



July 12, 2023

The Honorable Shelley Moore Capito  
Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Ranking Member Capito:

Thank you for your June 21, 2023, letter regarding the definition of “waters of the United States.” The U.S. Environmental Protection Agency and the U.S. Department of the Army (agencies) are in receipt of the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase “waters of the United States” consistent with the Supreme Court’s decision in *Sackett*. The agencies are developing a rule to amend the final “Revised Definition of ‘Waters of the United States’” rule, [published in the Federal Register](#) on January 18, 2023, consistent with the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. The agencies intend to issue a final rule by September 1, 2023. We appreciated the opportunity to brief your staff on the status of the definition of “waters of the United States” on June 27, 2023. Please see EPA’s website at <https://www.epa.gov/wotus/amendments-2023-rule> for more details.

Upon receipt of the *Sackett* decision, the U.S. Army Corps of Engineers (Corps) temporarily paused issuance of all Approved Jurisdictional Determinations (AJDs) while the agencies determined the appropriate next steps. After a short time, the agencies determined it was appropriate to limit the pause to some, but not all AJDs. Therefore, the Corps is currently issuing AJDs for which no water resources are involved (known as dry land AJDs) and for water resources that meet the terms of exclusions under the 2023 Rule or the pre-2015 regulatory regime, where applicable. This includes the longstanding exclusion for prior converted cropland, which our country’s farmers have relied on for many decades.

It is important to note this is a temporary, partial pause while the agencies develop a rule to amend the 2023 Rule, consistent with the *Sackett* decision. As previously stated, the agencies intend to issue the rule by September 1, 2023, and the Corps is prepared to resume issuing all AJDs by the effective date of the rule.

Finally, applicants with pending or new permit actions can choose to rely on preliminary jurisdictional determinations or delineation verifications, as they are not affected by the partial pause. Additionally, applicants can utilize an existing, unexpired AJD to support a pending or new permit action, with the exception of those completed under the vacated Navigable Waters Protection Rule.

Thank you again for your letter. Please contact us if you have any remaining questions or your staff may contact Laura Gentile in EPA's Office of Congressional and Intergovernmental Relations at [gentile.laura@epa.gov](mailto:gentile.laura@epa.gov) or (202) 564-3158, or Stacey Jensen, Acting Director of Policy and Legislation in the Office of the Assistant Secretary of the Army for Civil Works, at [stacey.m.jensen.civ@army.mil](mailto:stacey.m.jensen.civ@army.mil) or (703) 459-6026.

Sincerely,

A handwritten signature in black ink, appearing to be 'Radhika Fox', with a stylized, flowing script.

Radhika Fox  
Assistant Administrator  
Office of Water

A handwritten signature in black ink, appearing to be 'Michael L. Connor', with a stylized, flowing script.

Michael L. Connor  
Assistant Secretary of the Army  
(Civil Works)