



Summary Report of Federalism 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

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BACKGROUND

This document was prepared to support the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) in drafting the proposed rule Updated Definition of Waters of the United States. This report summarizes the agencies' federalism consultation and outreach efforts and the feedback they received.

The federalism consultation process described in this report follows the EPA's policy for implementing Executive Order (E.O.) 13132.¹ The agencies are proposing to revise the definition of "waters of the United States" to follow the clear direction of the Supreme Court in *Sackett v. Environmental Protection Agency*, 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. On March 21, 2025, the agencies initiated consultation with State and local governments and their member associations on certain topics related to the implementation of the definition of "waters of the United States." The agencies sought input on key topics related to the definition of "waters of the United States," consistent with the Supreme Court's ruling in *Sackett*, regarding "continuous surface connection," "relatively permanent," and jurisdictional versus non-jurisdictional ditches.

This report is being released in support of a proposed rule revising the definition of "waters of the United States" (Updated Definition of Waters of the United States *Rule*, Docket ID No. EPA-HQ-OW-2025-0322), which was preceded by Tribal and federalism consultations, initial stakeholder listening sessions, and a request for written recommendations (WOTUS Notice: The Final Response to SCOTUS (90 FR 13428, March 24, 2025); see <https://www.regulations.gov/docket/EPA-HQ-OW-2025-0093>), all to hear the perspectives of interested stakeholders and the agencies' co-regulators on how key topics related to implementation of the definition of States" under the Federal Waters Pollution Control Act as amended, also known as the Clean Water Act (CWA), in light of *Sackett*. Because the agencies' proposed revised definition may have federalism implications, the agencies undertook a federalism consultation under E.O. 13132 and applicable EPA guidance.

The agencies initiated the federalism consultation and consultation process with a letter to intergovernmental associations on March 21, 2025, and a consultation kick-off meeting on April 3, 2025. In addition, the agencies continued outreach and engagement with State and local government and hosted three listening sessions in April and May 2025 for States and their member associations, local governments and their member associations, and State and local governments and their member associations. In all these activities, the agencies solicited

¹ E.O. 13132, titled Federalism, requires meaningful and timely consultation with elected State and local officials or their representative national organizations early in the process of developing the proposed regulation. A federalism summary impact statement is published in the preamble to the regulation, and the agencies must provide the Office on Management and Budget (OMB) copies of all written communications submitted by State and local officials.

recommendations for the forthcoming proposed rule to revise the definition of “waters of the United States” consistent with the Clean Water Act and U.S. Supreme Court opinions. The proposed rule reflects consideration of these pre-proposal recommendations.

This report provides a summary of the consultation and outreach conducted with State and local governments during the rulemaking process to date. It also summarizes input provided by participants at meetings and the letters received during the federalism consultation period. The summary is intended to provide a description of the wide range of comments received from States, local government, and their State and local government associations as part of the consultation and outreach process. All letters submitted that the agencies considered as part of the consultation process are available in the docket for this proposed rule (EPA-HQ-OW-2025-0322). A separate report has been prepared summarizing the comments and input provided by Tribes and Tribal organizations during the consultation period and is also available in the docket for this proposed rule.

SUMMARY OF CONSULTATION AND OUTREACH EFFORTS

The agencies held a federalism consultation kick-off meeting with intergovernmental associations on April 3, 2025, in order to provide an overview of the forthcoming proposed rulemaking and to obtain pre-proposal input from intergovernmental representatives. The agencies also consulted with State and local governments to solicit their pre-proposal comments on what they thought a revised definition of “waters of the United States” should entail related to key topics. The consultation period ended on June 2, 2025. The agencies held a briefing for the National Association of State Departments of Agriculture (NASDA) as well as three listening sessions with States and their member associations, local governments and their member associations, and State and local governments and their member associations. In the course of this consultation, the EPA coordinated with Army, and Army jointly participated in aspects of the consultation process, including participating in meetings and listening sessions.

The agencies provided the same background information at each meeting and listening session held during the consultation period. Representative copies of the presentations are available in the docket for this rulemaking. Many of the sessions were led by or attended by one of the following representatives² for EPA: Jessica Kramer, Senior Advisor in the Office of the Administrator and the Nominee for Assistant Administrator for Water; Peggy Browne, Acting Assistant Administrator for Water; Wes Brooks, Deputy Assistant Administrator for Water, Stacey Jensen, Director of the Oceans, Wetlands, and Communities Division; Russell Kaiser, Chief of the Program Development and Jurisdiction Branch; Rose Kwok, Jurisdiction Team Coordinator, Office of Water; Laura Shumway, Office of Water; Stella Wilson, Office of Water; Elise O’Dea, Office of General Counsel (OGC); Simma Kupchan, OGC; and/or Andrew Hanson,

² The following names and titles were accurate at the time of the meetings.

Office of Congressional and Intergovernmental Relations. Attendees for the U.S. Department of the Army included Milton Boyd, Acting Director of Policy and Legislation, Office of the Assistant Secretary of Army for Civil Works; Elliott Carman, Water Resources Regulation and Policy Advisor, Office of the Assistant Secretary of Army for Civil Works; Jennifer Rashel, Assistant Deputy General Counsel, Office of the Army General Counsel; Lauren Leuck, Office of the Assistant Secretary of Army for Civil Works, and/or Matt Wilson, U.S. Army Corps of Engineers.

In addition to the April 3, 2025 kick-off meeting, the agencies held the following briefings and listening sessions on the following dates with States, local governments, or their representative organizations:

- April 17, 2025, Briefing for the National Association of State Departments of Agriculture and their members.
- April 29, 2025, Listening session for States and their member State associations.
 - Representatives attended from the following States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- May 6, 2025, Listening session for local governments and their member associations.
- May 28, 2025, Listening session for State and local governments and their member associations.

During the kick-off meeting and NASDA briefing, when possible, the agencies provided responses to the clarifying questions posed during the meetings. During all meetings and listening sessions, participants were invited to provide verbal recommendations particularly related to the three key implementation topics. Minutes taken during each meeting were used in the preparation of this summary. In addition, minutes taken during each meeting were summarized by artificial intelligence (AI), and EPA staff provided a quality assurance and quality control (QAQC) review for accuracy. In accordance with the Rules of Behavior for AI use at EPA, minutes recorded during the federalism kickoff meeting were pre-screened and all personal identifying information was removed before entering AI.

In addition to the meetings, the agencies received letters from State and local governments, as well as their member associations, as part of this Federalism consultation process. A total of ninety-eight letters were submitted to the agencies as part of the federalism consultation process:

- 47 State Government Agencies and State Associations, and
- 51 Local Government Agencies and Local Government Associations

- This report summarizes comments provided by participants at the federalism meetings and the letters received during federalism consultation. This summary does not generally distinguish comments submitted by State government entities from those provided by local government entities, nor does it distinguish between comments submitted by letter or at meetings. The summary is intended to provide a description of the wide range of comments received from both State and local governments as part of this consultation process. All letters submitted are included as attachments to this report in the docket for the proposed rule (Docket ID No. EPA-HQ-OW-2025-0322).

These meetings and the subsequent comments and input were provided before the proposed rule was signed. Therefore, State and local governments were asked to provide feedback on three key implementation topics related to the definition of “waters of the United States”:

1. The scope of “relatively permanent waters” and to what features this phrase applies.
2. The scope of “continuous surface connection” and to which features this phrase applies.
3. The scope of jurisdictional ditches.

When developing the proposed rule, the agencies carefully considered all comments received and all input from States, local governments, and intergovernmental associations from the various meetings. The agencies will continue to consider input received from States and local governments during the public comment for the proposed rule as they work to finalize the rule.

A copy of the agencies’ letter initiating federalism consultation is available as an attachment to this report (Appendix A). Appendix B lists the federalism consultation letters submitted by States, local governments, and State and local associations, along with association acronyms. The agencies included in this summary report letters from States, local governments submitted directly to them in response to the request for federalism comments as well as letters submitted by States, local governments, and their member associations submitted to the pre-proposal recommendations docket (EPA-HQ-OW-2025-0093).

THEMES EMERGING FROM STATE AND LOCAL GOVERNMENT CONSULTATION LETTERS AND LISTENING SESSIONS

The meetings, listening sessions, and consultation comment letters indicate the wide and diverse range of interests, positions, needs, and recommendations provided to the agencies by participants and commenters from State and local governments. However, a number of key themes emerged from these letters and the verbal input received from States and local

governments. These themes are summarized below, as subgroups of each respective key topic on which the agencies sought feedback.

1. RELATIVELY PERMANENT WATERS (RPWs)

Regional Specific Needs for Updates to the Definition of “Waters of the United States”

Many States and their associations, as well as some local governments and their associations, provided feedback related to the need to consider regional specific approaches in some capacity when defining RPW. Examples include differing thresholds and criteria to account for the geomorphic, hydrologic, and climatic diversity across the nation when revising the definition of “waters of the United States.” Many commenters made general suggestions about the need for a regionally applicable definition or provided specific ideas for incorporating regional variance through regulatory text revisions.

The need to incorporate regional variance was recommended most in regard to the scope of relatively permanent waters. States and local governments held divergent views on whether features subject to variant flow regimes across the nation should or should not be considered relatively permanent waters. Some federalism comments supported the exclusion of certain systems with infrequent flow and/or non-natural sources from assessments of whether a feature satisfies the relatively permanent standard or not. Many federalism comments recommended defining the scope of relatively permanent waters regionally under a science-based approach to more accurately assess systems with varied flow regimes. A few other federalism comments recommended omitting a specific flow duration or numeric flow criteria when defining relatively permanent waters due to the nation’s varied hydrologic network, including some areas where surface waters are seasonal. Concurrently, some federalism comments recommended including a criterion for measured flow or standing water at least seasonally with considerations of prolonged drought impacts based on regional climatic conditions. A few federalism commenters stated the importance of taking karst landscapes into consideration for determining relatively permanent waters, with one stating that losing streams should not lose their jurisdictional status simply due to their interaction with subsurface flow pathways.

Overall, the agencies received recommendations for taking both a standardized or an individualized approach, but commenters suggested the scope of relatively permanent waters to be applicable across all United States’ hydrologic systems and representative of regionally specific flow regimes.

Classifications for Relatively Permanent Waters

Many State and local governments and their member associations commented on the types of waters and flow classifications that should or should not be considered relatively permanent. Comments received on the types of waters that should be considered relatively permanent ranged broadly, with varying levels of support across the nation.

Some recommendations included conditional factors to require, in addition to flow regime classification, for a stream to be considered subject to CWA jurisdiction, such as a system must maintain permanent flow/presence of water *and* connection to a traditional navigable water in a typical year. A few commenters recommended considering functionality when determining temporary breaks in RPWs and suggested that a non-jurisdictional structure that interrupts or separates a RPW does not sever the relatively permanent status or its hydrologic connectivity to a jurisdictional water.

Suggested flow duration requirements ranged from “continuous flow” to “not defining any specific flow criteria to account for variability.” Recommendations on flow regimes to include in the scope of relatively permanent waters ranged from resources with “at a minimum ephemeral flow” to resources “naturally occurring continuous flow of water year-round” and all flow regimes in between, including “only perennial flow.” A few commenters supported including aquatic resources that meet one or more of the following parameters as RPWs: continuous flow at least 290 days per year, flow “most of the year,” flow more than thirty days during the growing season, “areas that are inundated or saturated,” or systems that contain “surface water flowing continuously during a typical year.” A few other commenters suggested a scientific approach to RPWs that would include ephemeral, intermittent, and perennial streams that have chemical, physical, and/or biological connection to downstream waters. A few local government commenters recommended including tributaries as RPWs that contribute “significant volumes of flow” to another jurisdictional water or that contribute to downstream water quality, flood mitigation, and habitat connectivity. Comments on what should constitute “seasonal” varied. Many commenters supported including resources that have seasonal flow for at least three consecutive months as RPWs. Other commenters stated that seasonal should refer to extended periods of A few commenters supported that all intermittent waters should be considered RPWs, while others recommended including only intermittent tributaries, lakes, and ponds that connect to a traditional navigable water during a normal year. One commenter suggested that intermittent and perennial streams should be included only when they are navigable-in-fact. Additionally, many commenters supported including waters that have temporarily interrupted flow due to drought conditions, dry spells, low tides, or human conduct. Some commenters stated that intermittent and/or ephemeral streams should not be considered relatively permanent waters.

The agencies also received recommendation on the types of waters that should not be considered relatively permanent waters. A few commenters recommended excluding resources that meet at least one of the following conditions from being relatively permanent waters: ephemeral flows, intermittent streams (including springs), flooding, rain runoff, dry washes, arroyos, channels that periodically provide drainage for rainfall, nuisance flows from urban/suburban irrigation or other artificial upland sources, artificial lakes and ponds, conveyances for irrigation water, stock water basins and tanks, ditches, canals, wells, drains, permafrost wetlands, channels lacking flow for majority of the year under ordinary circumstances, and interstate waters.

Implementation of Determining Relatively Permanent Waters

The agencies also received comments from State and local governments regarding implementation of relatively permanent waters and relatively permanent standard including:

- Use observed or modeled stream flows, not field indicators to determine jurisdiction.
- Create and use maps of “waters of the United States;’ update maps every five years, consistent with the duration of approved jurisdictional determinations.
- Use flow regime and presence of an ordinary high-water mark to determine if a water is jurisdictional as an RPW.
- Determine RPWs by presence of bed, banks, and other evidence of flow such as ordinary high water mark, staining, or debris deposits.
- Do not determine RPWs by physical indicators of bed, banks, or ordinary high-water mark.

2. CONTINUOUS SURFACE CONNECTION (CSC)

Sentiments from State and local governments ranged from the assertion that a continuous surface connection requires “two features physically touching and permanently sharing only surface water flows,” to the assertion that a continuous surface connection should be defined through “system functionality, interactions, and collective ecosystem services provided.” Some State and local governments commenters supported a definition of “continuous surface connection” somewhere in the middle, for example, where waters share a hydrologic connection, allowing for temporary interruptions in that connection due to natural processes or regional variation, such as subsurface hydrologic connectivity observed in the arid West region.

Discrete Features as a Continuous Surface Connection (CSC)

Many of the comments received from State and local governments and their associations provided recommendations for discrete features serving as a CSC. Many supported discrete features serving as a CSC, including features such as any perennial features, culverts, ditches, pipes, tunnels, dams, tide gates, and/or boulder fields. Alternatively, many supported excluding discrete features from being able to serve as a CSC, such as non-relatively permanent waterways, non-jurisdictional ditches, drainage swales, erosional gullies, groundwater, culverts, swales, and/or wetlands chained together through intermittent wetlands and uplands.

Ultimately, the agencies received feedback on numerous discrete feature types recommended for either inclusion or exclusion from the CSC definition. Some recommendations included consideration of additional factors, such as flow regime or other “waters of the United States” designations.

Definition of “Adjacent”

A few commenters from State and local governments and their member associations supported defining “adjacent” through functional relationships shared between aquatic resources and services provided, including seasonal subsurface flow, rather than being based solely on

distance. Additionally, a few commenters recommended functionality having priority to adjacency. Many States and their associations and a few local governments and their associations recommended defining “adjacent” as a continuous surface water connection, such that it is difficult to determine where the wetland ends and the water begins, so that the two aquatic resources are “indistinguishable” under normal conditions, or as physically touching with a continuous surface water connection. A few others supported an approach based more in science when considering smaller tributaries and their functional contributions to the watershed, as well as prioritizing the best available science when determining the depth of sub-surface hydrologic connections. Similarly, a few local government associations suggested considering either contribution of flow to covered waters, hydrologic functionality, climatologic variables, ecosystem services provided, presence of shared biota, and topography when evaluating adjacency and connectivity between wetlands and other aquatic resources. Lastly, a few commenters recommended that the term “neighboring” not be included in the definition of “adjacent,” consistent with the current definition under the Amended 2023 Rule.

Definition of “Abutting”

A few State governments and their member associations recommended considering berms or other features with evidence of a continuous surface connection as “abutting” or considering wetlands behind natural berms and other natural landforms as having a continuous surface connection and “abutting” if it touches or has a connection with an RPW. Some local governments suggested that wetlands periodically flooded and temporarily separated by drought should be considered as having a CSC as well as soils regularly saturated by surface or ground waters. A few States also recommended including wetlands that maintain subsurface hydrologic connection to other surface waters as they would exist in natural conditions.

A few commenters supported including as adjacent non-tidal wetlands abutting a traditional navigable water (TNW), but only if the wetland has a permanently flooded water regime. Additionally, a few commenters recommended that any wetlands that are separated by uplands or barriers, are separated from jurisdictional waters by permanent barriers that prevent flow in both directions, are not directly abutting a jurisdictional water without a separation, or are connected through intermittent mosaic wetlands should not be considered “abutting.” Some local government commenters strongly recommended that jurisdictional waters be indistinguishable from adjacent features and most local governments who commented suggested physical, manmade, or long-term barriers should prevent classification of a CSC.

A few State commenters supported maintaining the single feature concept from the 2020 Navigable Waters Protection Rule (NWPR), whereby a single natural landform (*e.g.*, river berm) would not sever wetlands from jurisdiction where such features provide evidence of a continuous surface connection but more than one such natural landform would result in the loss of jurisdiction over the wetland. Additionally, a few commenters recommended the

removal of the term “abut” all together, whereas other commenters stated that physical “abutment” alone should not be sufficient to establish a CSC.

Temporary Interruptions in CSC

Most States and State government associations provided comment on temporary interruptions in CSC and the related impacts of RPW on the types of features that may serve as a continuous surface connection. Many States and their associations, along with some local governments and their associations supported an approach where temporary interruptions in surface water connection would not sever jurisdiction, as they note that such interruptions are reflective of natural processes, such as temporary dry spells, subsurface flows, low tides, or regional variation across systems. Other commenters recommended considering natural conditions in which “temporary interruptions in surface connection” occur, such as changes in watershed hydrology, changes in substrate, beaver dams, natural log jam, or drought. For determining the presence of a CSC, the agencies also received a recommendation to scientifically define thresholds for “temporary interruptions” in published implementation guidance.

While many commenters supported that natural or artificial disruptions should do not inherently sever continuous surface connection, many other commenters recommended that natural or artificial disruptions with irregular hydrologic connection in response to precipitation events or unusually wet periods, such as flood gates, pumps, or other similar artificial constructs, should not always necessarily maintain a continuous surface connection. Most local governments and their associations recommended that physical, manmade, or long-term barriers should not classify as a CSC. Lastly, a few commenters recommended that wetlands within enclosed flood protection systems should not be included as adjacent wetlands.

Overall, most recommendations that the agencies received supported that temporary interruptions should not sever a continuous surface connection, though many suggested certain types of temporary interruptions should not always maintain such a connection.

3. JURISDICTIONAL DITCHES

Defining “Ditch”

A few States and State associations supported defining “ditch” based on the definition in the NWPR (“a constructed or excavated channel used to convey water), and some local government commenters highlighted the potential clarity that could be provided between jurisdictional and non-jurisdictional waters when considering the NWPR’s definition. Additionally, a few State associations recommended building upon the NWPR’s definition of “ditch” to further categorize and evaluate ditches by use (*e.g.*, agricultural, irrigation, drainage). Similarly, other State associations recommended defining ditch as “a surface water conveyance constructed for the sole purpose of directing and delivering water from one point to another for purposes of road or field drainage; supplying water for irrigation, stock water or municipal uses; or transporting goods and services.” Some local governments recommended excluding

water with specific designations, such as water supply infrastructure with routine operations, infrastructure maintenance, aqueducts, canals, impoundments, and treatment facilities.

Determining Jurisdiction

Many States and their associations, as well as many local governments and their associations provided recommendations for if, when, and/or how ditches should be included as “waters of the United States.” Many States who commented supported that human-made features should be jurisdictional if they function like natural features and are an RPW. Many commenters supported jurisdiction extending to ditches constructed in or that alter natural water features or that have the physical characteristics of a water and to ditches that drain or intersect jurisdictional wetlands. Similarly, the agencies received recommendations that jurisdictional ditches must contain the same attributes as jurisdictional tributaries with at least continuous seasonal flow, have flow more than in direct response to precipitation, and connect to a TNW. Many States and their associations provided different conditions to be met when determining the jurisdictional status of a ditch and recommended that ditches be jurisdictional in the following scenarios:

- Ditches associated with abandoned prior converted cropland (PCC), and new drainage ditches in agricultural lands.
- Roadside ditches where the ditch coincides/bisects/intersects a “water of the United States” and where it was not solely a human-made area for water runoff, but some type of human channelization/construction/excavation within a tributary.
- A ditch created during a mining operation when the site is abandoned, if it conveys perennial flow to a TNW.
- Ditches constructed in uplands to redirect or channelize a previously existing natural stream or if that convey perennial flow to a TNW.
- Ditches constructed in uplands that express indicators of an RPW.
- Ditches that divert/convey water for irrigation and other beneficial uses, such as wildlife, etc.

A few State and local government commenters advised against using biological indicators and criteria to determine if a constructed ditch is jurisdictional.

A few States suggested not determining the jurisdictional status of ditches by use or other categorical definitions, but by connection to a “water of the United States.” Others recommended that jurisdictional ditches should not be a separate category of “waters of the United States” and recommended that the agencies expressly clarify that artificial waterways and water features will be subject to jurisdictional determinations based on the same principles used to make jurisdictional determinations for naturally occurring waterways and water features. Alternatively, such commenters stated that if the agencies treat jurisdictional ditches as a separate category of “waters of the United States,” the agencies should confirm that

jurisdictional determinations for that category will be made in the same way as they are for naturally occurring waterways and water features.”

Ditches Excluded from the Definition of “Waters of the United States”

Some local government commenters generally recommended that ditches (usually artificial and constructed for land and water management purposes) should not meet the requirements of relatively permanent waters as such ditches are not “waters.” Some commenters suggested excluding: irrigation ditches that return water to the source, stormwater infrastructure built for flood control, artificial channels that don’t transport water from jurisdictional waters, or ditches used for water supply infrastructure, routine operations, aqueducts, canals, impoundments, or treatment facilities.

Some States and their associations also suggested a wide range of conditions to consider for the exclusion of ditches from the definition of “waters of the United States,” such as:

- Excluding all ditches.
- Excluding all ditches that are not RPWs.
- Excluding all roadside ditches or certain roadside ditches (*e.g.*, unless they are rerouted streams).
- Categorically excluding ditches that originate or terminate in uplands.
- Excluding ditches excavated wholly in uplands and draining only uplands and that do not carry relatively permanent flow.
- Excluding ditches excavated wholly in uplands, draining only uplands, and that have less than perennial flow.
- Excluding ditches constructed for the sole purpose of managing precipitation and that do not meet the definition of RPW.
- Excluding channels that do not experience flow for the “majority of the year under ordinary circumstances.”
- Excluding ditches constructed primarily for either agricultural purposes, flood abatement, or stormwater control purposes.
- Excluding waters that are non-tidal drainage and irrigation ditches excavated on dry land, and irrigated areas that would revert to upland if the irrigation ceased.
- Excluding ditches that are excavated wholly in and drain only dry land, and do not connect to jurisdictional waters directly or via subsurface or overland flow.

Ultimately, the agencies received numerous suggestions on the ditch exclusion. The recommendations received range from broad categorical exclusions determined by resource location to narrower exclusions with specific conditions and parameters regarding either resource use, location, and/or hydrology.

Implementation of Determining Jurisdictional Ditches

The agencies received some recommendations from a few local and state government commenters regarding tools, resources, and field parameters to use when determining the jurisdictional status of a ditch. Some state governments and their associations who commented supported considering flow regime, physical features, locational information, and biological indicators when assessing the jurisdictional status of ditches, although a few state associations recommended not using biological criteria when making assessments about ditches.

Specific tools identified by commenters for potential use included historic geologic land office survey maps, the National Wetlands Inventory, remote sensing technology such as light detection and ranging (LIDAR), historical aerial photography, satellite imagery, and National Hydrography Datasets. Generally, few local government commenters suggested the agencies maintain their 2020 joint memorandum to the field, *Concerning Exempt Construction or Maintenance of Irrigation Ditches and Exempt Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act* (July 24, 2020)³ regardless of any future rule actions related to the scope of jurisdictional ditches.

4. OTHER TOPICS

The agencies also received comments from States, local governments, and their member associations on topics other than the three key issues that they specifically sought feedback on. These recommendations and comments are summarized below, though some are outside the scope of the proposed rulemaking:

- A desire for clear, bright-line, common sense rules that are understandable by all.
- Determinations should fault to non-jurisdictional if there are doubts or if complicated surveys, modeling, or algorithms are needed.
- Navigability should be central to determinations of “waters of the United States.”
- TNWs should be limited to waters that are interstate highways of commerce.
- Interstate waters should not be an independent category of jurisdiction – such waters should be sufficiently connected to TNWs.
- Impoundments lacking a hydrological connection to TNWs should not be jurisdictional.
- A request to not allow the use of litter or debris for determining the presence of an ordinary high water mark.
- The agencies should not include the paragraph (a)(5) category from the Amended 2023 Rule for certain intrastate lakes and ponds in the definition of “waters of the United States.”

³ Available at https://www.epa.gov/system/files/documents/2022-12/Ditch%20Exemption%20Memo_Final.pdf.

- Requests for adding an exclusion for human-made drinking water, water supply, flood control, and stormwater infrastructure features (such as aqueducts, infiltration basins, percolation ponds, terminal reservoirs and other impoundments that do not discharge downstream, treatment wetlands), unless they are constructed in TNWs or are constructed on a jurisdictional tributary and maintain a CSC to a downstream TNW.
- A request to exclude permafrost wetlands from the definition of “waters of the United States.”
- Requests that the agencies defer responsibility for jurisdictional determinations to State or local governments.
- Requests that local flood control districts should be responsible for determining whether or not to apply for a Clean Water Act section 404 permit based on their discretion and independent judgement.

APPENDIX A: NOTIFICATION OF CONSULTATION AND COORDINATION LETTER SENT TO STATES AND LOCAL GOVERNMENTS



March 21, 2025

Re: Notification of E.O. 13132 (Federalism) Consultation and Coordination on Upcoming Efforts to Revise the Definition of "Waters of the United States"

Dear Intergovernmental Association Colleague:

The U.S. Environmental Protection Agency and the U.S. Department of the Army, hereafter "the agencies," would like to solicit your insight 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

Consultation is requested pursuant to the terms of Executive Order 13132, entitled "Federalism," which directs federal agencies to consult with elected state and local government officials, or their representative national organizations, when developing regulations and policies that may have implications for state and local governments. We look forward to the opportunity to engage with our state and local governmental partners to discuss your experiences and views on implementation of the definition of "waters of the United States" on the key topics of "continuous surface connection," "relatively permanent" waters and ditches. With this in mind, we would like to invite you to a federalism kick-off meeting to be held on April 3, 2025, from 1:00 – 3:00 pm Eastern.

Pursuant to this consultation process, the agencies are contacting the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the U.S. Conference of Mayors, the National Association of Towns and Townships, the National Association of Counties, the County Executives of America, the International City/County Management Association, and the Environmental Council of States to request input on this rulemaking. Additionally, several other state and local professional groups, such as the Association of Clean Water Administrators, the Western Governors' Association, the National Association of Wetland Managers and the American Public Works Association have been invited to participate.

The agencies are requesting your attendance at this meeting to obtain pre-proposal feedback on our efforts 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. At the meeting, the agencies will present background information on the forthcoming rulemaking. You will have the opportunity to provide input to the agencies during the meeting and may provide written input within 60 days after the date of the meeting, by June 2, 2025.

We request you and your members **submit written federalism comments to the agencies via email to CWAwotus@epa.gov. To register for the consultation kick-off meeting, please respond via the scheduling notice to which this letter is attached.**

Joint Guidance on Continuous Surface Connection

In addition to initiating federalism consultation, we would like to inform you and your members of the agencies' March 2025 joint memorandum,¹ 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*),² the agencies are interpreting "continuous surface connection" to mean abutting (or touching) a requisite jurisdictional water.

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

Separate from the federalism consultation, the agencies also seek the participation of state associations and their members in the upcoming state 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;³ 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 states and their representative organizations. Additional information about the forthcoming state listening session, which will be a hybrid event in Washington, D.C., will be posted on the EPA's website.⁴ State and local governments and their member associations are also welcome to participate in the listening sessions for the public and may provide written input to the agencies' recommendations docket (EPA-HQ-OW-2025-0093) separate from any written feedback provided as part of the consultation period. 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.

¹ <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>

² 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>.

³ https://www.epa.gov/system/files/documents/2025-03/wotus_notice_march2025.pdf

⁴ <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>

EPA and Army Staff Contacts

If you have questions regarding the forthcoming rule, you may contact Rose Kwok of the EPA's Office of Wetlands, Oceans, and Watersheds at wotus-outreach@epa.gov or (202) 566-0657, or Elliott Carman, Office of the Assistant Secretary of the Army (Civil Works) at 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



Robyn S.
Colosimo, PE
2025.03.21
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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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Browne, Peggy
Date: 2025.03.21
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Peggy S. Browne
Acting Assistant Administrator for Water,
U.S. Environmental Protection Agency

APPENDIX B: STATES, LOCAL GOVERNMENTS, AND ASSOCIATIONS SENDING CONSULTATION COMMENT LETTERS

All federalism consultation comment letters are included as an attachment to the Federalism 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 tables.

STATE GOVERNMENTS SENDING CONSULTATION COMMENT LETTERS

<i>State Governments</i>	<i>Docket reference</i>
Alabama Department of Agriculture and Industries	EPA-HQ-OW-2025-0093-0494
Alaska	EPA-HQ-OW-2025-0093-0506
Alaska – Governor Mike Dunleavy	Attached
Arizona Department of Environmental Quality	Attached
Attorneys General of New York, Illinois, Massachusetts, Michigan, and Oregon	EPA-HQ-OW-2025-0093-0177
California State Water Resources Control Board	EPA-HQ-OW-2025-0093-0183
District of Columbia, District Department of Energy and Environment	EPA-HQ-OW-2025-0093-0041
Florida and Florida Department of Environmental Protection	EPA-HQ-OW-2025-0093-0225
Idaho Office of the Attorney General	EPA-HQ-OW-2025-0093-0237
Idaho Departments of Transportation, Agriculture, and Environmental Quality	EPA-HQ-OW-2025-0093-0246
Idaho, Montana, North Dakota, South Dakota and Wyoming Departments of Transportation	EPA-HQ-OW-2025-0093-0722
Iowa	EPA-HQ-OW-2025-0093-0120
Kentucky	EPA-HQ-OW-2025-0093-0296
Louisiana Coastal Protection and Restoration Authority	EPA-HQ-OW-2025-0093-0300
Louisiana Department of Agriculture and Forestry	EPA-HQ-OW-2025-0093-2086
Maryland Department of the Environment	EPA-HQ-OW-2025-0093-0146
Michigan Department of Environment, Great Lakes and Energy	EPA-HQ-OW-2025-0093 –0496, EPA-HQ-OW-2025-0093-1506
Missouri Department of Conservation	Attached
Montana (Governor Greg Gianforte)	Attached
Nebraska Department of Natural Resources	Attached

State Governments	Docket reference
Nevada Department of Agriculture	EPA-HQ-OW-2025-0093-0507
Nevada Division of Environmental Protection	EPA-HQ-OW-2025-0093-0232
New Mexico Environment Department; Department of Game and Fish; InterState Stream Commission; Energy, Minerals, and Natural Resources Department	EPA-HQ-OW-2025-0093-0302
New Mexico Senate Republican	EPA-HQ-OW-2025-0093-0149
North Carolina Department of Transportation	EPA-HQ-OW-2025-0093-0060
South Dakota Department of Agriculture and Natural Resources	Attached
Texas Department of Transportation	EPA-HQ-OW-2025-0093-0111
Utah Department of Natural Resources	Attached
Utah Department of Transportation	EPA-HQ-OW-2025-0093-0513
Utah Public Lands Policy Coordinating Office	EPA-HQ-OW-2025-0093-0255
Vermont Agency of Agriculture, Food & Markets Water Quality Division	Attached
Virginia Department of Environmental Quality	EPA-HQ-OW-2025-0093-0175
Washington State Department of Ecology	EPA-HQ-OW-2025-0093-0138
Washington State Department of Health	EPA-HQ-OW-2025-0093-3207
Washington State Department of Transportation	EPA-HQ-OW-2025-0093-0074
States of West Virginia, North Dakota, Georgia, Iowa, Alabama, Arkansas, Florida, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, Virginia, and the Arizona Legislature	EPA-HQ-OW-2025-0093-0224
Wyoming Department of Agriculture	EPA-HQ-OW-2025-0093-0070
Wyoming Department of Environmental Quality	EPA-HQ-OW-2025-0093-0217

LOCAL GOVERNMENTS SENDING CONSULTATION COMMENT LETTERS

Local Governments	Docket Reference
Adel Water Improvement District, Oregon	EPA-HQ-OW-2025-0093-0258
Alaska's North Slope Borough	EPA-HQ-OW-2025-0093-0273
City of Columbus Dept of Public Utilities	EPA-HQ-OW-2025-0093-3332
City of Corona, California	EPA-HQ-OW-2025-0093-0219
City of Hays Kansas, Kansas	EPA-HQ-OW-2025-0093-0131
City of Lake Forest, California	EPA-HQ-OW-2025-0093-0222
City of Maria, California	EPA-HQ-OW-2025-0093-0132

Local Governments	Docket Reference
City of New York, Law Department	EPA-HQ-OW-2025-0093-0151
City of Santa Maria, California	EPA-HQ-OW-2025-0093-0493
Clark County Regional Flood Control District	EPA-HQ-OW-2025-0093-0186
County of San Diego, California	EPA-HQ-OW-2025-0093-0263
Duchesne County, Utah	Attached
Emery Water Conservancy District, Humboldt County, Utah	Attached
Eureka County Board of Commissioners, Nevada	EPA-HQ-OW-2025-0093-0038
Helix Water District	EPA-HQ-OW-2025-0093-0126
Humboldt County Board of Commissioners (Nevada)	EPA-HQ-OW-2025-0093-0101
Humboldt River Basin Water Authority (HRBWA) (Nevada)	EPA-HQ-OW-2025-0093-0277
King County Department of Natural Resources and Parks, Water and Land Resources Division	EPA-HQ-OW-2025-0093-0181
Los Angeles County Public Works	EPA-HQ-OW-2025-0093-3325
Los Angeles County Sanitation Districts (LACSD)	EPA-HQ-OW-2025-0093-0157
Minnesota Cities Stormwater Coalition (MCSC)	EPA-HQ-OW-2025-0093-0145
Orange County Public Works (OCPW)	EPA-HQ-OW-2025-0093-0226
Rio Blanco Water Conservancy District, Colorado	EPA-HQ-OW-2025-0093-0020
Riverside County Flood Control & Water Conservation District	EPA-HQ-OW-2025-0093-0150
San Bernardino County Flood Control District (SBFCD), California	EPA-HQ-OW-2025-0093-3318
Santa Fe Irrigation District (SFID), California	EPA-HQ-OW-2025-0093-0129
Santa Margarita Water District (SMWD), California	EPA-HQ-OW-2025-0093-0176
Sevier County, Utah	Attached
The Metropolitan Water District of Southern California	EPA-HQ-OW-2025-0093-0139
Utah County, Utah	Attached
Western Municipal Water District, California	EPA-HQ-OW-2025-0093-0238
Yakima Basin Joint Board, Washington	EPA-HQ-OW-2025-0093-0100

INTERGOVERNMENTAL ASSOCIATIONS SENDING CONSULTATION COMMENT LETTERS

State Government Associations	Docket Reference
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American Association of State Highway and Transportation Officials (AASHTO)	EPA-HQ-OW-2025-0093-0075
Association of Clean Water Administrators	EPA-HQ-OW-2025-0093-0511
Association of Metropolitan Water Agencies	Attached
National Association of Flood and Stormwater Management Agencies (NAFSMA)	EPA-HQ-OW-2025-0093-0104
National Association of State Departments of Agriculture (NASDA)	EPA-HQ-OW-2025-0093-0141
National Association of State Foresters (NASF)	EPA-HQ-OW-2025-0093-0155
National Association of Wetland Managers and Association of State Floodplain Managers (Joint Letter)	EPA-HQ-OW-2025-0093-0172
New England InterState Water Pollution Control Commission (NEIWPCC)	EPA-HQ-OW-2025-0093-0148
Western States Water Council	Attached

Local Government Associations

Docket Reference

American Public Power Association (APPA)	EPA-HQ-OW-2025-0093-0134
American Public Works Association	Attached
American Water Works Association	EPA-HQ-OW-2025-0093-0223
California State Association of Counties	Attached
Coalition of Local Government	EPA-HQ-OW-2025-0093-2087
Florida Stormwater Association (FSA)	EPA-HQ-OW-2025-0093-0040
National Association of Conservation Districts	EPA-HQ-OW-2025-0093-0184
National Association of Counties, National League of Cities, and the U.S. Conference of Mayors (Joint Letter)	Attached
National Association of Towns and Townships	EPA-HQ-OW-2025-0093-0090
National Municipal Stormwater Alliance (NMSA)	EPA-HQ-OW-2025-0093-3319
Nevada Association of Counties (NACO)	EPA-HQ-OW-2025-0093-0503
Ohio Township Association (OTA)	EPA-HQ-OW-2025-0093-3741
Pennsylvania State Association of Township Supervisors (PSATS)	EPA-HQ-OW-2025-0093-0097
Southeast Stormwater Association (SESWA)	EPA-HQ-OW-2025-0093-0039
Wyoming County Commissioners Association	Attached