



CLEAN WATER ACT – DEFINITION OF “WATERS OF THE U.S.”

The Clean Water Act (CWA) authorizes the U.S. Army Corps of Engineers (Corps) and Environmental Protection Agency (EPA) to federally regulate “navigable waters,” defined in the Act as the “waters of the United States (WOTUS), including the territorial seas.” All other waters generally remain under the protection of state and local governments.

For decades, confusion surrounding the CWA’s reach has led to widespread regulatory uncertainty, costly litigation, and stifled economic growth. The EPA and the Corps have proposed a new rule that would roll back the successful Navigable Waters Protection Rule (NWPR) and replace it with an updated version of the pre-2015 regulatory regime. We are very disappointed that the agencies are moving in this direction because the NWPR provided clarity to the term “navigable waters.” The NWPR is environmentally protective and respects the line Congress drew between state and federal authority.

On October 3, 2022, the Supreme Court will hear oral arguments in the high-profile CWA case, *Sackett v. Environmental Protection Agency*. A decision in this case could provide significant clarity on what is the proper test for determining which wetlands are “waters of the United States” under the CWA.

AFBF OBJECTIVES

Farm Bureau’s WOTUS objectives are to:

- Ensure that the Corps and EPA produce a rulemaking that respects Supreme Court precedent and Congressional intent;
- Ensure any rulemaking provides clarity and certainty;
- Ensure landowners are able to understand when they need CWA §404 permits, including where federal jurisdiction ends and state jurisdiction begins; and
- Ensure Farm Bureau members can navigate both individual or nationwide permits or know when to obtain the services of environmental consultants and legal counsel.

AFBF POLICY

Farm Bureau supports a rule that conforms to the limits set by Congress and reinforced by the U.S. Supreme Court.

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