

## V. Comments on Topics Identified in the March 24, 2025 Notice

The March 24, 2025 Notice states that the agencies are seeking “to gather recommendations on the meaning of key terms in light of *Sackett* to inform any potential future administrative actions to clarify the definition of ‘waters of the United States’ and to ensure transparent, efficient, and predictable implementation.”<sup>43</sup> Despite this outreach and the upcoming Listening Sessions soliciting feedback on the definition, it appears that the outcome is predetermined. EPA Administrator Zeldin’s March 12, 2025 press release indicates that the agencies have already decided to revise the current regulatory WOTUS definition, which was just revised in response to the *Sackett* decision in September 2023. Specifically, EPA Administrator Zeldin announced that, in adopting the current definition, “EPA has failed to follow the law and implement the Supreme Court’s clear holding in *Sackett*,” and that this definition “placed unfair burdens on the American people and drove up the cost of doing business.”<sup>44</sup>

However, Congress did not charge the agencies with defining WOTUS in order to “reduce[] red-tape, cut[] overall permitting costs, and lower[] the cost of doing business,” which are the policy goals that EPA Administrator Zeldin stated are motivating the agencies’ actions to quickly revise the definition.<sup>45</sup> The agencies are charged with defining WOTUS in a manner that is consistent with the text of the Clean Water Act and that ensures the protection of the chemical, physical, and integrity of the nation’s waters.<sup>46</sup> Additionally, the previous administration did not adopt a regulatory WOTUS definition that expanded protections to additional waters or increased regulatory burdens. To the contrary, the September 2023 WOTUS definition dramatically reduced protections for rivers, streams, lakes, wetlands, and waters across the country. For example, after finalizing the September 2023 definition in response to *Sackett*, EPA estimated that 63 percent of wetlands and roughly 1.2 to 4.9 million miles of streams would no longer be protected by the Clean Water Act.<sup>47</sup>

The March 24, 2025 Notice specifically seeks perspectives from stakeholders on jurisdictional scope and technical questions regarding three discrete regulatory categories from the September 2023 Definition, as well as previous regulatory definitions. However, the agencies’ questions regarding the scope of jurisdiction over relatively permanent waters and adjacent wetlands has already been resolved by the Supreme Court. Similarly, the agencies previously engaged in extensive evaluations of the technical issues identified in the notice, including multiple outreach

---

<sup>43</sup> March 24, 2025 Notice, 90 Fed. Reg. at 13429.

<sup>44</sup> *Administrator Zeldin Announces EPA Will Revise Waters of the United States Rule*, EPA (Mar. 12, 2025), <https://www.epa.gov/newsreleases/administrator-zeldin-announces-epa-will-revise-waters-united-states-rule> (“March 12, 2025 Press Release”).

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., 33 U.S.C. § 1251(a); *County of Maui*, 590 U.S. at 185-86.

<sup>47</sup> See EPA, *Policy Webinar: Updates on the Definition of “Waters of the United States”*, YOUTUBE, 24:01-24:18 (Sept. 12, 2023), <https://www.youtube.com/watch?v=lcCVelsAy2c>.