



# Fact Sheet for the Final Rule: Amendments to the Revised Definition of “Waters of the United States”

August 2023



## Overview

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) announced a final rule amending the 2023 definition of “waters of the United States.”<sup>1</sup> The amendments conform with the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. While EPA’s and Army’s 2023 rule defining “waters of the United States” was not directly before the Supreme Court, the decision in *Sackett* made clear that certain aspects of the 2023 rule are invalid. Therefore, the agencies have amended key components of the regulatory text to conform it to the Supreme Court decision. The final rule provides clarity for protecting our nation’s waters consistent with the Supreme Court’s decision while advancing infrastructure projects, economic opportunities, and agricultural activities.

## Changes to the “Waters of the United States” Categories and Definitions<sup>2</sup>

The agencies’ amendments change the parts of the 2023 definition of “waters of the United States” that are invalid under the *Sackett* decision. For example, the rule removes the significant nexus test from consideration when identifying tributaries and other waters as federally protected. It also revises the adjacency test when identifying federally jurisdictional wetlands, clarifies that interstate wetlands do not fall within the interstate waters category, and clarifies the types of features that can be considered under the “additional waters” category.

### Changes that the agencies have made to the January 2023 Rule categories:

Jurisdictional Category	Key Changes to the January 2023 Rule Regulation Text	Regulatory Text Paragraph
<b>Traditional Navigable Waters</b>	No changes	(a)(1)
<b>Territorial Seas</b>	No changes	(a)(1)
<b>Interstate Waters</b>	Removing interstate wetlands from the text of the interstate waters provision	(a)(1)
<b>Impoundments</b>	No changes	(a)(2)
<b>Tributaries</b>	Removing the significant nexus standard	(a)(3)
<b>Adjacent Wetlands</b>	Removing the significant nexus standard	(a)(4)
<b>Additional Waters</b>	Removing the significant nexus standard; removing wetlands and streams from the text of the provision	(a)(5)

<sup>1</sup> The “Revised Definition of ‘Waters of the United States’” rule published in the Federal Register on January 18, 2023.

<sup>2</sup> These tables are provided for informational purposes; the rule establishes the requirements defining “waters of the United States.”

**Changes that the agencies have made to the January 2023 Rule definitions:**

Definition	Key Changes to the January 2023 Rule Regulation Text	Regulatory Text Paragraph
<b>Wetlands</b>	No changes	(c)(1)
<b>Adjacent</b>	Revised definition to mean “having a continuous surface connection.”	(c)(2)
<b>High tide line</b>	No changes	(c)(3)
<b>Ordinary high water mark</b>	No changes	(c)(4)
<b>Tidal waters</b>	No changes	(c)(5)
<b>Significantly affect</b>	Deleted definition	(c)(6)

## No Changes to the Exclusions from “Waters of the United States”

The amendments to the January 2023 Rule do not change the eight exclusions from the definition of “waters of the United States” that provide clarity, consistency, and certainty. **The exclusions are:**

- **Prior converted cropland**, adopting USDA’s definition and generally excluding wetlands that were converted to cropland prior to December 23, 1985.
- **Waste treatment systems**, including treatment ponds or lagoons that are designed to meet the requirements of the Clean Water Act.
- **Ditches** (including roadside ditches), excavated wholly in and draining only dry land, and that do not carry a relatively permanent flow of water.
- **Artificially irrigated areas**, that would revert to dry land if the irrigation ceased.
- **Artificial lakes or ponds**, created by excavating or diking dry land that are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- **Artificial reflecting pools or swimming pools**, and other small ornamental bodies of water created by excavating or diking dry land.
- **Waterfilled depressions**, created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction operation is abandoned and the resulting body of water meets the definition of “waters of the United States.”
- **Swales and erosional features** (*e.g.*, gullies, small washes), that are characterized by low volume, infrequent, or short duration flow.

Additionally, the agencies’ amended definition of “waters of the United States” does not affect the longstanding activity-based permitting exemptions provided to the agricultural community by the Clean Water Act.

## For More Information

Additional information is available on [EPA’s Waters of the United States website](#).