



# Summary Report of Tribal Consultation and Engagement for the Proposed *Updated Definition of* *“Waters of The United States”* Rule

U.S. Environmental Protection Agency  
and  
Department of the Army

November 2025

# Table of Contents

|                                                                                          |    |
|------------------------------------------------------------------------------------------|----|
| Background .....                                                                         | 3  |
| Consultation and Engagement .....                                                        | 4  |
| Tribes Requesting Consultation .....                                                     | 5  |
| Themes Emerging from Consultation Comment Letters and Meetings .....                     | 6  |
| 1.    Relatively Permanent Waters (RPWs) .....                                           | 6  |
| 2.    Continuous Surface Connection (CSC) .....                                          | 7  |
| 3.    Jurisdictional Ditches.....                                                        | 7  |
| 4.    All Other Comments: Concerns, Tribal Treaty Rights, and Innovative Solutions ..... | 7  |
| Appendix A: Notification of Consultation and Coordination Letter Sent to Tribes .....    | 9  |
| Appendix B: Tribes/Tribal Organizations Sending Consultation Comment Letters.....        | 13 |
| Appendix C: Tribal Consultation, Coordination, and Outreach Meetings .....               | 19 |
| Meetings and Outreach Occurring During the Consultation Period .....                     | 19 |

## Background

This consultation report was prepared to support the U.S. Environmental Protection Agency and U.S. Department of the Army's (the agencies') Proposed *Updated Definition of "Waters of the United States"* Rule. This report summarizes the agencies' Tribal consultation and coordination efforts and the feedback they received.

On March 12, 2025, EPA Administrator Lee Zeldin announced the intent of EPA and Army to revise the definition of "waters of the United States" to follow the clear direction of the Supreme Court in *Sackett v. EPA*, 598 U.S. 651 (2023) (*Sackett*), while eliminating red tape, cutting permitting costs, and lowering the cost of doing business in communities across the country. The agencies published a *Federal Register* notice announcing the opening of a recommendations docket ("WOTUS Notice: The Final Response to SCOTUS," EPA Docket ID No. EPA-HQ-OW-2025-0093) and stakeholder engagement opportunities to solicit feedback on three key topic areas." On March 21, 2025, the agencies initiated consultation with all federally recognized Indian Tribes on certain topics related to the implementation of the definition of "waters of the United States" consistent with the terms of the [EPA Policy on Consultation and Coordination with Indian Tribes](#). The agencies sought input, consistent with the Supreme Court's ruling in *Sackett*, regarding "continuous surface connection," "relatively permanent," and jurisdictional versus non-jurisdictional ditches.

In August, 2025, the agencies announced the notice of proposed rulemaking "Clarifying the Legal Extent of Agency Regulation of Waters of the United States" (Docket ID No. EPA-HQ-OW-2025-0322). The proposed rule is based on feedback received through Tribal consultation, federalism consultation, stakeholder listening sessions, and pre-proposal feedback received via a recommendations docket (Docket ID No. EPA-HQ-OW-2025-0093). The proposed definition aims provide greater regulatory certainty and increase Clean Water Act program predictability and consistency while respecting State and Tribal authority over their own land and water resources.

The Tribal consultation process described in this report follows the U.S. Environmental Protection Agency's (EPA) policy for implementing Executive Order (E.O.) 13175<sup>1</sup> on Consultation and Coordination with Indian Tribal Governments. The agencies' Tribal consultation and coordination efforts took place prior to the agencies' proposal of the revised definition of "waters of the United States."

In addition to a kick off Tribal consultation webinar held on March 31, 2025, the agencies convened eight one-on-one consultation meetings with individual Tribal governments and presented at the National Tribal Water Council Spring meeting and the National Tribal Caucus Monthly meeting. The agencies also held a Tribal listening session on April 30, 2025 as part of

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<sup>1</sup> Executive Order 13175 requires that agencies consult with federally-recognized tribal governments on rules, policies, and guidance with tribal implications. *EPA Policy on Consultation and Coordination with Indian Tribes* defines when and how consultation takes place., available at <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

their pre-proposal engagement efforts. In all these activities, the agencies solicited input on key topics related to implementation of the definition of “waters of the United States” and considered this input as the proposed rule was developed.

This report provides a summary of the consultation and outreach conducted with Tribes during the rulemaking process. It also summarizes comments provided by participants at Tribal meetings and the letters received during the Tribal consultation period. The summary is intended to provide a description of the wide range of comments received from Tribes and Tribal organizations as part of this consultation process. All letters submitted through consultation are available as attachments to this Tribal consultation report in the docket at Docket ID No. EPA-HQ-OW-2025-0322 or are posted to the pre-proposal recommendations docket (Docket ID. No. EPA-HQ-OW-2025-0093) (See Appendix B).

## Consultation and Engagement

On March 21, 2025, EPA Acting Assistant Administrator Peggy Browne and Senior Official Performing the Duties of the Assistance Secretary of the Army (Civil Works) Robyn Colosimo, signed a Tribal Consultation Notification letter inviting Tribal officials to participate in consultation and coordination events and provide comments to EPA, with participation from the Department of the Army (Army). The letter (Appendix A) was sent to all 574 Tribes federally recognized at that time. EPA also notified Tribes of the consultation via the Tribal Consultation Opportunities Tracking System on the EPA Tribal Portal (<http://tcots.epa.gov>). The letter invited Tribal leaders and designated consultation representatives to participate in the Tribal consultation and coordination process. The agencies held a Tribal consultation kick-off webinars concerning this matter for Tribal representatives on March 31, 2025. EPA and the Army consulted with Tribes to gain an understanding of Tribal views on continuous surface connection, relatively permanent waters, and ditches, as well as to discuss information related to treaty or similar rights, Indigenous knowledge, and sacred sites.

The consultation period ended on May 20, 2025, though the agencies continued outreach and one-on-one meetings after the consultation period closed. The agencies welcomed individual requests for consultation after the close of the consultation period and continued to accept Tribal consultation comment letters after the close of the consultation period. During this consultation, the EPA coordinated with Army, and Army jointly participated in aspects of the consultation process, including participating in outreach events and meetings with individual Tribes.

The agencies also held a Tribal listening session for Tribes and their representative organizations on April 30, 2025. Copies of the presentations from the consultation kick-off meeting and the listening session are available in the docket. The listening sessions and meetings were led by and attended by EPA and Army senior officials, EPA Headquarters and Army managers and staff, and/or EPA regional managers and staff.

Twenty-seven consultation comment letters, one Tribal letter posted to the recommendations docket, and eight requests for government-to-government consultations were received as part of the Tribal consultation process representing 382 Tribes, Nations, and Tribal Organizations. This total count includes:

- 26 individual letters representing 380 individual Tribes and Nations
  - Notably Tribal organization letters represented many Tribes:
    - United South and Eastern Tribes (33)
    - EPA Region 10 Tribal Operations Committee (271)
    - National Association of Tribal Historic Preservation Officers (229)
    - Great Plains Tribal Water Alliance (5)
    - National Tribal Water Council (17)
    - National Tribal Caucus (19)
    - Inter Tribal Association of Arizona (21)
- 8 Tribal consultations including two Tribes who did not also send a consultation letter

The Tribes, Nations, and Tribal organizations represented in the consultation comments are located across all ten EPA regions, demonstrating a regionally diverse range of comments. The complete list of Tribes, Nations, and Tribal organizations that sent the agencies written consultation comments also is provided in Appendix B.

## Tribes Requesting Consultation

A total of nine Tribes notified the agencies that they wanted to engage in individual consultation on the anticipated rulemaking. Most of these requests came in the Tribe's comments during the consultation period, via a separate letter to the agencies during the consultation period, or via email.

In all instances, the agencies followed up with Tribes who had requested to consult on this action. In one instance, the agencies were unable to schedule consultation meetings where a Tribe did not respond to repeated outreach attempts. Five of these meetings were held during the consultation period. Staff from EPA's Office of Water and Office of General Counsel, the Department of the Army, including the U.S. Army Corps of Engineers, and the respective EPA regional offices participated in these consultation meetings. Benita Best-Wong, a Deputy Assistant Administrator in the Office of Water, served as EPA's senior official at these meetings.

# Themes Emerging from Consultation Comment Letters and Meetings

This section highlights comments received as part of the Tribal consultation process, including Tribal consultation comment letters sent to the agencies on the rulemaking, feedback provided by Tribes during one-on-one meetings with Tribes who requested such engagement, and during Tribal listening sessions. EPA and the Army requested feedback on implementation of “relatively permanent” waters and to which waters the phrase applies, implementation of the “continuous surface connection” requirement and to which features that phrase applies, and which ditches are properly considered to be “waters of the United States.” Thus, three of the main themes listed in this section are consistent with the three terms for which the agencies requested recommendations, and an additional theme captures all other recommendations received.

The agencies carefully considered all Tribal consultation recommendations, and all recommendations received.

## 1. Relatively Permanent Waters (RPWs)

Recommendations from Tribes on the relatively permanent waters under Federal jurisdiction reflected their view of the importance of both ecological integrity and cultural considerations. Several Tribes advocated against revising the existing definition of “waters of the United States,” asserting that the current regulations (the Amended 2023 Rule) already comply with the *Sackett* ruling. Alternatively, one Tribe argued that only perennial waters should be jurisdictional.

A significant number of Tribes and some Tribal organizations supported the inclusion of seasonal waters under CWA jurisdiction. Those Tribal commenters recommended that tributaries could be classified as relatively permanent in the same geographic area, year after year, if they flow or have standing water continuously at specified periods of the year, but for a longer period than just in response to precipitation. Furthermore, some Tribes called for a definition that reflects regional differences in hydrology and advocated for methodologies that incorporate traditional Tribal knowledge of their local water systems to better define relatively permanent waters.

Some Tribal organizations recommended a scientifically informed approach to defining relatively permanent waters, such as using biological indicators to identify these waters and ensure ecological integrity. Many Tribes recommended all water (perennial, intermittent, and ephemeral) should be federally jurisdictional. Many Tribes in arid regions expressed a similar concern over ephemeral and intermittent streams that dominate their arid lands. Some Tribes contended that federal protection under the CWA is essential because Tribal regulations alone may not be enough to safeguard waters impacted by upstream activities. One organization

offered a regional recommendation to exclude permafrost wetlands as jurisdictional to better provide safe, healthy, and affordable housing for low-income Native Alaskans.

Overall, Tribal feedback underscored a critical need for a scientifically defensible and culturally informed regulatory framework that prioritizes the protection of all water resources essential to Tribal communities and lifeways.

## 2. Continuous Surface Connection (CSC)

The majority of Tribal commenters recommended that natural and artificial features not inherently sever continuous surface connection. One Tribe recommended that berms and landforms should not provide a continuous surface connection. One Tribe shared that many waters would be continuous but for federal intervention in the operation of discrete features (such as flow gates), and therefore these waters should be understood as continuous. One Tribe recommended including wetlands that have a 100-year floodplain connection to a relatively permanent water to account for periodic connections and protect against flooding. Another Tribe advised using the science behind Federal Emergency Management Agency flood maps to define a repeated continuous surface connection to wetlands.

Additionally, a Tribal organization recommended the development of clear field indicators to identify abutting boundaries, especially for culturally significant wetlands. This recommendation highlighted the importance of protecting wetlands with seasonal or periodic water connections to jurisdictional waters. Additionally, Tribes stressed the need to consider regional variations, such as seasonal dry periods and drought conditions common in Tribal reservations and boundaries, as well as tidal variations affecting coastal Tribal communities, in the definition of “continuous surface connection.”

## 3. Jurisdictional Ditches

Very few Tribal letters included recommendations on ditches. Of the feedback received on the treatment of ditches, several Tribes advocated for all relatively permanent waters ditches to be jurisdictional, pointing out their importance in overflow scenarios during high precipitation events. One Tribal organization recommended that ditches serving as hydrological or biological connectors should be jurisdictional to ensure the protection of water systems integral to Tribal lands. Specifically, it suggested that a definition of ditches consider the distinctive features of Tribal lands, and distinguish between traditional Tribal irrigation systems, modern drainage ditches, and channelized or modified natural streams.

## 4. All Other Comments: Concerns, Tribal Treaty Rights, and Innovative Solutions

Overall, recommendations from Tribes reflected the need to include Indigenous Knowledge, Tribal sovereignty, and the balance of nature in the revision of the definition of “waters of the United States.” For example, one Tribe recommended that Indigenous Knowledge must be

included as one of the many important bodies of knowledge that contributes to the scientific and technical understanding of the interconnectedness of water. Another Tribe recommended following the guidance of mother nature to manage water.

Some Tribes expressed that revising the rule repeatedly was not what was intended by the Clean Water Act. One Tribe expressed that Tribes are the primary regulator of their waters.

Tribes called upon the United States' trust responsibility to safeguard Tribal lands, assets, and resources and cited numerous treaties between the United States and Tribal people. For example, one Tribe specifically affirmed this position by stating "In 1853, the United States and the Cow Creek Band signed the Treaty with the Umpqua-Cow Creek Band. As outlined in the United States Constitution, treaties are considered the "supreme Law of the Land." In signing the Treaty, the United States entered a trust relationship with the Cow Creek Band. It was stated that the United States serves as a trustee for the Tribe and has a responsibility to protect Tribal lands and the natural resources on those lands, including, most importantly, the water that flow through those lands." Some Tribal organizations noted that limiting EPA and Army Corps jurisdiction could compromise the water quality necessary for fulfilling Tribal water rights which could severely impact Tribes in regions like Arizona, where water scarcity is already a pressing issue.

Tribal references also include the United Nations Declaration on the Rights of Indigenous Peoples, which advocates for "the right to the conservation and protection of the environment" and national governments "shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous people without their free, prior and informed consent."

One Tribal organization proposed establishing standards for meaningful consent for jurisdictional determinations to ensure Tribes receive detailed information about jurisdictional impacts, have adequate time for review, and have access to translation services to accommodate traditional Tribal language speakers. They also advocated for establishing an appeals process to challenge jurisdictional determinations in an expeditious, predictable, less costly, more timely, and less adversarial than litigation.

Additionally, there were extensive recommendations for Tribal capacity building and legislative solutions to provide Tribes with the resources and authority to effectively manage and protect their water rights.

## Appendix A: Notification of Consultation and Coordination Letter Sent to Tribes



March 21, 2025

**Re: Notification of Consultation and Coordination on Upcoming Efforts to Revise the Definition of "Waters of the United States"**

Dear Honorable Leader:

The U.S. Environmental Protection Agency and the U.S. Department of the Army, hereafter "the agencies," are initiating consultation with federally recognized Indian Tribes on certain key topics related to the implementation of the definition of "waters of the United States." On March 12, 2025, the agencies announced their intent to undertake a rulemaking to revise this definition once and for all in light of the Supreme Court's decision in *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).

**Consultation on the Forthcoming Rulemaking**

The agencies' anticipated timeline for the consultation and coordination period is expected to extend for 60 days from March 21, 2025, to May 20, 2025. This consultation process will be conducted consistent with the *EPA Policy on Consultation with Indian Tribes*<sup>1</sup> and the EPA Guidance for Discussing Tribal Treaty or Similar Rights.<sup>2</sup> The agencies invite you and/or your designated consultation representative(s) to participate in this process to discuss information related to this action, including treaty or similar rights, Indigenous knowledge and sacred sites. We invite you to a Tribal consultation kick-off webinar to be held on March 31, 2025, from 1:00 – 3:00 pm Eastern.

If you would like to request government-to-government consultation with the agencies on this action, please have your staff contact Laura Shumway at [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov) and Elliott Carman, Water Resources Regulation and Policy Advisor, at [elliott.n.carman.civ@army.mil](mailto:elliott.n.carman.civ@army.mil) by May 20, 2025. Please also identify a Tribal representative to serve as a point of contact for planning purposes. The EPA will work with your staff to schedule the consultation meeting with your Tribal government as requests are received.

The EPA and the Army would like to conclude consultation meetings by June 2, 2025, so that input from Tribal governments can be received and considered in advance of publication of the proposed rule in the Federal Register. Following the agencies' proposal of a revised definition of "waters of the United States," there will be an opportunity for public comment.

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<sup>1</sup> <https://www.epa.gov/tribal/epa-policy-consultation-indian-tribes>

<sup>2</sup> <https://www.epa.gov/tribal/epa-policy-consultation-indian-tribes-guidance-discussing-tribal-treaty-or-similar-rights>

Enclosed is a consultation and coordination plan that includes a description of the action under consultation, a timeline for the consultation period and information on how you can provide input on this action. This information is also available on EPA's Tribal Consultation Opportunities Tracking System.<sup>3</sup>

### **Joint Guidance on Continuous Surface Connection**

In addition to initiating Tribal consultation, we would like to inform you of the agencies' March 2025 memorandum,<sup>4</sup> which provides guidance to the agencies' field staff regarding implementation of "continuous surface connection" in response to requests for clarification on the scope of adjacent wetlands in light of the Supreme Court's decision in *Sackett*. Consistent with this guidance, and under both regulatory regimes currently in effect across the country due to ongoing litigation (*i.e.*, the Amended 2023 Rule and the pre-2015 regulatory regime as informed by *Sackett*),<sup>5</sup> the agencies are interpreting "continuous surface connection" to mean abutting (or touching) a requisite jurisdictional water.

### **WOTUS Notice: The Final Response to SCOTUS – Upcoming Tribal Listening Session and Written Recommendations Docket**

Separate from the Tribal consultation, the agencies also seek the participation of Tribes and their representative associations in the upcoming Tribal listening session and invite your written input for the recommendations docket, Docket ID No. EPA-HQ-OW-2025-0093. A pre-publication version of the agencies' notice announcing a series of listening sessions and a 30-day written recommendations docket is available on the EPA's website;<sup>6</sup> this version will be replaced with the official version once it publishes. The recommendations docket will be open for 30 days upon publication of the notice in the Federal Register. The agencies specifically seek feedback on: defining "continuous surface connection," including what it means to "abut" a jurisdictional water; defining "relatively permanent" and identifying relatively permanent tributaries in the field; and which characteristics can provide clear and implementable distinctions between jurisdictional and non-jurisdictional ditches. One of the six listening sessions will be specifically for Tribes and their representative organizations. Additional information about the forthcoming virtual listening session for Tribes will be posted on the EPA's website.<sup>7</sup> You are also welcome to participate in the listening sessions for the public and provide written input to the agencies' recommendations docket (EPA-HQ-OW-2025-0093) separate from any written feedback provided as part of the consultation process. The agencies will use this input to inform further actions involving the definition of "waters of the United States" to ensure that implementation aligns with the *Sackett* decision.

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<sup>3</sup> <https://tcots.epa.gov>

<sup>4</sup> <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>

<sup>5</sup> For more information about the operative definition of "waters of the United States" for specific geographic areas in light of litigation, see: <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update>.

<sup>6</sup> [https://www.epa.gov/system/files/documents/2025-03/wotus\\_notice\\_march2025.pdf](https://www.epa.gov/system/files/documents/2025-03/wotus_notice_march2025.pdf)

<sup>7</sup> <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>

## EPA and Army Staff Contacts

Thank you for your consideration of this opportunity to engage in consultation. If you or your designated representative(s) have questions or would like to submit written Tribal consultation comments on the agencies' forthcoming rulemaking efforts to revise the definition of "waters of the United States," please contact Laura Shumway of EPA's Office of Wetlands, Oceans, and Watersheds at [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov) or (202) 566-2514, or Elliott Carman of the Office of the Assistant Secretary of the Army (Civil Works) at [elliott.n.carman.civ@army.mil](mailto:elliott.n.carman.civ@army.mil) or (703) 300-2899. We look forward to your input and engagement on this important effort.

Sincerely,

Robyn S.  
Colosimo, PE

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Robyn S.  
Colosimo, PE  
2025.03.21  
10:27:09 -04'00'

Robyn S. Colosimo, P.E.  
Senior Official Performing the Duties of the  
Assistant Secretary of the Army (Civil Works)  
Department of the Army

Browne,  
Peggy

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Digitally signed by  
Browne, Peggy  
Date: 2025.03.21  
14:59:55 -04'00'

Peggy S. Browne  
Acting Assistant Administrator for Water,  
U.S. Environmental Protection Agency

## ENCLOSURE

1. Tribal Consultation and Coordination Plan

## **Consultation and Coordination Plan**

### **Revising the Definition of “Waters of the United States”: The Final Response to SCOTUS**

#### **Overview**

On March 12, 2025, U.S. Environmental Protection Agency Administrator Lee Zeldin announced the EPA and the U.S. Department of the Army are pursuing actions to revise the definition of “waters of the United States” with a focus on clarity, simplicity and improvements that will stand the test of time.

#### **Background Information on the Initiative**

“Waters of the United States” is a threshold term in the Federal Water Pollution Control Act, also known as the Clean Water Act, that establishes the geographic scope of federal jurisdiction under the Act. Many Clean Water Act programs, including Section 303 (water quality standards and total maximum daily loads), Section 311 (oil spill programs), Section 401 (water quality certifications), Section 402 (pollutant discharge permits) and Section 404 (dredged and fill discharge permits) address “navigable waters,” defined in the statute as “the waters of the United States, including the territorial seas.” See 33 U.S.C. 1362(7). Since the 1970s, the agencies have defined “waters of the United States” by regulation. On May 25, 2023, the Supreme Court decided *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023). In light of the decision, on September 8, 2023, the EPA and the Army published a final rule to amend the January 2023 definition of “waters of the United States” to conform to the Supreme Court’s decision.

The “Amended 2023 Rule” refers to the final rule “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”) as amended by the rule “Revised Definition of ‘Waters of the United States’; Conforming,” 88 FR 61964 (September 8, 2023) (“Conforming Rule”) (codified at 33 CFR 328.3 (U.S. Army Corps of Engineers) and 40 CFR 120.2 (EPA)), which was issued without notice and comment under the “good cause” exemption to the Administrative Procedure Act. However, due to ongoing litigation,<sup>1</sup> the Amended 2023 Rule is not operative in certain states.<sup>2</sup> In the jurisdictions where the Amended 2023 Rule is subject to a preliminary injunction, the agencies are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime<sup>3</sup> and the Supreme Court’s decision in *Sackett*, pursuant to the recent 2025 guidance memorandum released by the agencies.<sup>4</sup>

The agencies have heard numerous concerns raised by stakeholders about the Amended 2023 Rule, including implementation-related issues and issues raised in ongoing litigation challenging the amended regulations. The agencies’ review of the definition of “waters of the United States” will be

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<sup>1</sup> Multiple states and industry associations, as well as one individual, have filed complaints challenging the Amended 2023 Rule in four different district courts. *Texas v. EPA*, Nos. 23-00017 & 23-00020 (S.D. Tex.); *West Virginia v. EPA*, No. 23-00032 (D.N.D.); *Kentucky v. EPA*, No. 23-00007 (E.D. Ky.); *White v. EPA*, No. 24-00013 (E.D.N.C.).

<sup>2</sup> For more information about the operative definition of “waters of the United States” for specific geographic areas in light of litigation, see <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update>.

<sup>3</sup> The “pre-2015 regulatory regime” refers to the agencies’ pre-2015 definition of “waters of the United States,” implemented consistent with relevant case law and longstanding practice, as informed by applicable guidance, training and experience, consistent with *Sackett*.

<sup>4</sup> Memorandum to the Field between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of “Continuous Surface Connection” under the Definition of “Waters of the United States” under the Clean Water Act (March 12, 2025), <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>.

guided by the Supreme Court’s decision in *Sackett*, which stated that the Clean Water Act’s use of “waters” encompasses only those relatively permanent, standing or continuously flowing bodies of water forming streams, oceans, rivers and lakes. The *Sackett* decision also clarified that wetlands would only be covered when having a continuous surface connection to waterbodies that are “waters of the United States” in their own right.

### **Potential Impacts/Benefits of the Activity**

The agencies understand that decisions concerning whether a water body is subject to the Clean Water Act have consequences for Tribal, state and local governments and for private parties. The agencies intend the forthcoming rulemaking to address this issue once and for all in a way that provides clear and simplified direction. The agencies acknowledge that, because the federal government generally implements Clean Water Act programs on Tribal lands, the definition of “waters of the United States” is of great importance to Tribes. Currently, of the Tribes that are eligible, most have not received treatment in a manner similar to a state status to administer Clean Water Act regulatory programs. While some Tribes have established Tribal water programs under Tribal law or have the authority to establish Tribal programs under Tribal law, many Tribes may lack the capacity to create a Tribal water program under Tribal law, administer a program or expand programs that currently exist. Other Tribes may rely on the federal government for enforcement of water quality violations.

Going forward, the agencies will seek to provide clear and transparent direction regarding the definition of “waters of the United States” and will prioritize practical implementation approaches and provide for durability and stability, as well as for more effective and efficient jurisdictional determinations, permitting actions, and other actions consistent with relevant decisions of the Supreme Court.

### **Input being Sought**

To assist the agencies in further clarifying the definition of “waters of the United States,” the agencies welcome feedback on specific key topic areas. When providing feedback, it will be helpful to the agencies if information is provided to support input on the particular issues described below, such as statutory citations, case law, references to longstanding agency practice, etc. The agencies are seeking input on the following issues:

- the scope of “relatively permanent” waters and to what features this phrase applies;
- the scope of “continuous surface connection” and to which features this phrase applies; and
- the scope of jurisdictional ditches.

The agencies also invite Tribes to discuss information related to treaty or similar rights, Indigenous knowledge and sacred sites.

### **Opportunities to Participate**

The Tribal consultation process table below lays out the approach and timeline for consultation and coordination. The agencies are also looking for additional opportunities to engage with Tribes during the consultation period.

The agencies plan to hold a Tribal Consultation Kick-off Webinar on March 31, 2025, from 1:00 – 3:00 p.m. Eastern. The webinar will be an opportunity for the EPA and the Army to provide an overview of

this forthcoming rulemaking and to receive input from Tribal representatives about this action. Webinar registration information is provided in the table below.

Tribes may submit written consultation comments at any time during the Tribal consultation and coordination process via email to [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov).

Additionally, Tribal governments may request one-on-one consultation meetings with EPA and the Army. The agencies will strive to accommodate these requests as time and resources permit. If you are interested in requesting consultation with the agencies during the pre-proposal period, please contact Laura Shumway at [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov) and Elliott Carman at [elliott.n.carman.civ@army.mil](mailto:elliott.n.carman.civ@army.mil) before May 20, 2025, to make arrangements.

Tribes may access this letter and related consultation information via EPA's Tribal Consultation Opportunities Tracking System.<sup>5</sup> Additional information on the definition of "waters of the United States" and this notice can be found on EPA's "Waters of the United States" webpage.<sup>6</sup>

### Consultation Period Timeline

| Date/Time                           | Event (description)                  | Contact information                                                                                                                                                                                                                                                                                                          |
|-------------------------------------|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| March 21, 2025                      | Initiation of Tribal Consultation    | EPA Contact: Laura Shumway<br>Phone: (202) 566-2514<br>Email: <a href="mailto:CWAwotus@epa.gov">CWAwotus@epa.gov</a><br><br>Army Contact: Elliott Carman<br>Phone: (703) 300-2899<br>Email: <a href="mailto:elliott.n.carman.civ@army.mil">elliott.n.carman.civ@army.mil</a>                                                 |
| March 31, 2025<br>1:00-3:00 p.m. ET | Tribal Consultation Kick-off Webinar | <a href="#">Registration Link</a><br><br>EPA Contact: Laura Shumway<br>Phone: (202) 566-2514<br>Email: <a href="mailto:CWAwotus@epa.gov">CWAwotus@epa.gov</a><br><br>Army Contact: Elliott Carman<br>Phone: (703) 300-2899<br>Email: <a href="mailto:elliott.n.carman.civ@army.mil">elliott.n.carman.civ@army.mil</a>        |
| April 30, 2025<br>1:00-3:00 p.m. ET | Tribal Listening Session             | <a href="#">Registration Information</a><br><br>EPA Contact: Laura Shumway<br>Phone: (202) 566-2514<br>Email: <a href="mailto:CWAwotus@epa.gov">CWAwotus@epa.gov</a><br><br>Army Contact: Elliott Carman<br>Phone: (703) 300-2899<br>Email: <a href="mailto:elliott.n.carman.civ@army.mil">elliott.n.carman.civ@army.mil</a> |

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<sup>5</sup> <https://tcots.epa.gov>.

<sup>6</sup> <https://www.epa.gov/wotus>.

| Date/Time    | Event (description)                                          | Contact information                                                            |
|--------------|--------------------------------------------------------------|--------------------------------------------------------------------------------|
| May 20, 2025 | Close of Tribal consultation                                 | Tribes may submit written consultation comments via email to CWAwotus@epa.gov. |
| June 2, 2025 | Conclusion of government-to-government consultation meetings |                                                                                |

**Any additional scheduled meetings or webinars will be posted to the TCOTS website.**

## Appendix B: Tribes/Tribal Organizations Sending Consultation Comment Letters

All Tribal consultation comment letters are included as an attachment to the Tribal Consultation Report in the docket at Docket ID No. EPA-HQ-OW-2025-0322 or are available in the recommendations docket (Docket ID No. EPA-HQ-OW-2025-0093) as referenced in the below table.

| Tribe/Organization Name                                                                   | Type of Commenter    | EPA Region | Docket reference         |
|-------------------------------------------------------------------------------------------|----------------------|------------|--------------------------|
| Ak-Chin Indian Community                                                                  | Tribal Leader        | Region 9   | Attached                 |
| Bayou City Waterkeeper, Chickaloon Village Traditional Council, and Tohono O'odham Nation | Tribal Staff         | Region 10  | EPA-HQ-OW-2025-0093-3330 |
| Citizen Potawatomi Nation                                                                 | Tribal Staff         | Region 6   | Attached                 |
| Coeur d'Alene Tribe                                                                       | Tribal Staff         | Region 10  | EPA-HQ-OW-2025-0093-0235 |
| Confederated Tribes of the Grand Ronde Community of Oregon                                | Tribal Staff         | Region 10  | Attached                 |
| Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources   | Tribal Staff         | Region 10  | EPA-HQ-OW-2025-0093-0301 |
| Cow Creek Band of Umpqua                                                                  | Tribal Staff         | Region 10  | Attached                 |
| Great Plains Tribal Water Alliance, Inc. (GPTWA)                                          | Tribal Organization  | NA         | EPA-HQ-OW-2025-0093-0497 |
| Leech Lake Band of Ojibwe                                                                 | Tribal Staff         | Region 5   | Attached                 |
| Little Traverse Bay Band of Odawa Indians                                                 | Tribal Staff         | Region 5   | Attached                 |
| Lummi Nation                                                                              | Tribal Staff         | Region 10  | Attached                 |
| Mille Lacs Band of Ojibwe                                                                 | Tribal Staff         | Region 5   | EPA-HQ-OW-2025-0093-0058 |
| National Association of Tribal Prehistoric Officers                                       | Tribal Organization  | National   | Attached                 |
| National Congress of the American Indians                                                 | Tribal Organization  | National   | EPA-HQ-OW-2025-0093-0299 |
| National Tribal Caucus & National Tribal Water Council                                    | Tribal Organizations | National   | EPA-HQ-OW-2025-0093-0051 |
| Nooksack Indian Tribe                                                                     | Tribal Leader        | Region 10  | Attached                 |
| Oneida Nation                                                                             | Tribal Leader        | Region 5   | Attached                 |
| Pokagon Band of Potawatomi Indians                                                        | Tribal Leader        | Region 5   | Attached                 |
| Pueblo of Acoma                                                                           | Tribal Leader        | Region 6   | EPA-HQ-OW-2025-0093-3329 |
| R10 Regional Tribal Operations Committee (RTOC)                                           | Tribal Organization  | Region 10  | Attached                 |
| Rincon Band of Luiseno Indians                                                            | Tribal Leader        | Region 9   | Attached                 |

| Tribe/Organization Name                                         | Type of Commenter    | EPA Region | Docket reference         |
|-----------------------------------------------------------------|----------------------|------------|--------------------------|
| Santa Clara Pueblo                                              | Tribal Leader        | Region 9   | EPA-HQ-OW-2025-0093-1508 |
| Snoqualmie Indian Tribe                                         | Tribal Staff         | Region 10  | EPA-HQ-OW-2025-0093-0030 |
| Southern Ute                                                    | Tribal Leader        | Region 8   | Attached                 |
| Tribal Association of Arizona & National Tribal Air Association | Tribal Organizations | National   | EPA-HQ-OW-2025-0093-0099 |
| Tulalip Tribes                                                  | Tribal Leader        | Region 10  | Attached                 |
| United South and Eastern Tribes                                 | Tribal Organization  | National   | Attached                 |
| Upper Sioux Community                                           | Tribal Staff         | Region 5   | EPA-HQ-OW-2025-0093-0006 |
| Ute Indian Tribe                                                | Unknown              | Region 8   | EPA-HQ-OW-2025-0093-0147 |

The following Tribes sent a separate letter to the agencies requesting consultation.

| Tribe/Organization Name            | Type of Commenter | EPA Region | Docket reference         |
|------------------------------------|-------------------|------------|--------------------------|
| Ak-Chin Indian Community           | Tribal Leader     | Region 9   | EPA-HQ-OW-2025-0093-3328 |
| Kalispel Tribe                     | Tribal Staff      | Region 10  | Attached                 |
| Miccosukee Tribe                   | Tribal Staff      | Region 4   | Attached                 |
| Pokagon Band of Potawatomi Indians | Tribal Leader     | Region 5   | Attached                 |
| Seneca Nation of Indians           | Tribal Staff      | Region 2   | Attached                 |

## Appendix C: Tribal Consultation, Coordination, and Outreach Meetings

One-on-one consultation meetings held as part of the consultation process are denoted in *italics* in the lists below.

### Meetings and Outreach Occurring During the Consultation Period

| Date           | Meeting                                                                        |
|----------------|--------------------------------------------------------------------------------|
| March 31, 2025 | Tribal Consultation Kick-Off Webinar                                           |
| April 2, 2025  | National Tribal Caucus Monthly Meeting                                         |
| April 9, 2025  | National Tribal Water Council – EPA Monthly Call                               |
| April 30, 2025 | Tribal Listening Session                                                       |
| May 12, 2025   | <i>Ak-Chin Indian Community Consultation</i>                                   |
| May 12, 2025   | <i>Seneca Nation of Indians Consultation</i>                                   |
| May 12, 2025   | <i>Mille Lacs Band of Ojibwe Consultation</i>                                  |
| May 21, 2025   | National Tribal Water Council Spring Meeting                                   |
| May 22, 2025   | <i>Little Traverse Band of Odawa Indians Consultation</i>                      |
| May 22, 2025   | <i>Kalispel Tribe Consultation</i>                                             |
| June 18, 2025  | <i>Miccosukee Tribe Consultation</i>                                           |
| June 18, 2025  | <i>Confederated Tribes of the Grand Ronde Community of Oregon Consultation</i> |
| June 20, 2025  | <i>Pokagon Band of Potawatomi Consultation</i>                                 |