



A Resolution Submitted by the City of Muskegon, MI



MAINTAINING FEDERAL PROTECTION FOR THE WATERS OF THE UNITED STATES

May 2026

WHEREAS the Clean Water Act (CWA) was passed by Congress in 1972, prohibiting the discharge of unpermitted point source pollution into “the waters of the United States,” (WOTUS), and has since played a critical role in protecting environmental and public health, safeguarding drinking water and supporting the Great Lakes economy.

AND WHEREAS the legal definition of “WOTUS” has been persistently litigated and relitigated since 1972, with general consensus regarding the inclusion of traditionally navigable waters like rivers, oceans and lakes, but significant debate about smaller or ephemeral waters like wetlands, ditches and streams.

AND WHEREAS in the 2006 case of *Rapanos v. United States*, the Supreme Court of the United States (SCOTUS) reaffirmed a more inclusive definition of WOTUS and ruled that most wetlands and streams are under the jurisdiction of the CWA due to their “physical, chemical, and biological” connection to traditionally navigable waters.

AND WHEREAS subsequent administrations enforced the CWA using various interpretations of the *Rapanos* ruling, all of which included some level of protection for wetlands, streams and tributaries with a “significant nexus” to traditionally navigable waters.

AND WHEREAS in the 2023 landmark case, *Sackett v. the U.S. Environmental Protection Agency* (EPA), SCOTUS reversed this decision, ruling that wetlands and streams are only subject to the CWA if they are “relatively permanent” or have a “continuous surface connection” to a permanent body of water, dramatically weakening the scope of the CWA.

AND WHEREAS in August 2023, EPA and the U.S. Army Corps of Engineers (USACE) finalized the “Revised Definition of ‘WOTUS’” rule to clarify the regulatory landscape and conform to the *Sackett* ruling.

AND WHEREAS on November 17, 2025, EPA and USACE submitted a notice of proposed rulemaking into the federal register, further restricting the number and size of federally jurisdictional waters beyond what was already outlined by the *Sackett* decision and the 2023 conforming rule.

AND WHEREAS a pair of 2024 SCOTUS cases ruled that federal agencies no longer have reasonable legal deference when interpreting ambiguous statutory language (i.e., Chevron deference), meaning federal agencies must rely solely on the *Sackett* decision to interpret the definition of WOTUS unless Congress formally amends the CWA.

AND WHEREAS EPA's 2025 proposed redefinition would remove federal protection for over 80 percent of wetlands and approximately five million miles of streams across the United States.

AND WHEREAS a report from the Natural Resources Defense Council found the Great Lakes region to be particularly vulnerable, with Michigan, Minnesota and Wisconsin as the only states expected to lose federal protection for over a million acres of wetland each.

AND WHEREAS wetlands and ephemeral streams play a disproportionately large role in maintaining the health and safety of both coastal and inland communities, absorbing damage from extreme weather, filtering out pollutants, providing aquatic ecosystems and storing atmospheric carbon.

AND WHEREAS even states with new or existing regulations to protect such waterways are threatened by EPA's proposed revision to the CWA due to the interconnectedness of all hydrologic systems and the additional overwhelm to state regulatory staff.

AND WHEREAS EPA held a public comment period at the end of 2025 and is expected to release a final decision on the proposed rule in Spring 2026, with several environmental organizations intending to litigate if EPA's proposed redefinition is approved.

AND WHEREAS USACE has paused the approval process for key wetland determinations as they work to finalize the proposed rule.

NOW THEREFORE BE IT RESOLVED THAT:

- EPA and USACE should reconsider the 2025 redefinition of WOTUS and instead rely on the 2023 Conforming Rule, which already addresses the *Sackett* decision.
- States should take legislative or executive actions to protect public and environmental health by restoring pre-*Sackett* level protections for wetlands and ephemeral streams.

- The U.S. Congress should amend the CWA to formally define “Waters of the United States” and explicitly include wetlands and ephemeral streams under the statute’s jurisdictional authority.

AND FURTHER BE IT RESOLVED THAT copies of this resolution will be distributed to: U.S. EPA Administrator Lee Zeldin; Lt. General William Graham, Jr. of the USACE; the Governors of all eight Great Lakes states and relevant committee leadership in the U.S. Congress.