



September 11, 2024

The Honorable David Rouzer
Chairman
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
U.S. House of Representatives
Washington, DC 20515

The Honorable Grace Napolitano
Ranking Member
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Rouzer, Ranking Member Napolitano and Members of the U.S. House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I write to thank you for holding a hearing on "[Waters of the United States Implementation Post-Sackett Decision: Experiences and Perspectives](#)." This hearing is vital to examining the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers' WOTUS implementation strategy and conformity with Sackett.

On May 25, 2023, the U.S. Supreme Court issued its [decision](#) in Sackett v. EPA, narrowing the scope of WOTUS that may be regulated under the Clean Water Act. Specifically, the Court rejected the 'significant nexus' test relied on by the Biden-Harris administration's [January 2023 WOTUS final rule](#). To conform with the Court's decision, the EPA and Army Corps issued an August 2023 [final rule](#) and [fact sheet](#), eliminating the "significant nexus" test. However, in doing so the agencies advanced the rule without meaningful opportunities for input from the construction industry and other stakeholders and failed to fully implement the court's opinion, including the definition of "relatively permanent" waters.

In addition, the EPA and Army Corps have not provided the regulated community with sufficient guidance regarding their interpretation of the August 2023 rule. Instead, the EPA and Army Corps have issued Field Memos without expanding on their interpretation or application, creating uncertainty for the regulated community. ABC is concerned the EPA and Army Corps' approach to WOTUS risks continuing the decades-long uncertainty surrounding the scope of federal authority under the CWA, resulting in litigation, regulatory uncertainty and confusion in the business community.

The Sackett decision placed clear boundaries on the scope of the federal government's authority relating to WOTUS while maintaining reasonable environmental protections for America's waterways. Now, the EPA and Army Corps must adhere to the Court's ruling. It is time for the EPA and Army Corps to provide the regulated community, including the construction industry, with the clarity necessary to complete much-needed projects in our communities that allow workers and local economies to thrive.

ABC urges the EPA and the Army Corps to fully comply with the Sackett decision and provide the regulated community with a clear, concise definition of WOTUS necessary to inform them of how to comply with the law while also serving as good stewards of the environment, as they did prior to the Biden-Harris administration's shortsighted reversal of President Donald Trump's WOTUS policies.

ABC appreciates the opportunity to comment on the committee's review of post-Sackett WOTUS implementation.

Sincerely,

Kristen Swearingen
Vice President, Legislative & Political Affairs