



National Association of State Departments of Agriculture
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August 2, 2023

The Honorable Michael S. Regan
Administrator
Office of Administrator
Mail Code 1101A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
108 Army Pentagon
Washington, DC 20310

Dear Administrator Regan and Assistant Secretary Connor:

The National Association of State Departments of Agriculture (NASDA) provides the following recommendations as the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) develop a rule to amend the January 18, 2023, final rule defining “waters of the United States” (WOTUS), consistent with the U.S. Supreme Court’s May 25, 2023, decision in *Sackett v. EPA*.

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs, including conservation and environmental protection, food safety, combating the spread of plant and animal diseases and fostering the economic vitality of our rural communities. Several state departments of agriculture also administer or partner in administering Section 402 National Pollutant Discharge Elimination System (NPDES) permitting programs for Concentrated Animal Feeding Operations (CAFO).

NASDA remains concerned with the process outlined by the EPA and the Corps as the agencies move forward with a “direct to final” rulemaking by September 1st, 2023. Considering the unanimous decision in *Sackett v. EPA*, in which the court struck down the significant nexus test and outlined the importance of state authority in regulating waterways, NASDA urges the agencies to allow for a public comment period and a stakeholder engagement process.

The Clean Water Act establishes limits on federal jurisdiction and affirmatively recognizes the role of states in regulating non-navigable waters. Justice Alito’s majority opinion in *Sackett v. EPA* emphasizes that “regulation of land and water use lies at the core of traditional state authority.”

While we appreciate the intent to issue a final rule expeditiously, we fear the “direct to final” rulemaking process will not accurately address all the issues and questions raised in the *Sackett* decision. A September 1st deadline appears to exclude active participation not only from those stakeholders who are regulated but likewise from states who share in the regulatory responsibility.

State departments of agriculture remain ready and willing to engage with the agency in a process that allows for adequate consideration of all issues outlined in *Sackett* and developing a WOTUS rule that is durable, clear, and respects the role of states.

Sincerely,

A handwritten signature in black ink that reads "Ted McKinney". The signature is fluid and cursive, with a long, sweeping tail that loops back under the name.

Ted McKinney
Chief Executive Officer