



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY **Army Corps/EPA/WOTUS**

On March 12, the Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) announced they would jointly review the definition of “waters of the United States” (WOTUS) and released field guidance on the proper implementation of “continuous surface connection.” The aim is to ensure that the revised definition aligns with legal requirements, provides clarity, and protects the nation’s navigable waters from pollution while streamlining regulatory processes. “EPA’s review will be guided by the Supreme Court’s decision in *Sackett v. Environmental Protection Agency*, [598 U.S. 651,] which stated that the Clean Water Act’s (CWA) use of ‘waters’ encompasses only those relatively permanent, standing or continuously flowing bodies of water forming streams, oceans, rivers and lakes. The *Sackett* decision also clarified that wetlands would only be covered when having a continuous surface connection to water bodies that are [WOTUS] in their own right.”

EPA and the Corps noted concerns that the Amended 2023 Rule (40 CFR Part 120) does not adequately comply with the *Sackett* decision. They will hold listening sessions in late March-April and accept written recommendations during a 30-day period following publication in the Federal Register (Docket ID No. EPA-HQ-OW-2025-0093). The feedback will inform future administrative actions but the agencies will not be responding to individual submissions. Written recommendations should respond to key topics and be supported with information such as statutory citations, case law, references to longstanding agency practice, etc. Key topic areas include: (1) the scope of “relatively permanent” waters, including feedback on whether flow regime, flow duration, or seasonality should inform the definition; (2) the scope of “continuous surface connection” including feedback on what it means to “abut” a jurisdictional water, the scope of “connection to,” implementation of *Sackett* language providing that “temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells;” (3) the definition of “adjacent”; and (4) the scope of jurisdictional ditches including feedback on the definition, and whether flow regime, physical features,

excavation in aquatic resources versus uplands, type or use of the ditch, biological indicators, or other characteristics should be considered.

The field memo, signed by acting Assistant Secretary of the Army Civil Works Robyn S. Colosimo, provided guidance regarding the implementation of the definition of WOTUS under both regulatory regimes currently operating across the country, including the Amended 2023 Rule and the “pre-2015 regulatory regime.” The memo affirmed the plurality set forth in *Rapanos v. United States*, 547 U.S. 715 (2006), interpreting “continuous surface connection” as adjacent wetlands that “directly abut the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike, or similar feature).” The memo noted that wetlands with only an intermittent, physically remote hydrologic connection to WOTUS do not have the “necessary connection” to trigger the CWA.

Departing from a series of controversial field memos under the Biden administration, the agencies wrote: “Therefore, an interpretation of ‘continuous surface connection’ which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement for ‘adjacent wetlands’ under the plurality’s standard and now *Sackett*’s endorsement of that standard. Therefore, any components of guidance or training materials that assumed a discrete feature established a continuous surface connection are rescinded.” (WSW # 2626). They acknowledged that *Sackett* contemplated instances where the “line drawing problem is difficult, such as during periods of drought or low tide or in those instances where there may be temporary interruptions in surface connection” and indicated that agencies would resolve such scenarios on a case-by-case basis.

EPA Administrator Zeldin said: “We want clean water for all Americans, supported by clear and consistent rules for states, farmers, and businesses. Our goal is to ensure that water regulations are legally sound, protect resources, and provide clarity for those affected by federal permitting requirements.”

ADMINISTRATION/WATER RESOURCES
Colorado River/Department of Interior

On February 13, negotiators representing the Lower Colorado River Basin States wrote Secretary of the Interior, Doug Burgum, asking he reconsider the five plans for Post-2026 Operations proposed by the Bureau of Reclamation in January (WSW #2640, #2638). Thomas Buschatzke (AZ), J.B Hamby (CA), and John J. Enstminger (NV) emphasized their commitment to a consensus-driven approach but asserted that Reclamation's Post-2026 Alternatives Report was technically and legally deficient. They said Reclamation had failed to consider the Lower Basin's proposed alternative, omitting compliance with the 1922 Colorado River Compact. They also challenged Reclamation's approach to protecting Lake Powell outlet works by reducing releases saying it was "shortsighted and harms the Lower Basin States by slashing the water available to our farmers, communities, and economies." They argued protections should be achieved by making repairs and improvements to existing infrastructure. <https://subscriber.politicopro.com/eenews/f/eenews/?id=00000195-859b-d9c8-addf-cdbb3e590000>

"Reclamation's failure to interpret and disclose application of the Law of the River, particularly the implications of a likely Compact Call, falls short of the minimum requirements of NEPA.... Therefore, the Secretary should direct Reclamation to evaluate a range of alternatives in the upcoming draft environmental impact statement that complies with NEPA and Reclamation's legal obligations under the Law of the River." The negotiators called on Burgum to retract the Alternatives Report, and meet with them to discuss the Lower Basin's proposed Alternative. "We are encouraged by the renewed spirit of collaboration in our ongoing discussions and optimistic that, under your leadership, we can refocus on achieving a durable, consensus-based agreement that respects the needs of our States and Nation. Our collective goal is to secure a solution that respects the cooperation of the States and avoids litigation."

On March 6, the entire Arizona congressional delegation joined a letter requesting a meeting with Burgum to discuss the future of the Colorado River and "a realistic path forward to reaching an agreement on a long-term operational plan for the system." They wrote: "More than 40 million people in seven states and 30 Tribes across the West rely on the Colorado River for water, food, energy and more. Yet the historic quarter-century long drought, along with overuse, has stretched the system to its absolute breaking point. While we bought some time with the short-term conservation measures, we can't take our focus off a state-driven, basin-wide agreement that acknowledges the significant

shared risks and is equitable between the Lower and Upper Basins. Arizona has and will continue to do its part to protect the Colorado River, but we simply cannot do it alone." <https://stanton.house.gov/press-releases>

National Water and Climate Center/Snow Surveys

The mass layoff of federal workers, including U.S. Department of Agriculture layoffs, has led to the loss of seven positions at the National Water and Climate Center (NWCC), cutting nearly 40% of the federal workforce responsible for the Snow Survey and Water Supply Forecasting (SSWSF) program under USDA's Natural Resources Conservation Service. The layoffs leave the program in critical condition even as the data and analysis NWCC provides is increasingly important in the face of drought, water supply shortages and increasing water demands across the West. The result will be substantially greater uncertainty for federal, state and local water agencies that depend on reliable snow pack data and information for critical agricultural, environmental, industrial and municipal water management short and long-term decisions.

For decades, the WSWC has supported SSWSF, noting just recently the importance of timely data on snow depth and snow water content, without which "human life, health, welfare, property, and environmental and natural resources are at considerably greater risk of loss." (Position No. 522, October 23, 2024) Some of the critical decisions that require snowpack and water supply information include: (1) reservoir management; (2) irrigation; (3) cropping decisions; (4) production estimation (commodity futures markets); (5) risk management; (6) planning and scheduling of water-related business and/or government activities; (7) flood damage prevention; (8) drought mitigation; (9) navigation; (10) climate change risk assessments for long-term water availability; (11) emergency response and preparedness; (12) general public safety; (13) protection of threatened and endangered species; (14) general environmental protection; (15) power generation; (16) water-based recreation; (17) municipal and industrial water supply; and (18) water-related research and education.

In 2019, the Internet of Water (IOW) Coalition released a study evaluating the costs and benefits of SSWSF using a number of case studies focused on different users and uses of the data. IOW found the annual budget for the SSWSF program had remained constant at \$9 million annually since 2012. In 38% of the single case studies, the benefits exceeded the entire annual program cost of \$9 million. <https://internetofwater.org/library/snow-survey-and-water-supply-forecast-data-story/>

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