

### **III. A Broad and Legally Sound WOTUS Regulatory Definition is Critically Important to the Integrity of the Nation's Waters**

The Clean Water Act regulatory definition of “waters of the United States” is critically important to the protection of human health, the wellbeing of communities, the success of local, state and national economies, and the functioning of our nation’s vast, interconnected aquatic ecosystems, as well as the many endangered and threatened species that depend upon those resources. As a nation, we cannot have clean water unless we control pollution at its source—wherever that source may be.

If a body of water is not included in the definition of “waters of the United States,” untreated toxic, biological, chemical, and radiological pollution can be discharged directly into it without meeting any of the Clean Water Act’s permitting and treatment requirements.<sup>22</sup> When waters are excluded from the definition of “waters of the United States,” all of the protections of the Clean Water Act—the Section 402 National Pollutant Discharge Elimination System discharge standards and permitting requirements, the Section 404 Dredge and Fill standards and permitting, water quality standards, effluent limitation guidelines, total maximum daily loads, water quality certifications, and myriad other standards and programs—become inapplicable and cannot prevent pollution, degradation, and destruction as Congress intended.

Waterways excluded from the WOTUS definition can be dredged, filled, and polluted with impunity because the Clean Water Act’s most fundamental human health and environmental safeguard—the prohibition of unauthorized discharges in 33 U.S.C. § 1311(a)—no longer applies. Unregulated pollution discharged into waterways that fall outside the agencies’ regulatory definition will not only harm those receiving waters but will also travel through well-known hydrologic processes before harming other water resources, drinking water supplies, recreational waters, fisheries, industries, agriculture, endangered and threatened species, and, ultimately, human beings.

Prior to August 27, 2015, the Clean Water Act regulatory definition of “waters of the United States” had remained in place largely unchanged since the 1970s and broadly encompassed jurisdiction over the nation’s waters.<sup>23</sup> The Pre-2015 Regulatory Definition was never vacated by any court and is, in fact, currently being applied by the agencies in 26 states.<sup>24</sup> The broad categories of waters included in the Pre-2015 Regulatory Definition are necessary to achieve the objectives of

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<sup>22</sup> For example, the Clean Water Act contains the following core water quality protections: point sources discharging pollutants into waters must have a permit, 33 U.S.C. §§ 1311(a), 1342; the absolute prohibition against discharging “any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste,” § 1311(f); protections against the discharge of oil or hazardous substances, § 1321; and restrictions on the disposal of sewage sludge, § 1345.

<sup>23</sup> See, e.g., 40 C.F.R. § 230.3 (1993) (“Pre-2015 Regulatory Definition”).

<sup>24</sup> The Pre-2015 Regulatory Definition is currently being “implemented consistent with relevant case law and longstanding practice, as informed by applicable guidance, training, and experience, consistent with *Sackett*.” March 24, 2025 Notice, 90 Fed. Reg. at 13429 n.4; see also *Definition of “Waters of the United States”: Rule Status and Litigation Update*, EPA, <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update> (Oct. 21, 2024).