



Summary Report of Pre-Proposal Listening Sessions for WOTUS Notice: the Final Response to SCOTUS

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

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Background

This report summarizes the verbal feedback the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (Army) (together, the agencies) received during their series of listening sessions. On March 12, 2025, the agencies released a joint memorandum issuing guidance to field staff on implementation of “continuous surface connection” consistent with the U.S. Supreme Court, decision in *Sackett v. EPA*, 598 U.S. 651 (2023). At the same time, the agencies also announced a Federal Register notice publicizing a series of listening sessions and a 30-day recommendations docket to solicit feedback on key aspects of the definition of “waters of the United States.” Nine listening sessions were held either virtually or in-person with a virtual option between April and May 2025 for States, Tribes, local governments, industry and agricultural stakeholders, environmental and conservation stakeholders, small business stakeholders, and the general public. The agencies were committed to obtaining input from a full spectrum of co-regulators and stakeholders on key topic areas related to the definition of “waters of the United States” in light of *Sackett*, including “continuous surface connection,” “relatively permanent,” and jurisdictional versus non-jurisdictional ditches. The agencies also sought input on implementation challenges related to those key topic areas. Through the course of these engagement sessions, the EPA coordinated with Army, and Army jointly participated in aspects of the outreach process.

The agencies provided the same background information at each listening session. Copies of the presentations are available in the docket for this rulemaking. These presentations also contain the final list of speakers providing verbal recommendations at each session. Many of the sessions were led or attended by one of the following representatives:¹ Peggy Browne, Acting Assistant Administrator for Water (EPA); Wes Brooks, Deputy Assistant Administrator for Water (EPA); Turner Bridgeforth, EPA Senior Advisor for Agriculture and Rural Affairs; Amy Van Blarcom-Lackey, EPA Regional Administrator (Region 3), Emma Pokon, EPA Regional Administrator (Region 10); Stacey Jensen, Director of the Oceans, Wetlands, and Communities Division (EPA); Russell Kaiser, Chief of the Program Development and Jurisdiction Branch (EPA); Rose Kwok, EPA Office of Wetlands, Oceans, and Watersheds (OWOW); Laura Shumway, EPA OWOW; Stella Wilson, EPA OWOW; Elise O’Dea, EPA Office of General Counsel (OGC); Simma Kupchan, EPA OGC; Andrew Hanson, EPA Office of Congressional and Intergovernmental Affairs (OCIR); Milt Boyd, Office of the Assistant Secretary of the Army for Civil Works (OASACW); Elliott Carman, OASACW; Jennifer Rashel, Department of the Army Office of the General Counsel; Matt Wilson, U.S. Army Corps of Engineers; U.S. Congressman Blake Moore of Utah 1st District; Senator Shelley Moore Capito of West Virginia.

¹ Titles listed may be subject to change and were accurate at the time of the engagements.

The agencies held the following listening sessions on the following dates with co-regulators and stakeholder groups:

- **Listening Session for States:** April 29, 2025, from 9:30 a.m. - 12:00 p.m. ET (Virtual and at EPA Headquarters in Washington, D.C.)
- **Listening Session for Tribes:** April 30, 2025, from 1:00 - 3:30 p.m. ET (Virtual)
- **Listening Session for Industry and Agricultural Stakeholders:** May 1, 2025, from 9:30 a.m. - 12:00 p.m. ET (Virtual and at EPA Headquarters in Washington, D.C.)
- **Listening Session for Environmental and Conservation Stakeholders:** May 1, 2025, from 1:00 - 3:30 p.m. ET (Virtual and at EPA Headquarters in Washington, D.C.)
- **Listening Session for Local Governments:** May 6, 2025, from 3:00 - 5:00 p.m. ET (Virtual)
- **First Listening Session for the Public:** May 14, 2025, from 2:30-6:00 p.m. ET (Virtual and in Charleston, West Virginia)
- **Listening Session for Small Business Stakeholders:** May 19, 2025, from 1:00 - 3:30 p.m. ET (Virtual and at EPA Headquarters in Washington, D.C.)
- **Listening Session for State and Local Governments:** May 28, 2025, from 2:00 - 4:00 p.m. ET (Virtual)
- **Second Listening Session for the Public:** May 29, 2025, from 2:00 - 6:00 p.m. MT (4:00 - 8:00 p.m. ET) (Virtual and in Salt Lake City, Utah)

Transcripts 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 in accordance with the Rules of Behavior for AI use at EPA, EPA staff provided a quality assurance and quality control (QAQC) review for accuracy. Summaries derived from meeting transcripts do not report participant feedback verbatim and should not be interpreted as direct quotes, but rather a summarized and sometimes paraphrased statement generated by AI.

Summary of Listening Sessions for States and Local Governments

This section includes summaries of verbal feedback the agencies received from participants from State and local government agencies and their representative associations that participated in the listening sessions held on April 29 (for States), May 6 (for local governments), and May 28, 2025 (for State and local governments).

Recommendations on Continuous Surface Connection (CSC)

Some participants provided feedback regarding whether discrete features should provide or sever a CSC. A few participants recommended that discrete features such as culverts, pipes, and tide gates should not sever a continuous surface connection between resources. Other participants recommended that the definition of CSC should interpret the indistinguishability principle described in *Sackett* to mean that connections should not be separated by any barrier, whether constructed or natural. Alternatively, some participants suggested that features behind natural barriers and artificial barriers should be included as meeting the CSC requirement if a culvert or other discrete feature maintains hydrologic connectivity. The agencies also received recommendations to consider biological and ecological connections when defining types of CSC.

Some participants provided specific temporal criteria to consider for the definition of CSC, such as annual assessments of hydrologic connectivity. Other participants highlighted the importance of a definition that is applicable across both space and time, considering climatic and geographic variance throughout the nation. The agencies received a recommendation for incorporating a science-based approach to identify predictable seasons of flow across the nation that are applicable in all environments and accounts for regions that experience regular periods of drought.

A few speakers expressed concern for the possibility that certain aquatic resources and their ecosystem services could be severed from jurisdiction through alteration of a potential CSC. Alternatively, one speaker mentioned the potential for creating a jurisdictional water by artificially connecting isolated wetlands and questioned the implications of such actions.

Recommendations on Relatively Permanent Waters (RPW)

The agencies received many recommendations to consider regional variance when defining “relatively permanent” so that the definition may account for hydrological, climatological, and geomorphological differences across the country. Many participants also suggested the definition include some form of temporal threshold to establish a clear designation of minimum flow, such as minimum flow volume and or duration. Some of the recommended criterion provided during the listening sessions included “seasonally,” “normal water year,” “seasonal flow for at least 90 days,” and “at least three consecutive months during a typical year.”

A few participants raised other concerns to the agencies related to RPWs, such as impacts and implications of discharges into significant downstream aquatic resources, recommendations to categorically exclude certain types of aquatic resources with less than

intermittent flow, and the degree of reliability of mapping resources commonly used to identify tributaries in the United States.

Recommendations on Ditches

The majority of State and Local Government participants providing feedback agreed that there is a need to clarify the types of ditches subject to Clean Water Act (CWA) jurisdiction. Many participants recommended criteria to consider for determining the jurisdictional status of a ditch. A few recommended basing jurisdictional assessments off criteria like connectivity to downstream waters, likeness in physical characteristics to a tributary, or biological significance. Many other participants provided recommendations for the types of ditches that should generally be excluded, primarily focusing on use or function such as agricultural or roadside ditches. The agencies also received recommendations to treat irrigation ditches as point sources rather than designating them as “waters of the United States.”

Other Recommendations

State and local government participants provided additional recommendations for the agencies outside the scope of the three key terms. The agencies received feedback on the CSC guidance published March 12, 2025, with a few participants concerned it may not be encompassing of all wetland types.

One participant estimated the economic impact their state would experience by increasing state level regulations for resources falling out of federal jurisdiction, totaling multiple millions of dollars annually.

Summary of Listening Session for Tribes

This section includes verbal feedback the agencies received during the listening session held on April 30, 2025, for Tribal governments and their representative associations.

Recommendations on Continuous Surface Connection

Several Tribes advocated against revising the existing rule, asserting that the amended 2023 rule already complies with the *Sackett* ruling. Many Tribes shared the cultural importance of Tribal wetlands, and some Tribes recommended a broad definition of CSC to protect adjacent waters. Some Tribal participants advocated for protecting wetlands that have been historically connected to jurisdictional waters. They suggested including spring-fed and groundwater wetlands in the proposed CSC definition and emphasized the need for region-specific protections reflecting hydrologic function. One speaker shared concern about excessive

groundwater pumping and water diversions in the Owens Valley along the eastern Sierra Nevada and another speaker requested updated wetland maps for Alaska.

Recommendations on Relatively Permanent Waters

Many Tribal participants recommended a broad and protective definition for “relatively permanent,” including all water types such as perennial, intermittent and ephemeral features in the revised definition. Several Tribes and some Tribal organizations supported the inclusion of seasonal waters as RPWs under CWA jurisdiction. 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 Tribes government’s trust responsibility to safeguard Tribal lands, assets, and resources and cited numerous treaties between the United States and Tribal people.

Recommendations on Jurisdictional Ditches

Only a few Tribal participants explicitly spoke about jurisdictional ditches but of those who did, most recommended considering long-term impacts on downstream waters when defining jurisdictional versus non-jurisdictional ditches. Some Tribal participants also recommended including transboundary issues in the definition of jurisdictional ditches.

Other Recommendations

Participants in this session underscored the need to include Tribes in regulatory decisions, recognize the cultural significance of water and wetlands, and strengthen laws protecting water while considering traditional knowledge and climate change impacts. Overall, the session highlighted the importance of collaboration, recognizing the cultural and ceremonial importance of water to Tribal communities, acknowledging the unique hydrological conditions of different regions, and respecting Tribal sovereignty.

Summary of Listening Session for Industry and Agricultural Stakeholders

This section includes verbal feedback the agencies received during the listening session held on May 1, 2025, for industry and agricultural stakeholders.

Recommendations on Continuous Surface Connection

The primary recommendation agencies received from industry and agricultural stakeholders is that wetlands considered adjacent should not have any features between them and a jurisdictional water. One participant recommended categorically excluding those wetlands

separated from covered waters by any natural or artificial barrier. A few participants recommended redefining “adjacent” to mean only wetlands that are indistinguishable from other “water of the United States.” Another participant emphasized the importance of defining how much physical separation in length is enough to determine resources are not abutting.

Overall, most participants in this listening session supported a clear and well-defined rule. One participant recommended codifying the agencies’ joint memorandum providing guidance on the proper application of CSC released in March 2025. A few participants highlighted the importance of a rule that is easily understood across all demographics and professions, emphasizing a continuous surface connection should be obvious and not require complex criteria.

Recommendations on Relatively Permanent Waters

Overall, the agencies received recommendations during this listening session to revise the definition of “relatively permanent” in a manner that prioritizes clarity and ease for implementation. One participant recommended that the agencies avoid defining RPW by flow duration or regime, while a few others recommended excluding intermittent streams, dry channels, or ephemeral features from the definition.

Recommendations on Jurisdictional Ditches

Many participants recommended that the agencies categorically exclude ditches and other anthropogenically-constructed features. Many other participants supported excluding these features if they have only ephemeral or intermittent flow. The agencies also received recommendations to categorically exclude other specific types of ditches based on their use or location, such as roadside ditches, irrigation ditches, or upland cut ditches for agricultural use.

A few participants recommended that ditches should only be jurisdictional when they are channelized portions of jurisdictional, relatively permanent waters.

The agencies also received feedback to maintain the 2020, joint agency memo concerning exempt construction or maintenance of irrigation ditches and exempt maintenance of drainage ditches under section 404 of the Clean Water Act. A few other participants highlighted the complications that jurisdictional ditches pose for construction projects. A few participants suggested that the agencies assume the “burden of proof” for determining the jurisdictional status of historic ditches rather than the permit applicant.

Other Recommendations

The agencies received many recommendations from industry and agricultural stakeholders regarding implementation and the need to clarify the rule in a way that provides

consistency across the agencies in their regulatory interpretation. The agencies also received recommendations about the need to increase efficiency and timeliness in CWA permitting processes, including approved jurisdictional determination requests. One speaker suggested the agencies update available tools and resources for determining jurisdiction like Corps field identification manuals, trainings, and mapping resources. Similarly, one participant raised the need for increased transparency in the regulatory process, by online disclosure of the national regulatory workflow across CWA programs.

Many participants provided recommendations on other features that the agencies should categorically exclude such as stormwater control features, wastewater systems, artificial features, groundwater, and water-filled depressions incidental to construction activity, with some participants stating that the agencies should restore all of the exclusions from either the 2015 Clean Water Rule or the 2020 Navigable Waters Protection Rule (NWPR). Additionally, a few speakers supported revising the prior converted cropland (PC) exclusion to clarify that PC never loses its excluded status. Alternatively, a few speakers recommended revising the exclusion such that only PC that has been abandoned and reverted back to wetlands should be subject to CWA jurisdiction, as was promulgated in the NWPR. One speaker requested that the five-year abandonment duration for PC be increased to ten years.

Some speakers also emphasized the need for a definition of “waters of the United States” that reflects regional variance and suggested the importance of cooperative federalism in this approach, leaving room for States to manage aquatic resources not covered under the CWA. Others highlighted the disproportionate impact CWA enforcement cases potentially have on small businesses, farmers, and ranchers with emphasis on increasing the ability for landowners to make jurisdictional determinations without consultants or engineers. Relatedly, the agencies received recommendation to draw “bright lines” in the regulatory text so that landowners can understand the rule without legal interpretation.

Summary of Listening Session for Environmental and Conservation Stakeholders

This section includes verbal feedback the agencies received during the listening session held on May 1, 2025, for environmental and conservation stakeholders.

Recommendations on Continuous Surface Connection

Most participants in this listening session recommended that discrete features, particularly culverts, should be able to provide a CSC with some participants stating that the agencies should maintain consistency with the 2023 Rule regarding the types of features that

can serve as a continuous surface connection. Other participants recommended that biological and hydrological indicators/features be used to help determine a CSC or that certain features like levees, pipes, and natural berms should be assessed on a case-by-case basis to determine if they provide a CSC. A few participants discussed the importance of including connections via seasonal overbank flooding, flow through swales or berms, shallow subsurface flow, and shared groundwater tables in the definition of CSC. These few participants highlighted that these surface connection features maintain ecological and hydrologic processes, stressing that culverts are often installed to manage hydrologic flow and maintain connectivity and that seasonal overbank flooding, flow through swales or berms, and shared groundwater tables are observable and predictable. One speaker indicated that floodplain and riparian areas should be included as adjacent wetlands.

Several participants expressed opposition towards the agencies' joint CSC guidance released in March 2025 or to an approach to CSC that encompasses only abutting wetlands. One participant stated that the 2025 guidance was inconsistent with the CWA and urged the agencies to consider the entire body of case law not just *Sackett*, *SWANCC*, *Rapanos*, and *Riverside Bayview* when revising the rule. Another speaker illuminated the further economic impacts their State would experience through the loss of ecosystem services, with wetlands, for example, providing an estimated \$4.6 billion benefit in flood mitigation services. One speaker opposed defining which wetlands are jurisdictional based on wetness levels, such as seasonally flooded, semi-permanently flooded, or permanently flooded, as they estimate that such a requirement would mean that most wetlands would no longer be federally protected.

Overall, participants in this session emphasized that defining key phrases such as CSC too narrowly would undermine the goals of the CWA. Many participants also stated the important functions and ecosystem services provided by wetlands, such as treating and processing pollutants, flood protection, and providing recreational opportunities.

Recommendations on Relatively Permanent Waters

Overall, environmental and conservation stakeholder participants in this session recommended the agencies not exclude ephemeral, seasonal, or intermittent resources from the definition of "relatively permanent," with many speakers highlighting regional variances in resources. A few speakers highlighted that numerous States' drinking water resources depend upon intermittent headwaters and indicated the potential impacts unregulated discharges to these resources could have on local communities. One participant noted the importance of federal regulations over these resources due to the lack of state regulations in place. Others cited scientific findings, including the EPA's 2015 Connectivity Report, regarding the importance of ephemeral and intermittent streams to the overall integrity of aquatic ecosystems, recommending the agencies base the definition in science. Another participant shared the

religious significance of sacred aquatic resources and emphasized that reduced regulations will impact future generations.

Recommendations on Jurisdictional Ditches

Participants in this session primarily mentioned ditches as related to their belief that such features should be able to provide a continuous surface connection. A few speakers highlighted how ditches and other artificial features serve to maintain hydrologic connectivity and support water movement through the landscape.

Other Recommendations

Many participants opposed any further revisions to the definition of “waters of the United States,” asserting their belief that the Amended 2023 Rule adequately addresses the *Sackett* decision and urging the agencies to take no action. Many participants highlighted the importance of a broad definition of “waters of the United States,” stating that the definition and clean water is vitally important to the human health, the economy, and the ecological functioning of the nation’s aquatic resources. Some participants stated that weakening CWA protections is contrary to the intent of Congress and the goals of the Act to restore and protect the chemical, physical, and biological integrity of the nation’s waters. Other participants stated that weakened regulations would ignore decades of science and the interconnected of aquatic ecosystems.

One participant recommended that any revisions the agencies make must follow public participation requirements including the Administrative Procedure Act and provide clarity and consistency with the law. Another participant highlighted the potential economic impact communities with market drivers such as tourism, real estate, and fisheries could experience from aquatic resources falling out of CWA jurisdiction.

Summary of Listening Sessions for the Public

This section includes verbal feedback the agencies received from listening sessions for the general public held on May 14 and May 29, 2025.

Recommendations on Continuous Surface Connection

Recommendations from participants varied during the public listening sessions, with participants either supporting or opposing discrete features serving as a CSC.

One participant recommended that CSC be clearly limited to the context of adjacency for wetlands and not conflated with the definition of RPW. Other speakers recommended the agencies recognize functional connectivity between wetlands and other waters and highlighted

that even when surface water is not visibly present, resources remain functionally connected, especially during seasonal or episodic events.

One participant also recommended ensuring consistent interpretation and implementation of CSC standards across Corps regulatory districts to reduce confusion and delays in the permitting process. Another speaker suggested the agencies provide field-based guidance for evaluating CSC, especially in arid and semi-arid regions where surface water connection may be seasonal or episodic.

Recommendations on Relatively Permanent Waters

Many participants strongly recommended excluding ephemeral and some intermittent features from the definition of RPW. Some speakers highlighted the prevalence of ephemeral and intermittent resources on farmland in the west, and the subsequent complications regulatory actions pose on rural communities in these regions. In response, one speaker recommended that the agencies not solely rely on indicators like ordinary high water mark or stream duration assessment methods to assess RPWs in arid regions. Other speakers who supported excluding resources with variable flow regimes suggested incorporating flow duration thresholds in the definition of “relatively permanent,” such as “at least 90 days of continuous flow” or “year-round flow or those with surface water for more than six months annually.”

Alternatively, many speakers strongly recommended the agencies maintain regulatory protections for intermittent and seasonal streams due to their vital role in ecosystem health within the headwaters. The agencies also received recommendations for the revised rule to reflect Western hydrology, ensuring that definitions account for the seasonal variability and arid conditions of the Western United States, where many features are dry for most of the year. Some participants also expressed concern for the potential loss of vital resources used for anthropogenic use in regions such as Appalachia. Several speakers advocated for a definition of “relatively permanent” that incorporates scientific indicators such as precipitation patterns, defined channels, flow duration, hydric soils, biological marker, and ecological function to determine permanence, rather than relying solely on visible or continuous flow.

Recommendations on Jurisdictional Ditches

The agencies received recommendations either in support of or in opposition to including ditches in the definition of “waters of the United States.” Many participants supported the exclusion of ephemeral and intermittent ditches and other artificially constructed infrastructure used for drainage and irrigation functions that do not exhibit continuous flow. Some participants emphasized the increased regulatory confusion created when ditches are subject to CWA jurisdiction. A few speakers recommended that ditches and similar features be covered at the state level, where local context and land use can be better considered.

Alternatively, many participants recommended ditches not be categorically excluded but rather be evaluated based on whether they meet the definition of a tributary and contribute, at a minimum, intermittent flow to traditional navigable waters.

Other Recommendations

Some participants highlighted that frequent changes to the definition of “waters of the United States” has significantly complicated the ability to plan long-term projects. The agencies also received feedback that these frequent revisions create an implementation lag time where local governments are still practicing dated regimes creating difficulty for builders. One participant recommended the agencies revisit active past jurisdictional determinations issued under former regimes.

Some rural participants in the sessions strongly supported the agencies maintain exemptions for agricultural ditches that do not significantly impact downstream navigable waters. The agencies also received recommendations to provide clear CWA permitting exemptions for activities involving routine operations, maintenance, and upgrades to aging irrigation infrastructure.

The agencies also received the recommendation to distinguish between naturally formed wetlands and those created by artificial flooding or poor maintenance of ditches and canals and to avoid subjecting the later to CWA jurisdiction.

Summary of Listening Session for Small Business Stakeholders

This section includes verbal feedback the agencies received during the listening session held on May 19, 2025, for small business stakeholders.

Recommendations on Continuous Surface Connection

Some speakers emphasized the need for practical clarity and consistency in the definition of CSC. One participant supported a definition that allows landowners to identify jurisdictional waters without hiring experts. The agencies received the recommendation to exclude ephemeral features from serving as a CSC, and to not define adjacency based on proximity alone.

Recommendations on Relatively Permanent Waters

Overall, participants in this listening session expressed the need for more clarity in the definition of “relatively permanent.” A few speakers provided potential metrics for outlining the

types of waters subject to the definition including, using watershed size to define all RPWs as a proxy for hydrologic permanence, waters that flow for more than three months of the year, and the presence of aquatic insects as an indicator of surface water permanence. A few speakers recommended excluding ordinarily dry features such as ephemeral waters, and one participant supported excluding intermittent features as well.

Recommendations on Jurisdictional Ditches

Overall, participants generally recommended exclusions for either all or certain types of ditches. Many speakers supported excluding roadside ditches from CWA jurisdiction. One participant supported limiting CWA jurisdiction to only those ditches that have an ordinary high water mark and flow into a traditional navigable water, and excluding those cut in uplands. Generally, participants emphasized the complications that small businesses face when ditches are subject to CWA jurisdiction.

Other Recommendations

A few participants recommended that the agencies not revise the Amended 2023 Rule and criticized the lack of representation of public input in the 2023 Conforming Rule, urging the agencies to author revisions that reflect both scientific understanding and legal interpretations.

Another speaker supported the continued exclusion of prior converted cropland. The agencies also heard the need for clarity and efficiency in jurisdictional determinations and received recommendations to incorporate a mandatory timeframe in which the Corps must make final agency action. One participant highlighted they do not believe landowners should need to submit maps for jurisdictional determination requests and emphasized the burden of proof should lie with the Corps for approved jurisdictional determination rebuttals.