated, or rainfall created. The agencies should keep enough flexibility to determine ordinary hydrologic conditions using objective evidence, flow records, field observations, historic aerial imagery, remote sensing, precipitation records, ordinary wet-season conditions, soils, and vegetation. This does not require returning to the significant-nexus test Sackett rejected, and it does not require an open-ended case-by-case standard. It simply recognizes that "relatively permanent" and "perennial" are not synonyms, and that ordinary hydrologic conditions differ by region.

VIII. Recommendations

For the reasons above, the Louisiana Wildlife Federation respectfully recommends that the agencies:

1. **Retain a meaningful seasonal or wet-season component in "relatively permanent,"** rather than adopting an exclusively perennial standard.
2. **Decline to make perennial surface water an independent prerequisite for continuous surface connection** where the physical relationship Sackett requires otherwise exists under ordinary hydrologic conditions.
3. **State clearly in the final rule which limitations Sackett requires and which are agency policy choices,** so the record distinguishes the Court's lines from the agencies' own.
4. **Evaluate and disclose the expected jurisdictional consequences of the supplemental alternatives** relative to the November 2025 proposal, including their effects on streams, wetlands, and the Clean Water Act programs that depend on the WOTUS definition.
5. **Retain sufficient regional flexibility** to account for ordinary hydrologic conditions, using objective and administrable evidence to provide certainty.
6. **Do not assume that waters removed from federal jurisdiction will automatically receive equivalent state protection and** recognize in the record the differences among state programs and the potential for actual regulatory gaps.
7. **Evaluate the consequences for Section 404 permitting,** including avoidance, minimization, and compensatory mitigation, before adopting definitions that substantially reduce the waters subject to those requirements.
8. **Implement Sackett faithfully,** without narrowing Clean Water Act jurisdiction beyond what the statutory text and the Court's decision require.

IX. Conclusion

LWF recognizes the agencies' responsibility to establish a clear and durable definition of "waters of the United States" after Sackett, and our concern is not with that objective. It is with whether the additional alternatives in this supplemental notice would move beyond implementing the Court's decision and impose a substantially narrower, perennial-water limitation that Sackett did not require. The physical and ecological functions of seasonal tributaries, floodplain wetlands, swamps, and coastal marshes do not disappear when the season changes, and neither should the agencies assume that removing federal jurisdiction simply hands responsibility to the states. In some places, Louisiana among them, there is no equivalent state permit waiting to take over, and the practical result of excluding additional waters may not be a shift of regulation from one government to another but the loss of the permit review altogether.

The Louisiana Wildlife Federation therefore urges EPA and the Department of the Army to retain the seasonal and wet-season concepts available under the November 2025 proposal, reject an unnecessarily restrictive perennial-only interpretation, distinguish clearly between what Sackett requires and what the agencies choose, and adopt a final rule that implements the Court's decision faithfully without extending its limitations beyond what the Court actually held.

Thank you for the opportunity to comment. LWF welcomes further engagement and is available to provide additional information at the agencies' request.

Respectfully submitted,



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