

Murky Waters/Navigating a Post-Sackett World: Ranking Members/U.S. House of Representatives Committee on Transportation and Infrastructure Analysis



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Ranking members from both the United States House of Representatives Committee on Transportation and Infrastructure and Subcommittee on Water Resources and Environment prepared an analysis titled:

Murky Water: Navigating a Post-Sackett World ("Analysis")

The Ranking members include:

- Congressman Rick Larsen, US House of Representatives Committee on Transportation and Infrastructure
- Congresswoman Grace F. Napolitano, Subcommittee on Water Resources and Environment

The Ranking members are Democrats. Majority members of the Committees are Republicans.

The *Analysis* contains a caveat that the analysis has not been officially adopted by the Committee on Transportation and Infrastructure or Subcommittee on Water Resources and Environment. Therefore, it does not necessarily reflect the views of its members.

The Clean Water Act definition of Waters of the United States ("WOTUS") is arguably one the three critical jurisdictional terms of the Clean Water Act. Its importance is magnified by the fact that it is also relevant to Non-National Pollutant Discharge elimination system such as:

- Section 404 of the Clean Water Act Wetland Permits
- Section 311 – Oil/Hazardous Substances Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

As a result, it is easy to understand why the scope of the definition of WOTUS has been the subject of frequent litigation, legislative oversight, rules making and public policy debates since the enactment of the modern version of the Clean Water Act in 1972.

The United States Environmental Protection Agency and the United States Corp of Engineers (collectively "EPA") recently issued a final rule narrowing the Clean Water Act definition of WOTUS. The rule responded to the United States Supreme Court's Opinion in *Sackett v. Environmental Protection Agency, et al*, which significantly narrowed the scope of what constitutes a WOTUS for purposes of the Clean Water Act. In announcing the final rule EPA stated that it:

...conforms the definition of “Waters of the United States” to the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sacket v. Environmental Protection Agency*.

EPA acknowledged that parts of its previously promulgated definition of WOTUS were invalid under the United States Supreme Court’s interpretation of the Clean Water Act in the *Sackett* decision.

The *Analysis* states by way of introduction:

“The *Sackett v. EPA* decision will have the significant and lasting impact on the Nation’s efforts to protect its water resources and to preserve the health and safety of American families. In light of this decision, several questions have risen. Which waters and wetlands will maintain protections; which stand to lose them? What consequences will businesses and individuals face who are now subject to different rules in different states?”

The stated objective of the *Analysis* is to summarize the discussion and further elaborate on what are described as the “critical impacts of the *Sackett* decision”. They also argue that Congress must act to protect water resources nationwide.

Sections of the *Analysis* include:

- Background - The Clean Water Act
- Not-so Fun Facts on the Impacts on the Sackett decision
- Regional Impacts
- Watershed Impacts
- Chesapeake Bay
- Great Lakes
- Everglades
- Mississippi Delta
- Mississippi River
- Arid West
- Regional Flooding Impacts
- Cape Fear River Basin, North Carolina
- Coastal Wetlands
- A world with no Clean Water Act
- Notes from the Experts

A copy of the *Analysis* can be downloaded [here](#).