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WLF Hails New EPA Proposal Clarifying the Definition of “Waters of the United States” *(In re Updated Definition of “Waters of the United States”)*

“When it comes to faithfully applying the Supreme Court’s decision in *Sackett v. EPA*, the agencies should realize they can’t swim with the Court’s current only part of the way.”

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today advised the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers to adopt the agencies’ latest proposed regulatory changes to the definition of “waters of the United States.”

In *Sackett v. EPA*, the Supreme Court settled a long-running dispute about the scope of the Clean Water Act (CWA) and held that the law applies to only those bodies of water “that are as a practical matter indistinguishable from” lakes and rivers. In late 2025, the EPA and the Corps proposed a new rule that largely conformed with *Sackett*. But, as WLF’s comment on that initial proposal noted, the regulation suffered from two problems. First, it offered a vague and capacious definition of a “relatively permanent” waterbody. Second, it tied federal jurisdiction to the concept of a “wet season”—which could practically result in the CWA applying to oft-dry land. In September 2026, the agencies issued a supplemental proposal, which addressed both of WLF’s concerns.

As WLF’s comment explains, the supplemental’s regulatory language resolves the deficiencies in the original proposed rule. By limiting the CWA’s reach to only “perennial” bodies of water, the agencies faithfully apply *Sackett*. What’s more, it does so with clear regulatory text that ensures that “any citizen—let alone a sophisticated company counsel advising her client—can determine whether a parcel is CWA-regulated ‘simply by observation,’” rather than recourse to hydrological or legal experts.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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