



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*¹ and the EPA Guidance for Discussing Tribal Treaty or Similar Rights.² 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 and Elliott Carman, Water Resources Regulation and Policy Advisor, at 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.

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

² <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.³

Joint Guidance on Continuous Surface Connection

In addition to initiating Tribal consultation, we would like to inform you of the agencies' March 2025 memorandum,⁴ 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*),⁵ 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;⁶ 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.⁷ 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.

³ <https://tcots.epa.gov>

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

⁵ 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>.

⁶ https://www.epa.gov/system/files/documents/2025-03/wotus_notice_march2025.pdf

⁷ <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 or (202) 566-2514, or Elliott Carman of the Office of the Assistant Secretary of the Army (Civil Works) at elliot.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, 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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Peggy S. Browne
Acting Assistant Administrator for Water,
U.S. Environmental Protection Agency

ENCLOSURE

1. Tribal Consultation and Coordination Plan