



Forest Resources Association
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January 5, 2026

Stacey M. Jensen
U.S. Environmental Protection Agency
EPA Docket Center, Water Docket, Mail Code 28221T
1200 Pennsylvania Avenue, NW (Mail code 4504T)
Washington, DC 20460
OW-Docket@epa.gov

RE: Comments on Docket ID EPA-HQ-OW-2025-0322

Dear Director Jensen:

The Forest Resources Association (FRA) has reviewed the U.S. Environmental Protection Agency and the U.S. Department of the Army's proposed rulemaking to revise the regulations defining the scope of waters federally covered under the Clean Water Act in light of the Supreme Court's decision in *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).

FRA is the only national trade association representing the entire wood supply chain¹, representing the interests of more than 300 organizations and businesses in the forest products industry. Our members include forest landowners, suppliers, consuming mills, associated businesses, and state forestry associations. The mission of FRA is to promote the interests of its members in the economic, efficient, and sustainable use of forest resources to produce products Americans use every day. FRA members are represented in 49 states and 387 congressional districts, and members and their businesses are part of a forest product industry that provides for the livelihoods of nearly 940,000 families and contributes more than \$293 billion annually to the U.S. economy.

For decades, the Clean Water Act ("CWA") has created significant uncertainty for the forestry industry. Foresters have been forced to interpret what constitutes "Waters of the United States" ("WOTUS") and anticipate how regulators might apply the rule's vague or ambiguous terms.

FRA supports the proposed revisions because they introduce clearer, more consistent definitions; align with the statute and Supreme Court precedent; and maintain the states' traditional authority over land and water use. FRA also supports eliminating the standalone interstate waters category.

In *Sackett vs. Environmental Protection Agency*², the Supreme Court issued a definitive majority opinion clarifying the scope of WOTUS. In the decision, the Court held that the CWA applies only to water and that, to qualify as WOTUS, the water must be part of a body of water that is relatively permanent, standing, or continuously flowing. The decision further limits federal jurisdiction to relatively permanent waterways (RPWs) that are connected to traditional

¹ <https://forestresources.org/resources/wood-supply-chain-schematic/>

² *Sackett v. Environmental Protection Agency*, 566 U.S. 120 (2012)

navigable waters and wetlands, are practically indistinguishable from those waters, unless jurisdictional barriers were unlawfully constructed.

The court also reaffirmed that agencies cannot remove the word “navigable” from the statute. As a result, the CWA does not extend to all water features, such as isolated ponds or seasonal, non-permanent streams that do not connect to a navigable waterway. These corrections are essential to help landowners and the general public understand which waters are federally regulated and to reduce the risk of inadvertent violations.

Traditional Navigable Waters (TNWs)

FRA supports narrowing the (a)(1) Traditional Navigable Waters category because it restores the CWA focus on waters that are actually capable of navigation and used as a means to *transport* commercial goods. The current regulations define TNWs far more broadly, improperly expanding the definition to include waters that are, were, or could be subject to any use in interstate *commerce*, even if they have never served as channels for transporting goods. This approach improperly expands federal jurisdiction beyond what the statute and Supreme Court precedent allow.

The Proposed 2025 WOTUS Rule appropriately corrects this overreach by aligning the TNW definition with the Supreme Court’s direction in *Sackett v. EPA*, which reaffirmed that the CWA covers only “relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes.”³ The proposal also reflects the agencies’ stated intent to bring the rule into conformity with *Sackett* and to provide greater regulatory certainty by clarifying jurisdictional categories.⁴

FRA supports this revision because it better aligns the regulatory text with the CWA’s statutory intent, reduces inconsistencies in application, and provides a more predictable framework for both regulators and the regulated community. The updated language offers a clear, understandable approach that removes unnecessary subjectivity and enhances compliance certainty for forest landowners and operators.

Support for Eliminating the Standalone Interstate Waters Category

FRA supports the proposed elimination of the standalone (a)(3) “interstate waters” category because it aligns the regulatory text with both Congressional intent and the Supreme Court’s direction in *Sackett v. EPA*. As the agencies explain in the Proposed 2025 WOTUS Rule, the proposal would “remove interstate waters from the categories of jurisdictional waters to make clear that such waters no longer gain jurisdiction by simply crossing state lines.” This revision is necessary to ensure that the CWA remains grounded in the statutory requirement that jurisdiction applies only to navigable waters.

³ https://www.epa.gov/system/files/documents/2025-12/wotus-proposed-rule_508c.pdf

⁴ <https://www.hklaw.com/en/insights/publications/2025/11/the-last-wave-epa-and-army-corps-seek-to-conform-wotus-definition>

Under regulator frameworks, the inclusion of a standalone “interstate waters” category effectively removed the navigability requirement embedded in the (a)(1) TNW category. By treating any interstate water—whether navigable or not—as jurisdictional, the agencies expanded federal authority beyond what the CWA authorizes. The Supreme Court’s *Sackett* decision reaffirmed that the CWA reaches only “relatively permanent, standing or continuously flowing bodies of water” and that jurisdiction cannot be based solely on a water’s location or its potential for any form of interstate commerce. The agencies’ proposal correctly reflects this limitation by removing automatic jurisdiction for interstate waters.

For the forestry sector, which routinely operates across state boundaries, the prior interstate-waters category created unnecessary uncertainty and exposed landowners to federal permitting obligations for features that were not navigable and did not meet the statutory definition of WOTUS. The proposed removal of this category restores clarity, reduces regulatory overreach, and ensures that jurisdiction is based on the characteristics of the waterbody—not its position relative to a state line.

FRA therefore supports the elimination of the (a)(3) interstate-waters category as an appropriate and legally sound correction that improves clarity, aligns the rule with *Sackett*, and provides much-needed certainty to the regulated community.

Tributaries

Forestry operations frequently occur near intermittent and ephemeral streams, as well as a variety of small drainage features that may lie close to one another in the landscape. Under prior WOTUS frameworks, the broad treatment of tributaries created significant uncertainty for forest landowners, who often struggled to determine whether these features were federally jurisdictional. If intermittent or ephemeral features were swept into CWA jurisdiction, forest owners could no longer rely solely on state-approved Best Management Practices (BMPs) and forest practice rules and would instead face the prospect of expanded riparian management zones and additional federal permitting obligations.

The Proposed 2025 WOTUS Rule appropriately addresses this longstanding challenge by incorporating the Supreme Court’s *Sackett v. EPA* standard and adding a clear definition of “relatively permanent” to guide tributary determinations. This definition provides an objective threshold for identifying tributaries that may qualify as WOTUS—those that are standing or continuously flowing and that dry up only under extraordinary circumstances. By contrast, intermittent and ephemeral features that flow only in response to precipitation do not meet the relatively permanent standard and therefore fall outside federal jurisdiction.

This clarification is essential for forestry. The proposed rule’s approach ensures that tributaries are regulated based on hydrologic reality rather than on broad or subjective interpretations. It also allows for regional variation in precipitation patterns while still providing a consistent national framework. The agencies’ use of the “wet season” concept further supports accurate, science-based determinations and gives the regulated community confidence when planning and conducting operations in the woods.

By narrowing tributary jurisdiction to features that meet a relatively permanent standard, the proposed rule brings needed clarity, reduces regulatory uncertainty, and ensures that forest landowners can continue to rely on state BMPs and forest practice rules for managing intermittent and ephemeral drainage features. FRA supports this approach as a legally sound and practical improvement that aligns with *Sackett* and the CWA's statutory limits.

Adjacent Wetlands

FRA supports the proposed revisions to the adjacent wetlands category, particularly the agencies' decision to define "continuous surface connection" consistent with the Supreme Court's *Sackett v. EPA* decision. Under the proposed rule, wetlands fall within federal jurisdiction only when they share a continuous surface-water connection with navigable water such that they are practically indistinguishable from that water. This approach appropriately limits jurisdiction to wetlands that function as part of the same waterbody.

FRA also supports the agencies' clarification that mere abutment—physical touching without a surface water connection—is not sufficient to establish jurisdiction. Likewise, the proposal correctly states that wet soils, shallow subsurface hydrology, or potential groundwater exchanges do not constitute a continuous surface connection. These clarifications are essential for forestry operations, as they provide a clear, workable standard that allows operators to distinguish between federally regulated wetlands and those under state authority. This added clarity will give forest managers greater flexibility in planning and conducting operations while maintaining compliance with the CWA.

Exclusions

FRA supports the proposed rule's reaffirmation and clarification of exclusions for prior converted cropland and waste treatment systems. These exclusions have long been essential for providing certainty to landowners and operators, and the agencies' updated definitions help ensure consistent application across regions. By clearly identifying features that fall outside federal jurisdiction, the proposed rule reduces confusion and supports efficient land management.

Ditches

Ditches are a common and necessary feature in forested landscapes. Forest owners construct, maintain, and use ditches to support operations, manage runoff, prevent flooding, and reduce erosion. Many ditches are legacy features from historical land uses—often abandoned, unmapped, or difficult to identify from aerial imagery. In some cases, these ditches function as part of minor drainage systems that Congress explicitly excluded from CWA jurisdiction.

FRA supports the proposed rule's standalone exclusion for ditches, which clarifies that ditches are not jurisdictional regardless of their flow regime. This is a critical improvement for forestry, as it ensures that routine ditch construction and maintenance—activities essential for sustainable forest management—do not trigger federal permitting requirements. The exclusion supports



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environmentally beneficial practices, reduces unnecessary regulatory burdens, and prevents significant financial hardship for forest owners.

Conclusion

Overall, FRA is encouraged by the direction of the Proposed 2025 WOTUS Rule. By narrowing federal jurisdiction to reflect the Supreme Court's *Sackett* decision, the agencies have taken meaningful steps toward a clearer, more workable regulatory framework. The proposed definitions and exclusions provide the regulated community, particularly forest and logging operations, with greater certainty about when the Clean Water Act applies, reducing the risk of inadvertent violations and unnecessary permitting delays. At the same time, the rule preserves the flexibility needed to account for regional differences in climate, hydrology, and forest landscapes. These improvements will support efficient, environmentally responsible forest management while ensuring that federal oversight remains consistent with the statute's limits.

Sincerely,

A handwritten signature in black ink that reads "Tim J. O'Hara".

Tim O'Hara
President, FRA