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April 23, 2025

Via www.regulations.gov

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**RE: Docket ID Number EPA-HQ-OW-2025-0093: Waters of the U.S. Definition
Request for Recommendations**

Kentucky Resources Council, Inc. ("KRC") respectfully submits this comment and recommendation in response to the solicitation of feedback as to defining "waters of the United States" (WOTUS) consistent with the Supreme Court's interpretation of the scope of Clean Water Act jurisdiction and how to implement that interpretation. KRC is a statewide public-interest environmental law and advocacy organization that works to protect Kentucky's natural resources and communities, including the rivers and streams that supply our drinking water, the lakes we fish, the wetlands that protect our communities from flooding.

Any change to the WOTUS rule has significant implications for Kentucky, as our legislature passed Senate Bill 89, which ties our definition of protected "waters of the Commonwealth" to "navigable waters, as defined in 33 U.S.C. sec. 1362."

The U.S. Environmental Protection Agency ("EPA") is soliciting recommendations on (1) the scope of "relatively permanent" waters and to what natural features it applies; (2) "continuous surface connection" and to which features this phrase applies; and (3) the scope of jurisdictional ditches.

A. Strong federal protections are essential to ensuring clean water that sustains our communities, farms, and ecosystems.

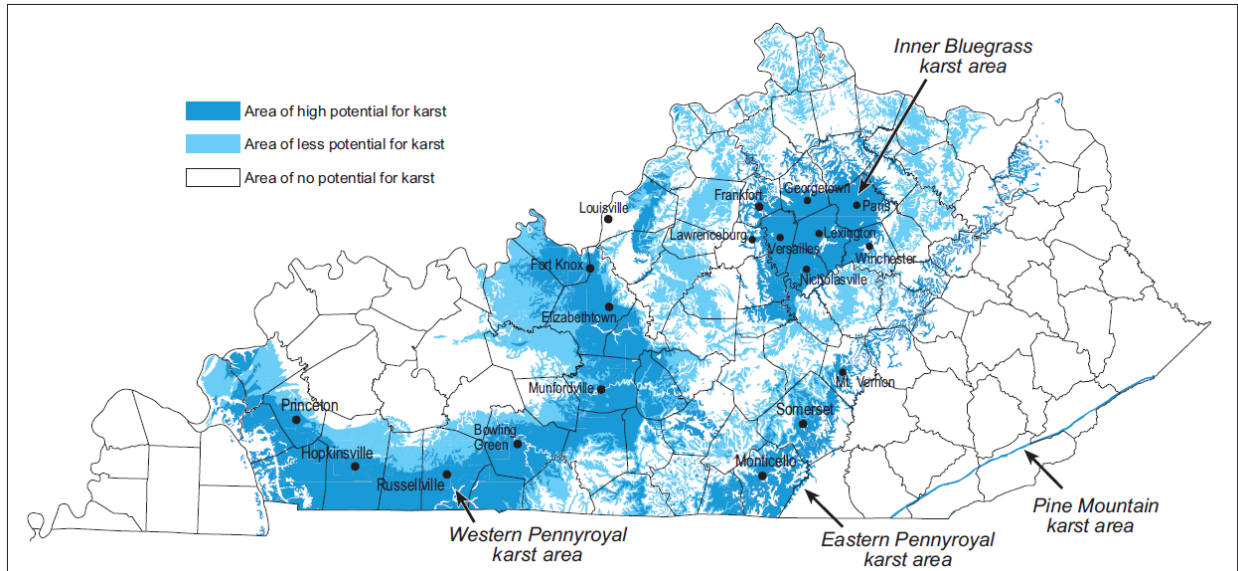
To the extent that the EPA is accepting recommendations on strategies to create a new rule that further narrows the applicability of the definition of “Waters of the United States” (WOTUS)—even beyond the limitations imposed by the *Sackett v. EPA*, 598 U.S. 651, decision—to waters in need of safeguarding, KRC urges EPA and U.S. Army Corps of Engineers (“Corps”) not to further weaken federal clean water protections. Any recommendation that further restricts this definition by tying it solely to waters with specific flow characteristics or durations would severely undermine efforts to protect vulnerable water bodies. Such constraints would fail to account for the geographic and hydrologic variability across the nation and would jeopardize the safeguarding of waters that are vital to communities, ecosystems, and public health.

The weakening of federal clean water protections that resulted from the Supreme Court’s *Sackett* decision caused more pollution to enter the nation’s rivers, lakes, wetlands, and drinking water sources. In *Sackett*, the Supreme Court held that the Clean Water Act covers only “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,” along with wetlands that “have ‘a continuous surface connection to bodies that are “waters of the United States” in their own right, so that there is no clear demarcation between “waters” and wetlands.” The Agencies’ current regulatory definition of WOTUS adopts the language of *Sackett* and faithfully conforms to the decision. Maintaining the Agencies’ definition of “waters of the United States” under the Clean Water Act is critical to restoring and maintaining the integrity of the nation’s waters and supporting the communities that rely on them.

In considering the “relatively permanent” and standard and what natural features it applies and “continuous surface connection,” we urge the Agencies to consider states such as Kentucky with extensive karst systems, and the connectivity of our waterways.

B. Karst Topography and Hydrologic Connectivity in Kentucky

Kentucky is underlain by one of the most extensive karst systems in the United States. Ninety-two of Kentucky’s 120 counties contain karst features such as sinkholes, caves, karst windows, and swallow holes—formed as water dissolves the state’s limestone bedrock. These features result in a complex and largely subterranean hydrologic system, wherein surface and groundwater are inextricably connected. (see map below https://www.uky.edu/KGS/karst/karst_location.php)



As water percolates from the surface through tiny fractures in limestone, it gradually enlarges these voids into subsurface channels that form a dynamic network supporting the flow of water to streams and rivers. Mammoth Cave National Park, with over 365 miles of mapped cave passages and more being discovered each year, illustrates the scope and scale of this system. However, countless other systems across the state remain unmapped or under-studied due to insufficient funding.

Because of this unique geology, many Kentucky streams—including those with perennial or intermittent flow—disappear underground via swallow holes or sinkholes, only to re-emerge downstream. The lack of a visible “continuous surface connection” at certain times or in certain locations is not evidence of hydrologic disconnection but rather a function of the state's karst terrain.

In addition, swallow holes—natural depressions where streams sink underground—are common in Kentucky. Their size and location can vary dramatically, from a few inches wide to large cave entrances. Because they can migrate or become temporarily filled, a stream’s surface connection may appear “broken” during certain times of the year, despite the stream being perennial or intermittent and “relatively permanent” by all other measures.

C. Case Example: Jurisdictional Determination for Skinframe Creek

The limitations of the current WOTUS definition are illustrated in the U.S. Army Corps of Engineers’ Jurisdictional Determination for the Skinframe Creek project (Project #LRN-2022-00278). In this case, 29,000 linear feet of perennial stream, 28,000 linear feet of intermittent stream, and 30 acres of wetlands were all found to

be non-jurisdictional simply because the stream ultimately flows into a sinkhole and fills an underground basin that ultimately feeds more surface water.

Despite meeting all other criteria of “relatively permanent” waters, these features were excluded due to the lack of a continuous surface flow at one point in their course. This determination demonstrates the real-world consequences of ignoring subsurface connections in karst terrain regarding water’s connectivity.

D. Any agency action to define “relatively permanent” must recognize the ecological significance and longstanding legal protection of waters with intermittent flow.

The Agencies have long recognized the importance of Clean Water Act protections for intermittent streams—streams that flow continuously only during certain times of the year. Streams with intermittent flow make up a majority of the stream miles in the United States and affect the chemical, physical, and biological integrity of downstream waters. Streams provide benefits to downstream waters even when they do not flow continuously. Intermittent streams, like perennial streams, control the transport of pollution, nutrients, and carbon to downstream waters, with impacts on downstream flooding, base flows, and water quality.

Further narrowing the definition of WOTUS so that fewer intermittent streams have protections would have significant impact for Kentuckians. According to EPA, about 65% of all Kentucky’s streams and rivers are ephemeral or intermittent and 54% of streams providing water for surface water intakes that supply public drinking water systems are intermittent, ephemeral, or headwater streams. We therefore recommend that the agencies refrain from adopting a brightline rule relating to “relatively permanent,” particularly if it would exclude intermittent streams with banks that vary regionally but are vital.

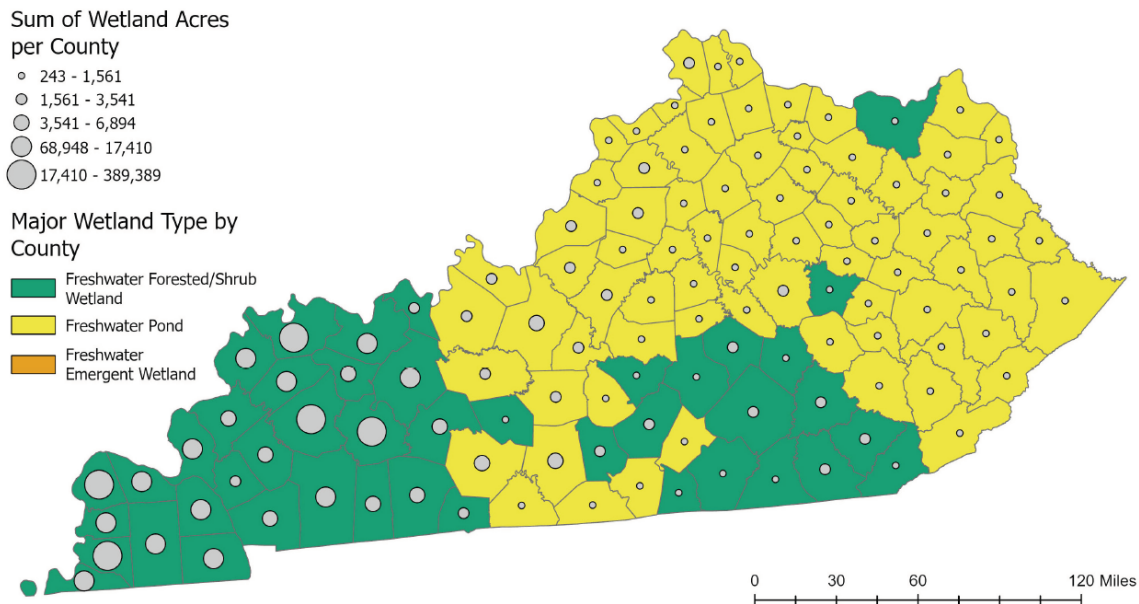
E. Wetlands and Ecological Connectivity

According to the Corps’ Eastern Mountains and Piedmont Region Wetland Manual, wetlands are defined by the presence of hydrophytic vegetation, hydric soils, and wetland hydrology. Areas may contain one or two of these characteristics even if not formally delineated as wetlands, yet still serve as functional ecological corridors and buffers.

The land between a jurisdictional water and a delineated wetland that exhibits any of these three wetland indicators should be presumed connected. Wetlands are not merely surface water features—they are the result of interactions between soils,

vegetation, and hydrology. A groundwater connection to a jurisdictional water is just as valuable as a surface one, particularly in karst areas.

The economic and biological value of a wetland does not diminish because of a lack of surface flow. In fact, many of Kentucky’s 360,000 acres of wetlands—what remains after the loss of 80% of historical wetland areas by the 1990s—are sustained by groundwater and perform critical flood control, filtration, and habitat functions regardless of visual surface connectivity. (see map below)



Map of Kentucky's existing wetlands, showing the prominent type of wetland and acres of wetland per county (source: U.S. Fish and Wildlife Service).

We urge the Agencies to continue to recognize the existing rule that a wetland’s “continuous surface connection” constitutes a physical connection — a connection that may be, but need not be, demonstrated by the continuous presence of surface water — to an adjacent water that is relatively permanent to be protected as WOTUS.

F. Conclusion and Recommendations

In conclusion, we ask that you to not take any action to further weaken the definition of “Waters of the United States.” The current WOTUS rule complies with the Sackett decision and further clarification is not necessary. The costs of any further, unnecessary rollbacks will be borne by the public in the form of less safe drinking water, increased flooding, and further loss of protections for waters that sustain our communities, farms, and ecosystems.

Thank you for your consideration of these comments.

Sincerely,

Handwritten signature of Ashley Wilmes in cursive script.

Ashley Wilmes, Esq.
Executive Director
Kentucky Resources Council