

# Hot Legal Topics: A Roundup of the Latest Litigation Shaping CWA Policy

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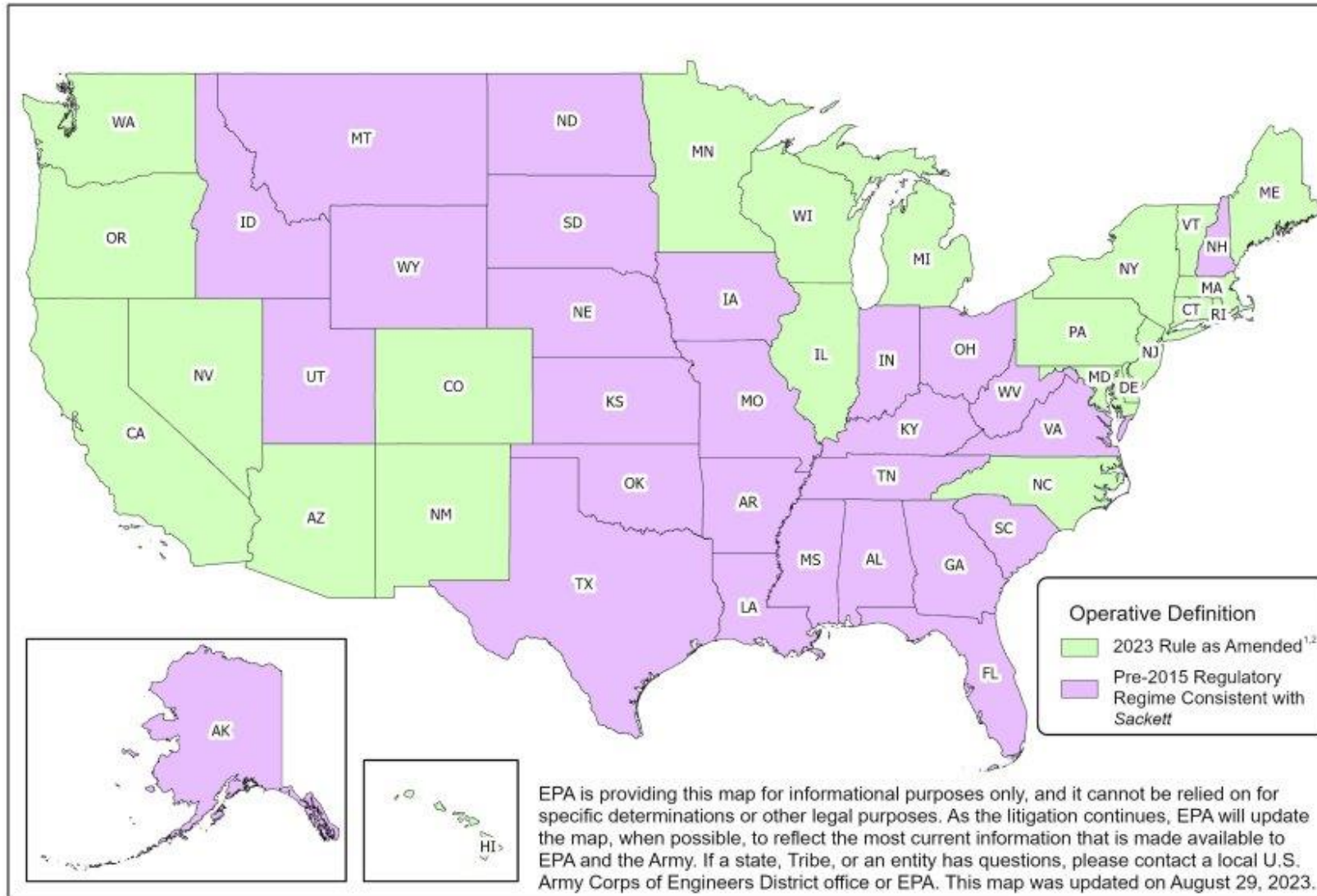
Association of Clean Water Administrators

# Waters of the United States Litigation





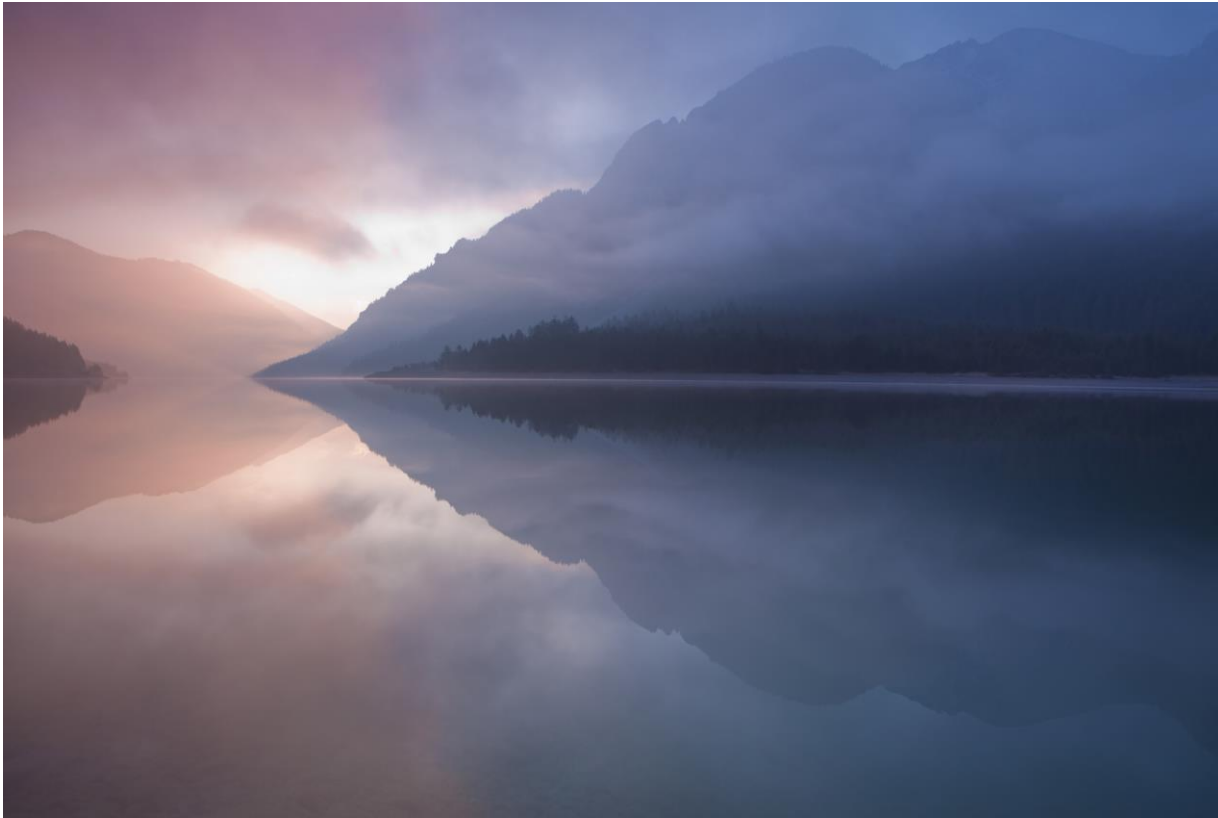
# Operative Definition of "Waters of the United States"



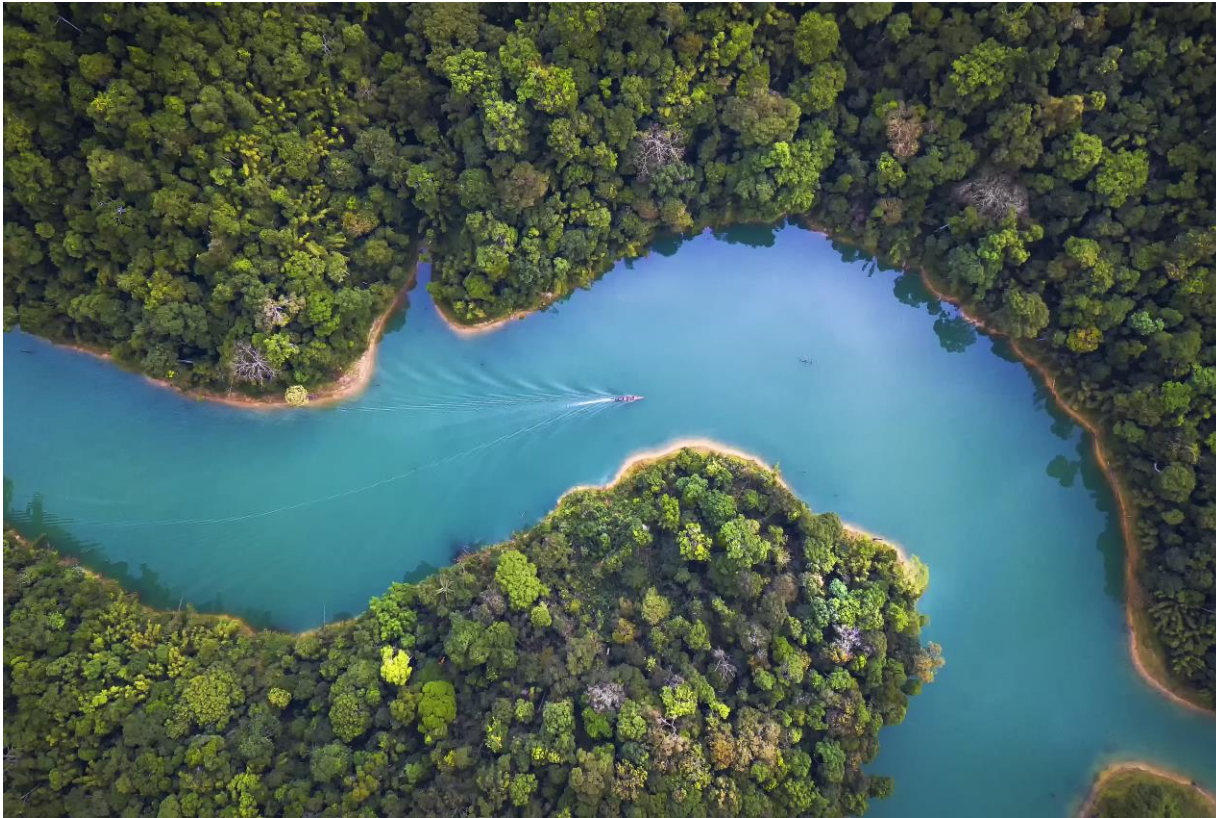
<sup>1</sup>Also operative in the U.S. territories and the District of Columbia

<sup>2</sup>The pre-2015 regulatory regime implemented consistent with *Sackett* is operative for the Commonwealth of Kentucky and Plaintiff-Appellants in *Kentucky Chamber of Commerce, et al. v. EPA* (No. 23-5345) and their members (Kentucky Chamber of Commerce, U.S. Chamber of Commerce, Associated General Contractors of Kentucky, Home Builders Association of Kentucky, Portland Cement Association, and Georgia Chamber of Commerce).

*Louisiana v. EPA*  
Clean Water Act Section 401



*Idaho v. EPA*  
WQS Regulatory Revisions to Protect Tribal Reserved  
Rights





# *City and County of San Francisco v. EPA* Generic Prohibitions in NPDES Permits



*Loper Bright Enterprises, et al. v. Raimondo,*  
*Secretary of Commerce, et al.*  
Federal Administrative Agency Deference



# Executive Order 13132, *Federalism*





# Executive Order 13132, Federalism Directives to Federal Agencies

- Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.
- The head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

**Feb. 17, 2023, Memo from Administrator Regan: *Principles and Best Practices for Oversight of State Implementation and Enforcement of Federal Environmental Laws***

“An important component of EPA’s effective communication with state partners is the federalism consultation process established by [E.O.] 13132 for rulemakings that would have a substantial impact on state and local governments. Through early, meaningful engagement, EPA is able to thoughtfully consider each state’s geographic, social, and political conditions and existing regulatory programs as it strives to develop durable environmental and public health policies.”