

# Supreme Court Limits Federal Jurisdiction Over Wetlands

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Perhaps settling a debate that has been raging for at least 20 years, the U.S. Supreme Court issued a decision today in [Sackett v. EPA](#) that is intended to settle, once and for all, the scope of federal power over wetlands.

The Court found that the meaning of the term “waters of the United States” (WOTUS) in the federal Clean Water Act, 33 U.S.C. § 1362(7), covers “only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic[al] features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes.’”

While acknowledging that the term also includes so-called “adjacent wetlands,” the Court limited that term to those wetlands that are “as a practical matter indistinguishable from waters of the United States,” which requires first, that the body of water is itself a water of the United States (following the restrictive definition it just announced) and second, that the wetland has “a continuous surface connection with that water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.”

The narrowing of WOTUS, and therefore federal permitting jurisdiction, is an important victory for developers and the energy industry.

Following this decision, Environmental Protection Agency (EPA) Administrator Michael S. Regan issued a [statement](#) expressing his disappointment with the decision and noting that the Biden-Harris Administration had worked to establish a durable definition of WOTUS, publishing a new [rule](#) on January 18, 2023 that revised that definition.

As forecast in our [client alert](#) on that rule and its interplay with Sackett, however, the Biden Administration’s 2023 WOTUS rule, which took effect on March 20, 2023 but has not been uniformly applied across the U.S. due to a flurry of federal court decisions this year, is in legal jeopardy.

The Sackett decision should correct this [regulatory patchwork](#), as we anticipate that the EPA and U.S. Army Corps of Engineers will now proceed with the additional rulemaking (to be completed in

2024) it [announced](#) last fall to again revise and refine the WOTUS definition, resulting in one operative definition of WOTUS nationwide.

The decision does not affect state authority to regulate wetlands under state law.

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