



State of Utah

SPENCER J. COX  
Governor

DEIDRE M. HENDERSON  
Lieutenant Governor

## Department of Natural Resources

JOEL FERRY  
Executive Director

### Public Lands Policy Coordinating Office

REDGE B. JOHNSON  
Director

January 5, 2026

Submitted electronically, Federal eRulemaking Portal: <https://www.regulations.gov>

Stacey Jensen  
Oceans, Wetlands, and Communities Division  
Office of Water (4504-T)  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Milton Boyd  
Office of the Assistant Secretary of the Army for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310

RE: **WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”**  
Environmental Protection Agency, EPA–HQ–OW–2025–0322, 40 CFR Part 120  
Department of the Army, Corps of Engineers, FRL 11132.1–01–OW, 33 CFR Part 328

Dear Ms. Jensen and Mr. Boyd:

The State of Utah (“Utah” or the “State”) has reviewed the referenced notice (“Notice”) concerning the definition of “Waters of the United States” (“WOTUS”) and appreciates the opportunity to submit comments on this significant issue. The Notice seeks explicit input on implementing the WOTUS definition in light of the Supreme Court’s 2023 decision in *Sackett v. Environmental Protection Agency*.<sup>1</sup> As one of the nation’s driest states, Utah faces unique challenges due to its naturally arid conditions, exacerbated by recent droughts. These factors make certainty and clarity in the definition of WOTUS critically crucial for protecting Utah’s

---

<sup>1</sup> WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”, 90 Fed. Reg. 52498 (No. 222) (November 20, 2025) (to be codified at 33 CFR Part 328 and 40 CFR Part 120).

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 2

limited water resources. Utah, therefore, encourages the Environmental Protection Agency (“EPA”) and the United States Army Corps of Engineers (“USACE”) to adopt a clear, narrow definition of WOTUS that would allow states to assume greater management authority over natural resources, including water, within their borders.

WOTUS is a critical term in the Clean Water Act (“CWA”) that delineates the scope of federal regulatory authority over the nation’s waters.<sup>2</sup> The CWA aims to protect “navigable waters,” which the CWA defines as “the waters of the United States, including the territorial seas.”<sup>3</sup> However, the CWA lacks a clear definition of “waters of the United States,” leading to decades of debate, fluctuating regulations, and numerous legal challenges.<sup>4</sup> The Supreme Court’s decision in *Sackett v. Env’t Prot. Agency*, 598 U.S. 651 (2023) (“*Sackett*”), represents the latest attempt to clarify the outer boundaries of the CWA. Utah joins other states in requesting that the WOTUS definition be clear and narrowly tailored, consistent with the *Sackett* decision.

To align with *Sackett*, Utah requests that WOTUS be defined within the limits of the Commerce Clause as Congress contemplated when drafting the CWA. The Supreme Court has “refused to read ‘navigable’ out of the statute, holding that it at least shows that Congress was focused on ‘its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made.’”<sup>5</sup> The Court further opined, “while not all environmental statutes are so textually limited, Congress chose to tether federal jurisdiction under the CWA to its traditional authority over navigable waters. The EPA and the Corps must respect that decision.”<sup>6</sup> Utah echoes this finding, holding firm to *Sackett*, that Congress intended the CWA to regulate WOTUS uniquely within the confines of the Commerce Clause as it was understood in October, 1972<sup>7</sup>.

Utah also supports the policy Congress expressly included in the CWA: “...recognize, preserve, and protect the primary responsibilities and rights of the States to prevent, reduce, and eliminate pollution” and “to plan the development and use... of land and water resources.”<sup>8</sup> To achieve this goal, *Sackett* found that the CWA requires a shift toward states’ sovereignty over

---

<sup>2</sup> 33 U.S.C. § 1251, *et seq.*

<sup>3</sup> 33 U.S.C. § 1311(a), 1362(7).

<sup>4</sup> “[T]he outer boundaries of the [CWA’s] geographical reach have been uncertain from the start.” *Sackett v. Env’t Prot. Agency*, 598 U.S. 651, 658 (2023).

<sup>5</sup> *Sackett*, 598 U.S. at 672 (citing *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159 (2001) (internal quotations omitted)).

<sup>6</sup> *Id.* at 680, 683, and 688 (Justice Thomas and Justice Gorsuch, concurring opinion, the Court contrasted other contemporary statutes which Congress chose to broaden by omitting “navigable waters,” to illustrate that Congress would have likewise broadened the scope of CWA had it intended to do so).

<sup>7</sup> 33 U.S.C. § 1251, originally enacted on October 18, 1972.

<sup>8</sup> 33 U.S.C. § 1251(b).

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 3

their own water resources. Speaking of the need to narrow EPA’s geographical authority, Justice Alito opined, “it is difficult to see how the States’ ‘responsibilities and rights’ in regulating water resources would remain ‘primary’ if the EPA had such broad jurisdiction.”<sup>9</sup> This sentiment reminds us that “powers not delegated to the United States... are reserved to the States respectively, or to the people.”<sup>10</sup> Therefore, the definition of WOTUS must be narrowed to align with Congress’s intent to make water resources the primary responsibility of the states.

The definition and scope of WOTUS significantly affects rural economies in Utah. The U.S. Department of Health and Human Services classified twenty-four of the State’s twenty-nine counties as “rural” or “frontier.”<sup>11</sup> In these rural counties, water resources are vital to an economy that is almost entirely agricultural, ranching, and mining. Unfortunately, these activities often fall under the onerous CWA Section 404(d) dredge-and-fill permitting (“CWA Permitting”) requirements when WOTUS is defined broadly. Therefore, for the sake of *Sackett* and the American people in rural Utah, WOTUS must be narrowly defined under the Commerce Clause.

The definition of WOTUS also affects Utah’s ability to plan and build infrastructure for its growing population. According to the U.S. Census Bureau, Utah ranks among the fastest-growing states.<sup>12</sup> Accommodating this growth requires planning, development, and the use of water resources. Unfortunately, like agriculture, ranching, and mining, these activities also face costly delays due to CWA Permitting because of what *Sackett* describes as “an expansive interpretation of the CWA’s text.”<sup>13</sup> Hoping to avoid this unintended expansion of federal authority, Congress explicitly penned this reminder: “the policy of the Congress is to recognize, preserve, and protect the primary responsibilities and rights of States... to plan the development and use... of land and water resources.”<sup>14</sup> The definition of WOTUS must recognize and preserve this policy and protect Utah’s right to plan, develop, and use water resources.

The EPA and USACE are the primary federal agencies responsible for interpreting and implementing the WOTUS definition under the CWA. Historically, the WOTUS definition identified which “waters” the CWA protects. This federal jurisdiction subsequently triggers specific permit requirements for activities such as discharging pollutants or adding fill to wetlands.<sup>15</sup>

---

<sup>9</sup> *Sackett*, 598 U.S. at 655.

<sup>10</sup> U.S. Const. amend. X.

<sup>11</sup> <https://mchb.tvvisdata.hrsa.gov/Narratives/Overview/958c7b3e-4a88-48a8-8b76-f73ca0bb7b4a>.

<sup>12</sup> <https://www.census.gov/newsroom/press-releases/2023/population-trends-return-to-pre-pandemic-norms.html>

<sup>13</sup> *Sackett*, at 594 (concurring opinion, Justice Thomas and Justice Gorsuch).

<sup>14</sup> 33 U.S.C. § 1251.

<sup>15</sup> 33 U.S.C. § 1342.

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 4

Ultimately, how WOTUS is defined dictates the scope of federal authority over water resources. A broader definition expands federal permitting requirements, while a narrower definition gives meaning to Congress’s policy of state sovereignty over water resources. As explained above, *Sackett* supports a narrower definition of WOTUS, which would place primary responsibility for regulating Utah's water resources on Utah and increase administrative efficiency without compromising Congress’s intent.

“For more than half a century,” EPA “wrestled with the problem” of defining WOTUS through regulations intended to encapsulate the relevant case law.<sup>16</sup> Consequently, the definition of WOTUS has undergone multiple evolutions over the years. For example, in 2015, the Obama Administration introduced the Clean Water Rule (“CWR”),<sup>17</sup> aiming to clarify and expand the definition of WOTUS (successfully opposed by Utah and sixteen other states).<sup>18</sup> Subsequently, in 2020, the Trump administration replaced the CWR with the Navigable Waters Protection Rule (“NWPR”).<sup>19</sup> The NWPR narrowed the definition of WOTUS by focusing on a connection to traditionally navigable waters. In 2023, the Biden administration issued a rule intended to build on the CWR and the opinions in *SWANCC*, *Riverside*, and *Rapanos* to establish a “significant nexus” between disputed waters and WOTUS.<sup>20</sup> Frustratingly, none of these attempts successfully defined “WOTUS.”

Finally, in *Sackett*, Justice Alito recognized that “On three prior occasions, the Court tried to clarify the meaning of ‘the waters of the United States.’ But the problem persists.”<sup>21</sup> Whereupon, he determined, “Today, we return to the problem and attempt to identify with greater clarity what the Act means by ‘the waters of the United States.’”<sup>22</sup> Ultimately, the *Sackett* Court adopted the holdings in *SWANCC*, *Riverside*, and *Rapanos* and narrowed the scope of federal authority by holding that a continuous surface connection is necessary for wetlands to be WOTUS.

In response, the EPA and USACE have attempted to align the WOTUS definition with *Sackett*. On March 24, 2025, the agencies published a Federal Register notice soliciting public input to aid in this crucial definitional process.<sup>23</sup> The final proposed rule was published on

---

<sup>16</sup>*Sackett*, 598 U.S. at 659.

<sup>17</sup> 80 Fed. Reg. 37056 (2015).

<sup>18</sup> <https://kmyu.tv/news/local/utah-ag-10-state-coalition-touts-victory-in-blocking-2015-wotus-rule>; *See Georgia v. Wheeler*, 418 F. Supp. 3d 1336, 1343–44 (S.D. Ga. 2019).

<sup>19</sup> 85 Fed. Reg. 22250 (2020).

<sup>20</sup> 88 Fed. Reg. 3004 (2023).

<sup>21</sup> *Sackett*, 598 U.S. at 651

<sup>22</sup> *Ibid.*

<sup>23</sup> 90 Fed. Reg. 13428 (2025).

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 5

November 20, 2025, and is responsive to this document.<sup>24</sup>

What is and what is not WOTUS can be examined through Supreme Court cases and the regulations found in 33 CFR § 328 (USACE regulations) and 40 CFR § 120 (EPA regulations). For this letter, the State will collectively address the two agencies’ proposed regulations as “Regulations,” given their near-identical definitions.

First, the proposed Regulations classify WOTUS in five categories. These categories are: 1) waters used or susceptible to use in interstate or foreign commerce, including territorial seas; 2) impoundments; 3) tributaries; 4) wetlands; and 5) lakes and ponds not otherwise identified. Notably, the proposed Regulation omits “interstate waters, including interstate wetlands”.<sup>25</sup> This proposed revision focuses more on navigable waters, restoring “navigability as the touchstone of federal jurisdiction under the CWA...” and rejecting the EPA’s “interpretation, upon which every subsequent expansion of its authority has been based.”<sup>26</sup> Utah finds this amendment trends in the right direction, limiting the definition of WOTUS and focusing on the narrow meaning of navigable waters within the Commerce Clause.

Utah places significant emphasis on the word “indistinguishable,” as used in *Sackett*. The proposed Regulation adopts exemptions for waste treatment systems, prior cropland, ditches, and groundwater, which illustrate the intent to distinguish water, whether continuously flowing or not, from those waters that are indistinguishable from WOTUS in their own right. In fact, these exemptions, as revised, result in a narrower definition of WOTUS. Moreover, the exemptions clarify Sackett’s intent by distinguishing those waters from WOTUS. Therefore, to fully adopt the findings in *Sackett*, the proposed Regulation must more clearly articulate which wetlands are indistinguishable from WOTUS, and which wetlands are distinguishable from WOTUS by characteristics like those found in the exceptions (*i.e.*, not continuously flowing, artificial, seasonal, or distinct from WOTUS).

Additionally, the State supports the proposal in Section 120.2(b)(9) to expressly exclude groundwater from WOTUS. Although the exclusion is helpful, the State believes it would be beneficial to define the term rather than list it as an exclusion. To ensure consistency across regulations, the State recommends adding the exact definition in Section 120.2(c) as is used in 40 CFR § 146.3 and 40 CFR § 257.3-4, with minor clarifications. Namely, “*Groundwater* means water below the land surface in a zone of saturation having pressure greater than or equal to atmospheric pressure, commonly referred to as the water table.”

---

<sup>24</sup> WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”, 90 Fed. Reg. 52498 (No. 222) (November 20, 2025) (to be codified at 33 CFR Part 328 and 40 CFR Part 120).

<sup>25</sup> *Ibid.*

<sup>26</sup> *Id.* (citing *SWANCC*, 531 U.S. at 172).

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 6

Next, the proposed Regulation provides definitions and clarifications for continuous surface connection, relatively permanent, ditch, tributary, prior converted cropland, and waste treatment system. However, these definitions do not meet the narrow standard set out in *Sackett*. Namely, the definition of “relatively permanent” relies on the term “wet season” without defining the term. A discussion of “wet season” in the preamble does not adequately ensure a reliable interpretation; rather, the proposed Regulation must define “wet season” because wet seasons vary widely across the United States. Without a clear and narrow definition of “wet season,” the proposed Regulation could broaden the scope of WOTUS to inadvertently include waters that appear irregularly and omit waters lacking a temporal component.

Likewise, the definition of “tributary” includes nearly anything, artificial or natural, which is subject to permanent flow. This definition conflicts with the exemptions by including “culvert, tunnel, or similar artificial feature...” and thereby includes features more like ditches, which are exempt from WOTUS. The proposed Regulation must not define terms that obscure the distinctions made by the exemptions.

Proposed Regulations must align water resource management with Congress’s original intent under the CWA. The CWA explicitly states, “it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of the States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise and authority under this Chapter.”<sup>27</sup> This congressional declaration underscores the recognition of states’ primary responsibility for regulating water resources, a principle that the State and the Court in *Sackett* believe is not consistently reflected in the current federal-state dynamic.<sup>28</sup> The State encourages the EPA and USACE to adopt regulations that narrowly construe the bodies of water that qualify as WOTUS and reserve most waters for state regulation. Furthermore, the State recommends that federal agencies make it easier for states to assume Section 404 regulatory primacy over WOTUS within a state’s borders. As stated in *Sackett*, “Regulation of land and water use lies at the core of traditional state authority.”<sup>29</sup> Accordingly, Utah advocates for a narrow definition of WOTUS that clearly identifies which bodies of water are subject to the CWA and empowers states to define and regulate Waters of the State (“WOS”) themselves. Without a clear definition of WOTUS, it is challenging for Utah to distinguish WOTUS from WOS, so WOS can be appropriately managed and protected by the State.

---

<sup>27</sup> 33 U.S.C. § 1251(b).

<sup>28</sup> “Regulation of land and water use lies at the core of traditional state authority... the CWA’s express policy [is] to ‘preserve’ the States’ ‘primary’ authority over land and water use.” *Sackett*, 598 U.S. at 679-80.

<sup>29</sup> *Sackett*, 598 U.S. at 670 (citing *SWANCC*, 531 U.S. at 174).

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 7

Furthermore, bodies of water qualifying as WOTUS must be “navigable” in the constitutional sense, specifically as it relates to the Commerce Clause.<sup>30</sup> In the definition of WOTUS, “navigable” should be interpreted narrowly, “invoking only Congress’s authority over waters that are, were, or could be used as highways of interstate or foreign commerce.”<sup>31</sup> This limitation, allowing federal oversight only to navigable waters that act as highways of interstate or foreign commerce, is essential because it “does not displace states’ traditional sovereignty over their waters.”<sup>32</sup>

A clear and narrow definition of WOTUS will significantly enhance the ability of state agencies, such as Utah State Parks (“USP”), to better serve the public. By simplifying the determination of which waters are subject to the CWA and removing unnecessary federal permitting requirements, USP can avoid potentially costly and time-consuming identification processes. Incorrectly interpreting an unclear definition could lead to CWA penalties or expensive litigation. Moreover, when water bodies are indeed unnecessarily subject to CWA Permitting, essential park activities and the construction of new projects become more costly and challenging to execute.

CWA permitting requirements create significant hurdles for USP in managing water resources, affecting critical areas such as water quality testing, accessibility improvements, recreation management (including motorized boating), and the planning and development of vital infrastructure near water (*e.g.*, campgrounds, day-use areas, and concession operations). These projects are urgently needed to accommodate increasing visitation and enhance the overall visitor experience within Utah’s State Parks.

In addition to advocating a limited definition of WOTUS, the State urges federal agencies to narrow the definition of WOTUS and provide more areas and activities for “categorical exclusions” from the requirement of CWA permits under the Regulations. Specifically, the federal government should incorporate exclusions essential to Utah’s farmers, ranchers, and rural communities. The State looks forward to providing detailed input on categorical exclusions as WOTUS implementation progresses.

Finally, the State urges the federal government to explicitly redefine “wetlands” and “adjacent” in the Regulations. To fully incorporate the Supreme Court’s ruling in *Sackett*, these new definitions must provide precise meanings. They must include all essential elements and exclude all nonessential elements. This clear delineation is crucial for states to readily distinguish the limited subset of wetlands that are “adjacent” to WOTUS from all other wetlands, which

---

<sup>30</sup> *Id.* at 672.

<sup>31</sup> *Id.* at 685 (Thomas, J., concurring).

<sup>32</sup> *Id.* at 687 (Thomas, J., concurring).

## WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”

January 5, 2026

Page 8

rightly fall under state regulation and control. More specifically, the State proposes an additional tenth exception from WOTUS for “(10) Wetlands that do not have a continuous surface connection to the waters identified in paragraphs (a)(1) through (3) of this section.”

The State asserts that the current definitions are not sufficiently exact and do not adequately account for the *Sackett* and *Rapanos* decisions, which limited the extent to which the federal government can regulate “wetlands” under the CWA. The State suggests EPA and USACE adopt an updated definition to address these deficiencies and better align with the Supreme Court precedent and CWA’s intended scope.

This is an opportunity for the E.P.A. and the Corps to recognize that the State is best suited to protect its waters and establish mechanisms consistent with its goals and management objectives. Continual changes to the WOTUS definition have posed significant challenges because past definitions have not recognized the states as primary in regulating water. Moreover, since 2015, there have been five major updates to the definition. This constantly shifting regulatory regime makes it difficult for states to accurately identify regulatory gaps and develop non-duplicative rules, protections, and permitting processes while ensuring there is no unnecessary burden on prospective permittees. This takes substantial time, resources, and support. Furthermore, persistent regulatory changes create uncertainty, causing delays to critical development projects within the State. Permits can be delayed as changes to rules are assessed, which makes it increasingly challenging for large-scale development projects to plan for the regulatory requirements. If the WOTUS definition recognizes the State as the primary manager of its own resources, Utah will enjoy greater certainty, efficiency, and prosperity while protecting and improving its water quality.

Moreover, if the WOTUS definition places primary responsibility for managing water on the states, Utah will be better positioned to address its unique hydrology. For example, Utah has unpredictable “wet season[s],” with ephemeral or intermittent streams making up 88% of the State’s streams by length and 68% of the State’s streams for drinking water. Therefore, Utah has an interest in managing these streams differently from other states where intermittent streams are rare. A definition of WOTUS that empowers states to manage WOS will help protect Utah’s unique hydrology and improve the State’s water quality.

Additionally, the Regulation’s focus on beds and banks may not adequately account for streams and tributaries often characterized by shifting channels without visible beds or banks. Furthermore, reliance on subjective definitions for terms like “dry land” or “upland,” becomes difficult around the Great Salt Lake, where the slope is often less than one inch per mile. In such flat terrain, a “wetland” can transition to an “upland” over several miles. Making states the primary managers of their water resources will allow Utah to address these unique challenges

**WOTUS Notice: Proposed Rule, Updated Definition of “Waters of the United States”**

January 5, 2026

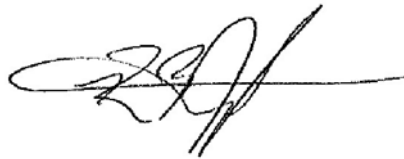
Page 9

while still recognizing federal authority, consistent with the *Sackett* opinion, over interstate waters.

In conclusion, the State believes WOTUS must be defined to yield a predictable, narrow interpretation that protects Utah’s unique hydrology without exceeding the narrow scope of interstate commerce to which the CWA is confined.

Thank you for the opportunity to comment. Please direct any written correspondence to the Public Lands Policy Coordinating Office at the address below, or call to discuss any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Johnson", with a long horizontal flourish extending to the right.

Redge B. Johnson  
Director