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WestFAST News

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To Conform with Recent Supreme Court Decision, EPA and Army Amend “Waters of the United States” Rule

EPA 8/29/23.

Today, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (the agencies) announced a final rule amending the 2023 definition of “waters of the United States” to conform with the recent Supreme Court decision in *Sackett v. EPA*. The agencies are committed to following the law and implementing the Clean Water Act to deliver the essential protections that safeguard the nation’s waters from pollution and degradation. This action provides the clarity that is needed to advance these goals, while moving forward with infrastructure projects, economic opportunities, and agricultural activities.

“While I am disappointed by the Supreme Court’s decision in the *Sackett* case, EPA and Army have an obligation to apply this decision alongside our state co-regulators, Tribes, and partners,” said EPA Administrator Michael S. Regan. “We’ve moved quickly to finalize amendments to the definition of ‘waters of the United States’ to provide a clear path forward that adheres to the Supreme Court’s ruling. EPA will never waver from our responsibility to ensure clean water for all. Moving forward, we will do everything we can with our existing authorities and resources to help communities, states, and Tribes protect the clean water upon which we all depend.”

“We have worked with EPA to expeditiously develop a rule to incorporate changes required as a result of the Supreme Court’s decision in *Sackett*,” said Michael L. Connor, Assistant Secretary of the Army for Civil Works. “With this final rule, the Corps can resume issuing approved jurisdictional determinations that were paused in light of the *Sackett* decision. Moving forward, the Corps will continue to protect and restore the nation’s waters in support of jobs and healthy communities.

While EPA’s and Army’s 2023 rule defining “waters of the United States” was not directly before the Supreme Court, the decision in *Sackett* made clear that certain aspects of the 2023 rule are invalid. The amendments issued today are limited and change only parts of the 2023 rule that are invalid under the *Sackett v. EPA* decision. For example, today’s final rule removes the significant nexus test from consideration when identifying tributaries and other waters as federally protected.

The Supreme Court’s Decision in *Sackett v. EPA*, issued on May 25, 2023, created uncertainty for Clean Water Act implementation. The agencies are issuing this amendment to the 2023 rule expeditiously—three months after the Supreme Court decision—to provide clarity and a path forward consistent with the ruling. With this action, the Army Corps of Engineers will resume issuing all jurisdictional determinations. Because the sole purpose of this rule is to amend specific provisions of the 2023 Rule that are invalid under *Sackett*, the rule will take effect immediately.

The agencies will work with state, Tribal and local partners to safeguard waters in need of protection following the *Sackett v. EPA* decision and will continue to use all available tools to protect public health and provide clarity for stakeholders.

The agencies will host a public webinar on September 12, 2023 to provide updates on the definition of “waters of the United States.” For registration information, please visit EPA’s [webpage for the amendments rule](#). The agencies also plan to host listening sessions this fall with co-regulators and stakeholders, focusing on identifying issues that may arise outside this limited rule to conform the definition of “waters of the United States” with the *Sackett v. EPA* decision.

Learn more about this action on EPA’s [“waters of the United States” website](#).

Background

On January 18, 2023, the agencies published a [final rule](#) revising the definition of “waters of the United States”, which became effective on March 20, 2023. On May 25, 2023, the Supreme Court issued a decision in the case of *Sackett v. EPA*.

The Clean Water Act prohibits the discharge of pollutants from a point source into “navigable waters” unless otherwise authorized under the Act. “Navigable waters” are defined in the Act as “the waters of the United States, including the territorial seas.” Thus, “waters of the United States” is a threshold term establishing the geographic scope of federal jurisdiction under the Clean Water Act. The term “waters of the United States” is not defined by the Act but has been defined by the agencies in regulations since the 1970s and jointly implemented in the agencies’ respective programmatic activities.

NOAA completes upgrade to weather and climate supercomputer system

Increased computing power will enable a significant upgrade to the ‘American’ forecast model.

NOAA 8/10/23



Twin supercomputers Dogwood (pictured here) and Cactus - NOAA's weather and climate operational supercomputing system - just received a 20% upgrade. Located in Manassas, Virginia, and Phoenix, Arizona, respectively, each supercomputer now operates at a speed of 14.5 petaflops. (Image credit: General Dynamics Information Technology (GDIT))

The Department of Commerce and NOAA expanded the capacity of the nation’s Weather and Climate Operational Supercomputing System (WCOSS) by 20% this week. The increased computing power and storage will help improve forecast model guidance for years to come and allow for other weather prediction advances.

“Our investment in high-performance computing will pay off with better U.S. weather modeling,” said Michael C. Morgan, Ph.D., assistant secretary of commerce for environmental observation and prediction. “Forecast model upgrades made possible by this increased computing capacity will bring improved and timely forecasts and warnings that better protect life and property.”



NOAA's supercomputer Dogwood, located in Manassas, Virginia (2023). (Image credit: NOAA) [Download Image](#)

Faster supercomputing will allow NOAA to run more complex forecast models while increased storage space will enable more data to be fed and assimilated into the system. These improvements will permit upgrades to NOAA's weather forecasting systems and models over the next few years, including:

- Upgrades to the U.S. Global Forecast System will make it higher-resolution. The model's horizontal resolution will improve to nine kilometers, compared to 13 in the current version. This upgrade will help smaller-scale features to be seen and simulated, improving model accuracy and overall model performance.
- A new Rapid Refresh Forecast System, which will allow for larger ensembles with more data included, providing a measure of certainty in a particular forecast that can lead to better decision-making. These updates also allow for more advanced high-resolution data-assimilation techniques.
- Upgrades to the Global Ensemble Forecast System, which will more accurately capture

what is known as radiatively active aerosols to better model emissions such as wildfire smoke, dust and fog.

- Expansion in compute power and storage, which will provide operational capacity to implement research and development advancements made through NOAA's [Earth Prediction Innovation Center](#).

With this upgrade, the twin supercomputers, located in Manassas, Virginia, and Phoenix, Arizona, now operate at a speed of 14.5 petaflops each, and together, the forecast system can process 29 quadrillion calculations per second. Coupled with NOAA's research and development supercomputers in West Virginia, Tennessee, Mississippi and Colorado, which have a combined capacity of 20 petaflops, the supercomputing capacity supporting NOAA's new operational prediction and research is now 49 petaflops.

“This increased supercomputing power allows for upgrades to specific modeling systems that will help weather forecasters deliver more accurate weather forecasts, watches and warnings and improved certainty in a forecast,” said Ken Graham, director of NOAA's National Weather Service.

NOAA has made significant advances to its forecast models since [WCOSS was implemented in June 2022](#). Last month, the [Hurricane Analysis and Forecast System went operational](#). In June, the Probabilistic Storm Surge [model upgrade](#) allowed for [storm surge](#) forecasting for the contiguous U.S. and new forecasts for surge, tide and waves for Puerto Rico and the U.S. Virgin Islands.

NOAA's weather forecasting systems and models are developed and managed by the [Environmental Modeling Center](#) in College Park, Maryland, which is part of the [National Weather Service](#), in collaboration with NOAA research scientists and the broader modeling community. Over 20 operational numerical weather prediction models are run on WCOSS.

In 2020, NOAA contracted with the company General Dynamics Information Technology (GDIT) on the supercomputer acquisition, upgrade, products and services. The 8-year contract with a 2-year optional renewal provides a total managed service.

Biden-Harris Administration Announces Nearly \$3 Billion in Project Selections to Help Communities Build Resilience to Climate Change and Extreme Weather Events

Additional Funding from the President's Investing in America Agenda Enables Major Program Expansion, with 23 States Selected for the First Time.

FEMA 8/28/23.

Today, Homeland Security Secretary Alejandro N. Mayorkas, FEMA Administrator Deanne Criswell and Senior Advisor to the President and White House Infrastructure Coordinator Mitch Landrieu announced the project selections for nearly \$3 billion in climate resilience funding as part of President Biden's Investing in America agenda, a key pillar of Bidenomics. The selections, through two competitive grant programs, will help communities across the nation enhance resilience to climate change and extreme weather events.

Overall, the President's Bipartisan Infrastructure Law provides FEMA nearly \$7 billion to help communities proactively reduce their vulnerability to flood, hurricanes, drought, wildfires, extreme heat and other climate-fueled hazards.

Today's selections include \$1.8 billion for critical resilience projects funded by the [Building Resilient Infrastructure and Communities \(BRIC\)](#) national competition and \$642 million for [Flood Mitigation Assistance \(FMA\)](#) community-scale flood mitigation projects. These selections build on **\$160 million** in BRIC and FMA selections that FEMA announced in May for efforts to support mitigation projects, project scoping and adoption of hazard-resistant building codes. Combined, the funds awarded this grant cycle of the BRIC and Flood Mitigation Assistance programs total nearly \$3 billion, including management costs.

A key pillar of Bidenomics, President Biden's Investing in America agenda has provided record funding to FEMA's annual resilience grant

programs, increasing them from \$700 million when he took office to \$3 billion this year. This increased funding allows FEMA to expand its geographic scope in funding selections and protect more of our nation's communities that are most in harm's way from the effects of climate change and extreme weather. Today's selections include projects in 23 states that have never before received competitive BRIC funding.

"Our local and community partners are the first responders when extreme weather events unfold, and they are on the front lines of building our nation's resilience to the impacts of climate change," said Secretary of Homeland Security Alejandro N. Mayorkas. "By investing today in strengthening our critical infrastructure, particularly for the most marginalized and vulnerable communities, President Biden's Investing in America agenda is going to keep Americans and their communities safer and more resilient."

"From Hawaii to Maine, communities across the country are experiencing more frequent and intense severe weather events, resulting in devastating impacts to their homes, businesses and families. Though FEMA will always help communities respond to and recover from these disasters, it is also paramount to build resilience before disasters strike," said FEMA Administrator Deanne Criswell. "Thanks to President Biden's Investing in America agenda, we can further our mission to help our state, local, territorial and tribal partners build a more resilient nation."

"Millions of Americans in communities big and small feel the effects of climate change each year from drought, extreme heat, wildfires and floods," said Mitch Landrieu, Senior Advisor to the President and White House Infrastructure Coordinator. "President Biden's Investing in America agenda provides the largest investment in the resilience of physical and natural systems in American history. These projects will be a lifeline for many communities as we build a stronger, more resilient America."

Today's selections further underscore the Biden-Harris Administration's commitment to equity and environmental justice, including by assisting the most disadvantaged communities in building resilience to climate change and extreme weather

events. Aligning with the President's [Justice40 Initiative](#), these efforts will advance the goal that 40% of the overall benefits of certain covered federal investments flow to disadvantaged communities that are marginalized and overburdened by pollution and underinvestment. In total, more than \$1.2 billion — 71% — in BRIC national competition selections and approximately 53% of all BRIC and FMA selections — \$1.6 billion — will benefit disadvantaged communities.

Both programs received applications representing an intense demand for climate resilience funding. State, local, tribal and territorial governments submitted record-breaking requests for funding totaling a combined \$5.6 billion for these two grant programs.

Building Resilient Infrastructure and Communities

For the BRIC national competition, FEMA selected 124 projects across 115 communities. The selections span all 10 FEMA regions, including 38 states, one tribe and the District of Columbia. These are critical mitigation projects and activities to reduce natural hazard risks for states, local communities, tribes and territories. Examples of funded projects include:

- Strengthening the electrical grid in Jefferson Parish, Louisiana, including by equipping poles and wires to withstand 150 mph winds. The project should decrease the risk of power outages to residents and critical facilities;
- Upgrading pipelines in the Central Utah Water Conservancy District to withstand seismic activity. Pipelines will be designed to withstand a 975-year seismic event;
- Installing new sewer mains in Detroit's Jefferson Chalmers neighborhood to protect over 600 homes from flooding. The area has seen repeated major flooding since the 1950s;
- Building three critical electrical hubs in Ko'olaupoko, Hawaii, to keep the power on during severe weather and long outages;
- Installing critical infrastructure upgrades to the Hobart Creek Reservoir Dam in Nevada to enhance safety and protect the water supply. This work will help to mitigate the

- risk of a catastrophic breach during earthquakes or major precipitation events;
- Making storm drainage improvements in Greenville, North Carolina, that will reduce flood risk for 90 homes;
- Reducing extreme heat conditions in Portland, Oregon, by planting 10,500 trees over three years to reduce the impacts of heat islands as well as mitigate urban flooding during extreme rainfall events as well as improve air quality;
- Supporting a comprehensive wildfire mitigation program in Napa County, California, to provide long-term wildfire and climate resilience for many of its residents and communities;
- Funding a new water pump station in Philadelphia to reduce flood risk and improve water quality and quality of life throughout the city.

A total of 64 of the projects selected use nature-based solutions to achieve program objectives. In addition to funding for flood mitigation, wildfire and drought, this year's selections also include the first BRIC funding for extreme heat.

Combined with May's announcement of \$136 million, FEMA has selected \$2.2 billion worth in BRIC grants for this funding cycle.

Also [announced in May](#), 46 local communities, tribes and territories will receive non-financial [direct technical assistance](#) to help build community-wide resilience through the BRIC program. Through process-oriented, hands-on support, this assistance enhances a community's capacity to design holistic, equitable climate adaptation solutions that advance numerous community-driven objectives.

This assistance provides free support to help disadvantaged and underserved communities access [Hazard Mitigation Assistance](#) grant programs. More than 70 communities, territories and tribes nationwide have been selected to receive this hands-on support since the BRIC technical assistance program began three years ago, several of which received implementation funding as part of this year's selections.

Learn more about selected projects on [FEMA.gov](#).

Flood Mitigation Assistance

For the Flood Mitigation Assistance program, FEMA selected 149 projects in National Flood Insurance Program (NFIP)-participating communities in 28 states and the District of Columbia. This funding will go toward flood control and individual property mitigation projects such as elevation, acquisitions and mitigation reconstruction of repetitively flood-damaged buildings insured by NFIP.

Combined with May's announcement of \$24 million, FEMA has selected \$711 million worth in Flood Mitigation Assistance grants for this funding cycle. Examples of funded projects include:

- Elevating 84 structures to two feet above the Base Flood Elevation and open green space for the community in East Baton Rouge Parish, Louisiana;
- Acquiring and demolishing repetitively-flooded structures in Machesney Park, Illinois, to eliminate repetitive flood threats to property and convert to green space;
- Upgrading a stormwater infrastructure system in Harris County, Texas;
- Elevating 19 single-family homes in the Florida Keys using piers and concrete footings to at least three feet above the Base Flood Elevation, or to the elevation set by the local floodplain ordinance, whichever is higher.

Approximately \$212 million (33%) of this cycle's Flood Mitigation Assistance project selections will go to disadvantaged communities. Examples of community-wide projects funded areas include:

- Upgrading drainage to reduce flood risk in Canton, Mississippi;
- Constructing a flood control facility in Apache Junction, Arizona.

Learn more about selected projects on [FEMA.gov](https://www.fema.gov).

Upcoming Meetings and Webinars

[Western States Water Council 2023 Fall Meetings](#)
September 12-14, 2023, in Anchorage AK

Other Federal News

BLM 8/16/23. [Biden-Harris Administration Invests more than \\$18 Million in Public Lands Projects as Part of Investing in America Agenda](#)

DOI 8/7/23. [Biden-Harris Administration Makes Nearly \\$200 Million Available for Drought and Climate Resiliency Projects as Part of Investing in America Agenda](#)

DOI 8/14/23. [Biden-Harris Administration Announces \\$50 Million to Enhance Key Water Infrastructure in the Upper Colorado River Basin Through President's Investing in America Agenda](#)

DOI 8/31/23. [Interior Department, Hualapai Tribal Leaders Celebrate Historic Indian Water Rights Settlement](#)

EPA 8/10/23. [Biden-Harris Administration Announces \\$50 million in Available Grants to Upgrade Stormwater and Sewer Infrastructure](#)

EPA 8/15/23. [EPA Awards Nearly \\$8.5M in Research Grants to Ensure Cleaner and Safer Drinking Water](#)

EPA 8/17/23. [EPA Releases Initial Nationwide Monitoring Data on 29 PFAS and Lithium](#)

FWS 8/18/23. [A Rapid Response Fund for Aquatic Invasive Species](#)

NASA 8/14/23. [NASA Clocks July 2023 as Hottest Month on Record Ever Since 1880](#)

NOAA 8/15/23. [Biden-Harris Administration makes \\$240 million available for habitat restoration and coastal resilience through Investing in America agenda](#)

NOAA 8/17/23. [Biden-Harris Administration announces \\$106 million in recommended funding for West Coast and Alaska salmon recovery](#)

NPS 8/8/23. [Biden-Harris Administration Announces \\$44 Million to Restore and Strengthen Climate Resilience Across America's National Parks as Part of Investing in America Agenda](#)

NRCS 8/31/23. USDA Invests \$65 Million for Conservation and Climate Action on Private Lands as Part of the Biden-Harris Administration's Investing in America Agenda

Reclamation 8/15/23. Reclamation announces 2024 operating conditions for Lake Powell and Lake Mead

USDA 8/28/23. Biden-Harris Administration Announces More Than \$800 Million to Strengthen Rural Infrastructure and Create Jobs

USGS 8/30/23. The USGS Invests \$1.5M in Local Partnership to Improve Urban Waterways

The Western States Federal Agency Support Team (WestFAST) is a collaboration between 13 Federal agencies with water management responsibilities in the West. WestFAST was established to support the Western States Water Council (WSWC), and the Western Governors Association in coordinating Federal efforts regarding water resources.