

Originating Committee: Wetlands and Waterfowl

Author: 2017 ad hoc committee and Kelly Srigley Werner/Tom Bell

Intended Recipients: Missouri Department of Natural Resources, Governor of Missouri, and Missouri General Assembly

CFM Supports a Framework for State Authorities to Protect Missouri Waters

WHEREAS, in 1972 Congress enacted the Clean Water Act (CWA) to “maintain and restore the physical, chemical, and biological integrity of the nation’s waters”; and

WHEREAS, subsequent amendments in 1981 and 1987 served to streamline the regulatory process and increase partnerships between the Environmental Protection Agency and the states; and

WHEREAS, under the Clean Water Act the waters, including wetlands, under the jurisdiction of the federal government are referred to as Waters of the United States (WOTUS); and

WHEREAS, in 2015, at the federal level, WOTUS went through a lengthy full rulemaking process to clarify, streamline, and make the regulatory process uniform nationwide, including public notice, public comment, responses to comment, and development of substantial technical, policy, and scientific evidence to craft a logical, defensible, scientifically-based rule which has since been vacated; and

WHEREAS, in 2023 there was a significant reduction in federal protection of wetlands and other waters (WOTUS) due to the U.S. Supreme Court’s *Sackett v. Environmental Protection Agency* decision, leaving the responsibility for protecting most waters to the states; and

WHEREAS, in Missouri, the proposed modification of section 644.016, RSMo would change the definition of ‘waters of the state’ by adopting the Supreme Court’s language regarding the ‘relatively permanent test’ further narrowing jurisdiction over Missouri waters; and

WHEREAS, in 2015, the WOTUS rule clearly defined and protected tributaries that impact the health of downstream waters to include headwaters that have a bed, bank and ordinary high water mark that science has shown can have a significant connection to downstream waters and could provide a strong framework for Missouri water protections at the surface and also for groundwater; and

WHEREAS, the 2015 rule maintained exemptions for farming activities such as planting, harvesting, and moving livestock while also providing greater clarity and certainty to farmers and does not add any new requirements or economic burden on agriculture; and

WHEREAS, the 2015 rule did not interfere with or change private property rights, or address land use and did not regulate groundwater, shallow subsurface flows or tile drains, or change policy on irrigation or water transfers, and does not apply to rills, gullies, or erosional features and provided limited protections to ditches constructed out of streams; and

WHEREAS, conservation and recreation groups that supported the 2015 WOTUS rule were many, including the science-based groups that make up the Consortium of Aquatic Sciences, the Nature Conservancy, the Wildlife Society, and the National Wildlife Federation (of which CFM is an affiliate); and

WHEREAS, the Supreme Court’s majority opinion in *Sackett* in 2023 has limited the jurisdiction and definition of Waters of the U.S. inconsistent with existing science related to the vital role isolated wetlands, ephemeral streams, and groundwater play in ensuring clean and healthy water, and severs the connection between science and law by adopting the ‘relatively permanent test’; and

WHEREAS, there is no comprehensive wetland protection law in Missouri; and

WHEREAS, floodplain wetlands that were protected by the Clean Water Act minimize flooding and provide critical habitat for millions of waterfowl, other migratory birds, and other wetland dependent species; and

WHEREAS, there are other states that value high quality water for their citizenry and already have strong policies and regulations that are independent from the CWA; and

WHEREAS, in the *Sackett* decision, Justice Kavanaugh’s opinion disagreed with the majority opinion on wetland jurisdiction arguing that wetlands are jurisdictional if they border, are contiguous to, or are neighboring to covered waters, and criticized the majority for narrowing the test to cover only “adjoining wetlands”, further warning the decision would “have negative consequences” and would exclude wetlands separated by flood control levees. “For example, the Mississippi River features an extensive levee system to prevent flooding.”; and

WHEREAS, Justice Kavanaugh confirmed that “adjacent” and “adjoining” are commonly understood to have distinct meanings and Congress's use of “adjacent” in the 1977 CWA amendments means that the statute does not require wetlands to ‘touch’ covered waters and identified areas where the majority’s decision would generate more regulatory uncertainty; now, therefore, be it

RESOLVED, that the Conservation Federation of Missouri assembled at Lake Ozark, Missouri, this 2nd day of March, 2024, fully supports the role of science in the determination of which waters will be protected under Missouri statute, and asks the Missouri Department of Natural Resources and the Missouri General Assembly to utilize a science-based framework exemplified by the 2015 rule, to define waters of the state including protections for groundwater, and to begin a process in Missouri for the protections of waters, including wetlands, for people and wildlife; and, be it further

RESOLVED, that the Conservation Federation of Missouri opposes modifying the definition of 'waters of the state' under section 644.016, RSMo.

Searchable Keywords: WOTUS, Clean Water Act, wetlands, water protections, Sackett, 2015 rule, science

Expires: March 2, 2029