



**RESOLUTION  
of the  
WESTERN STATES WATER COUNCIL  
regarding  
CLEAN WATER ACT JURISDICTION**

**Lincoln, Nebraska  
April 25, 2025**

**WHEREAS**, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

**WHEREAS**, the WSWC’s mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future; and

**WHEREAS**, the Clean Water Act (CWA) is built upon the principle of cooperative federalism in which Congress intended the states, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (Corps) to implement the CWA as partners, delegating co-regulator authority to the states;

**WHEREAS**, the CWA’s cooperative federalism framework has resulted in significant water quality improvements since the law’s enactment in 1972, and western states have made great strides in protecting water quality and coordinating water quality and water quantity decisions; and

**WHEREAS**, it is imperative that EPA and the Corps actively seek meaningful state consultation, engagement, and participation in the review and development of any new proposed or final rule to define Waters of the United States; and

**WHEREAS**, States are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks; and

**WHEREAS**, States have both state statutory and constitutional authority pursuant to their “waters of the state” jurisdiction to protect the quality of waters within their borders, and such jurisdiction generally extends beyond the limits of federal jurisdiction under the CWA; and

**WHEREAS**, CWA Section 101(b) supports the states’ critical role in protecting water quality by stating: “It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;” and

**WHEREAS**, CWA Section 101(g) further provides that the primary and exclusive authority of each state to “allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act;” and

**WHEREAS**, the Supreme Court has interpreted the jurisdictional scope of the CWA in *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985); *Solid Waste Agency of Northern Cook County (SWANCC) v. Corps*, 531 U.S. 159 (2001); and *Rapanos v. United States*, 547 U.S. 715 (2006); and *Sackett v. EPA* (#21-424, 143 S. Ct. 1322 (2023)); and

**WHEREAS**, the U.S. Supreme Court held in *Sackett* that the definition of “waters of the United States” in CWA §1362(7) “encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes” and that this does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are “waters of the United States” in their own right, so that they are indistinguishable from those waters; and

**WHEREAS**, *Sackett* also acknowledged that “temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells” and that “a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier’s removal because it violates the Act...that unlawful barrier poses no bar to its jurisdiction;” and

**WHEREAS**, a one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West, where water and precipitation can be scarce and a variety of unique waterbodies exist, including small ephemeral washes and arroyos, snow dependent intermittent streams, effluent dependent and dominated streams, prairie potholes, playa lakes, and terminal lakes, as well as numerous man-made reservoirs, impoundments, and water and stormwater conveyance structures; and

**WHEREAS**, physical, biological, and chemical differences between waters, and hydrologic differences, both spatially and temporally, as well as considerable differences in legal doctrines that govern water in western states, mean that any federal effort to clarify CWA jurisdiction will inevitably impact each state differently, thus underscoring the need to thoroughly involve states in developing and implementing any rule so as to clearly respect and avoid conflict with state authority over the regulation of water quality and the allocation of waters and water rights within their respective borders; and

**WHEREAS**, any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact states and alter the distribution of power and responsibilities among the states and the federal government; and

**WHEREAS**, as co-regulators, states are separate and apart from the general public, and have a unique role with the federal government in the development and implementation of any rule to clarify or redefine CWA jurisdiction; and

**WHEREAS**, information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states; and

**WHEREAS**, uncertainty and differences of opinion have and continue to exist regarding CWA jurisdiction among states, and challenge EPA and the Corps to develop and implement any new rule in cooperation with the states, based on principles of cooperative federalism, and together to provide greater certainty and a clearer definition of the limits of federal jurisdiction; and

**WHEREAS**, substantial and recurring changes to regulatory definitions, policies, and programs between federal administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.

**NOW, THEREFORE, BE IT RESOLVED**, that Congress and the Administration should ensure that any federal effort to clarify or define CWA jurisdiction and define Waters of the United States:

1. Creates enduring and broadly supported definitions
2. Acknowledges and addresses the needs, priorities, and concerns of states as co-regulators.
3. Includes robust, meaningful, and representative state participation and consultation in the development and implementation of any rule, acknowledging the inherent federalism implications.
4. Gives full force and effect to Congress' intent to maintain a reasonable balance of state and federal authority and the purposes of CWA Sections 101(b) and 101(g).
5. Complies with the limits set by Congress as interpreted by the Supreme Court, and appropriately incorporates those limits.
6. Specifically identifies waters and features outside the scope of the CWA jurisdiction including but not limited to groundwater and historically recognized agricultural and silvicultural exemptions. Additionally, for states with (or seeking) CWA Section 404 delegated authority, provides states with the opportunity to establish processes for defining jurisdictional determinations based on scientifically defensible practices and those limits set by Congress as interpreted by the Supreme Court.
7. Acknowledges that states have authority to protect all "waters of the state," and that excluding waters from federal jurisdiction does not always mean that they will be exempt from state regulation and protection.
8. Continues to provide access to appropriate technical and financial assistance to the states to protect and improve water quality under existing EPA programs without regard to jurisdictional determinations.
9. Provides a clearly delineated process for resolving differences of opinion over federal and non-federal jurisdiction, and jurisdiction between different States and tribes (treated as states).

10. Provides for mapping of jurisdictional waters as a joint federal/state/tribal effort employing the best available data and tools, with appropriate provisions and processes for map maintenance, and recognizing that verification of jurisdiction still needs to be coordinated with the state.

11. Includes an appropriate delay in the effective date of any new rule or otherwise allows for a transition enabling states to take such actions as may be necessary to address any gaps in state law, regulation and protection, and to ensure sufficient time for tools to be developed by federal agencies, in collaboration with states, that facilitate implementation of the new rule.

12. Recognizes the need to balance definitional clarity with flexibility in implementation to address the unique landscapes, flow regimes, and legal frameworks in various regions of the Nation and appropriately weighs all factors of science, law, and effective policy to draw jurisdictional conclusions that are appropriate, and that do not impinge on the rights of States.

13. Considers a regional approach to the definitions of terms for foundational and any categorical waters in the rule including terms such as “relatively permanent” and “significant nexus” and defines regions building upon existing classification systems based on hydrology, geology, and climate.

14. Provides, in the rule development process, a representative number of states, as co-regulators, with diverse perspectives and regions to engage actively in an integrated way with the EPA and Corps staff to provide direct and effective feedback on the implementability of a proposed rule which requires ample time for development of new regulatory language.

Revised and Readopted  
(*see former Positions No. 481 – 4/06/22; No. 472 – 9/16/2021; No. 427 – 10/26/2018; No. 410 – 6/29/2017; and No. 369 – 7/18/2014*)