



NATIONAL ASSOCIATION OF STATE FORESTERS

444 North Capitol Street NW | Suite 387 | Washington, DC 20001 | www.stateforesters.org

April 23, 2025

Letter to be submitted electronically to:

<https://www.regulations.gov>

Re: Docket ID No. EPA–HQ–OW–2025–0093 Public input to the WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations

Dear Sir/Madam:

The National Association of State Foresters (NASF) appreciates the opportunity to provide comments on certain key topics related to the implementation of the definition of “waters of the United States” (WOTUS), in light of the Supreme Court’s 2023 decision in *Sackett v. Environmental Protection Agency*.

NASF, established in 1920, represents the heads of the state forestry agencies in all fifty states, the U.S. territories, and the District of Columbia. Our members are either directly responsible for or the primary deliverers of sustainable forest management on three hundred million acres of family, state, and locally owned forest land. State forestry agencies also provide wildfire protection on more than 1.5 billion acres nationwide and often assist in managing federal forests. Over half of the nation’s drinking water supply comes from forested landscapes. Forests are the most effective land use type in protecting water quality and are key to protecting groundwater reserves.

Through all the iterations of policy deliberation over WOTUS in the past decade, NASF has been a consistent supporter of both regulatory clarity and reduced federal overreach in the definition and implementation of WOTUS under the Clean Water Act. We support the efforts being made to gather recommendations on the meaning of key terms considering the *Sackett* decision to inform any future administrative actions to ensure clear, transparent, efficient, and predictable implementation of WOTUS.

NASF supports language from the preamble to the 2023 Rule, which states that “relatively permanent” tributaries are those tributaries with flowing or standing water year-round or continuously during certain times of the year and more than just a short duration in direct response to precipitation. NASF supports that “relatively permanent” tributaries may be subject to the Clean Water Act.

Additionally, NASF supports the scope of “adjacency” to wetlands in the definition of WOTUS from the *Sackett* decision to include only those adjacent wetlands that have a continuous surface connection because they directly abut jurisdictional water that are not separated by uplands.

NASF believes that including characteristics such as flow, duration, or seasonality in water features as part of a WOTUS definition is not practical due to the diversity of hydrology nationwide.

NASF supports the agencies implementing the “continuous surface connection” to mean abutting or “touching” jurisdictional waters and not using the exclusion of natural berms or if they are behind a natural berm or similar natural landform where that natural landform provides evidence of a continuous surface connection. In addition, NASF supports the “continuous surface connection” to wetlands, and phenomena like low tides or dry spells.

While we support jurisdictional WOTUS status on canals that are intended for commerce and ditches that are channelized stream tributaries, minor wetland silvicultural ditches should be considered wetland extensions, not new artificial “tributaries.” This interpretation would be consistent with the silvicultural exemptions codified in Section 404(f) of the Clean Water Act and state-adopted silvicultural Best Management Practices (BMPs).

NASF supports a rule that provides States with greater decision-making authority when determining whether a water feature warrants protection under a federal WOTUS designation. NASF also supports maintaining definitions that are either inclusive of, or not in conflict with, the diversity of state program definitions already in place, such as definitions used in states’ BMPs manuals. Any WOTUS rule should provide some flexibility for regional or state-specific criteria rather than a one-size-fits-all national standard. Doing so will provide land managers with the flexibility they need, while also ensuring consistency in implementation.

Thank you for this opportunity to comment. We look forward to collaborating closely with you as this process continues.

Sincerely,

Jay Farrell
Executive Director
National Association of State Foresters