



WATERS OF THE STATE ACT

Summary: This bill aims to align state water regulations with the Supreme Court’s limit on federal jurisdiction as defined by *Sackett v. EPA*.

Section 1. Purpose

- (a) The purpose of this Act is to align state water regulations with the Supreme Court’s limits on federal jurisdiction as directed by *Sackett v. EPA*, establish that the state will not impose restrictions beyond the federal WOTUS definition, and require a clear, evidence-based justification for any state rule that goes beyond the federal definition.

Section 2. Definitions

For the purpose of this Act:

- (a) “Agency” means any state executive entity with rulemaking or permitting authority.
- (b) “WOTUS” means waters of the United States as defined by federal law and any conforming federal rule in effect.
- (c) “Property owner” means the holder of legal title to or right to use real property.

Section 3. Standard

- (a) Under this Act, the jurisdiction of agencies shall be the current federal WOTUS definition.
- (b) Agencies shall not expand their jurisdiction through guidance documents, manuals, or permit conditions.
- (c) Any exercise of jurisdiction beyond the federal definition must be clearly defined in statute, justified by evidence of a specific state problem, narrowly tailored,



and accompanied by a transparent cost-benefit analysis and a map illustrating jurisdiction.

Section 4: Transparency

- (a) In order to maintain transparency, agencies shall maintain a public portal with statutory justification for jurisdictional decisions, maps illustrating jurisdiction, all scientific sources relied upon for jurisdictional determinations, and permit metrics and outcomes.

Section 5: Judicial Review

- (a) In cases of judicial review, the court shall review questions of statutory authority and jurisdiction de novo and may consider but shall not defer to an agency's interpretation expanding jurisdiction beyond the federal standard.

Prevailing property owner are entitled to reasonable attorney's fees and costs in actions proving unlawful expansion of jurisdiction. A property owner shall not be liable for attorneys' fees or costs in favor of the government, nor shall the government require an application for a project to indemnify, defend, or hold harmless government in any manner with respect to an action brought by the applicant, or another person, alleging that the government violated the applicant's rights or deprived the applicant of benefits or protections provided by law.

Want to learn more about this model policy in your state?

Contact Pacific Legal Foundation.

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