

Drainage Work Group (DWG) Meeting

August 21, 2025

Following the welcome and introductions, Tom Gile, Board of Water and Soil Resources (BWSR) gave an overview of the agenda. Information was provided about the following drainage-related events.

- MADI fall meeting – scheduled for September 10 - 11 in St. Cloud
- Tri-State Drainage Research Forum – September 9 - 10 in Brookings, SD

DNR Public Waters Inventory Update

Randall Doneen gave a PowerPoint presentation regarding the status and process of the Public Waters Inventory (PWI) update. Highlights include:

- Data management decision to unify buffer and PWI GIS layers, using the buffer as the primary data source.
- Launch of the review process in four counties (Clay, Aitken, Benton, Blue Earth), with a quasi-alphabetical approach and special cases for trout stream designations.
- Notification procedures: courtesy notices, direct notices to affected landowners, county boards, SWCDs, watershed districts.
- Review process: preliminary map, 30-day comment period, public meeting, additional 30-day comment period, provisional final map (90-day review window), final order.
- Emphasis on material evidence for corrections; online tools for comment submission. Coordination with SWCDs and BWSR; partnership highlighted for buffer law implementation.
- Discussion of technical aspects, including ARC Pro Review Tool (DART), web map development, and handling of discrepancies and errors.

Next steps

- Carry out technical reviews (through late fall)
- Share preliminary map and public meeting information
- Notify next counties for update

Wetland Conservation Act Rulemaking Update

Les Lemm gave an update on Wetland Conservation Act (WCA) rulemaking. Highlights include:

- Rulemaking authority and statutory limitations.
- Extensive stakeholder engagement: advisory committee, local government listening sessions, tribal consultation.
- Two preliminary draft rules posted; feedback ongoing. Guiding principles: statutory consistency, clarity, implementability, minimizing local government workload, balancing costs/benefits.
- Scope: reconcile rule with statute changes (2011, 2012, 2015, 2017, 2024), clarify procedures, modernize provisions, improve mitigation outcomes, increase federal consistency.
- Notable topics: wetland credit classification (HGM method), regulation of deepwater habitats, updates to exemptions, replacement siting criteria, tribal notification, wetland bank application review process, upland buffer credit flexibility, enforcement responsibilities.
- Items deferred for future rulemaking: protection/mitigation of intermittent/perennial watercourses upstream of public waters, wetland bank decision roles, stream restoration credits, high-priority mitigation areas, functional assessment tool.
- Current status: draft rule under review by revisor's office, ongoing language adjustments, stakeholder meetings on rare natural communities, development of SONAR.
- Website resources: drafts, comments, meeting recordings, statute changes, contact info

Next Steps

- Complete revisions based on Revisor's office comments
- Further review of Rare Natural Communities provision
- Develop final draft rule and SONAR
- Posting in State Register, additional opportunities for review and comment

Minnesota Public Drainage Manual - Clean Water Act Overview

Hannah Schacherl Jansen summarized recent federal regulatory changes (Sackett V. EPA) to the Clean Water Act and implications for the MPDM.

Discussion was held on whether to update MPDM content to reflect federal changes or streamline to high-level summaries and references. The consensus was to reduce the detailed federal process descriptions and focus on high-level summaries.

Outlet Adequacy Technical Report

Discussion was held regarding publishing the outlet adequacy technical report as a resource on the BWSR website. Environmental groups asked for the publishing to include a disclaimer that the document does not have a DWG consensus recommendation.

Next Meeting

The next meeting will be held on Thursday, October 9 at 11:00 a.m. in St. Cloud. Because the MnDOT building is not available in September, the September meeting will be canceled.

Meeting notes by Jan Voit



Drainage Work Group Public Waters Inventory (PWI) Update Project

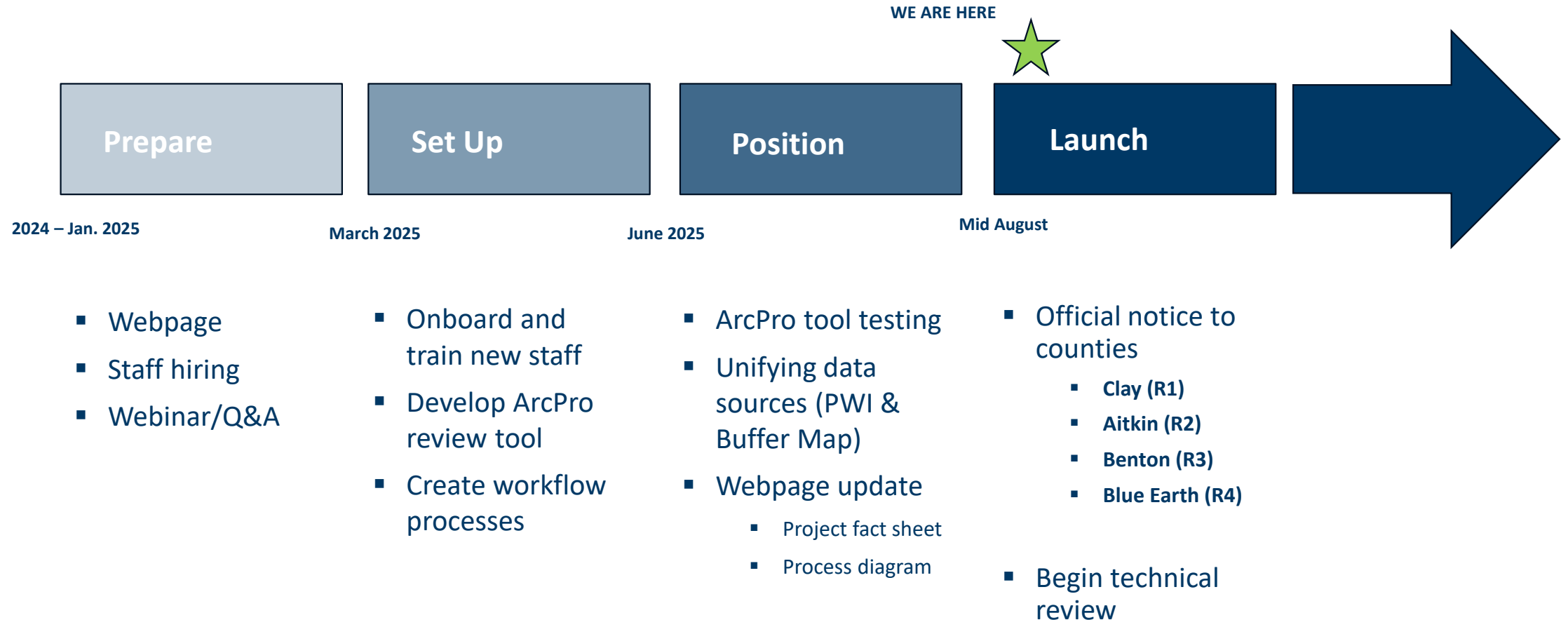
Randall Doneen | Conservation Assistance and Regulation Section Manager

Moving Forward with the PWI Update

- Progress highlights
- Project approach
- Key tools
- Upcoming priorities

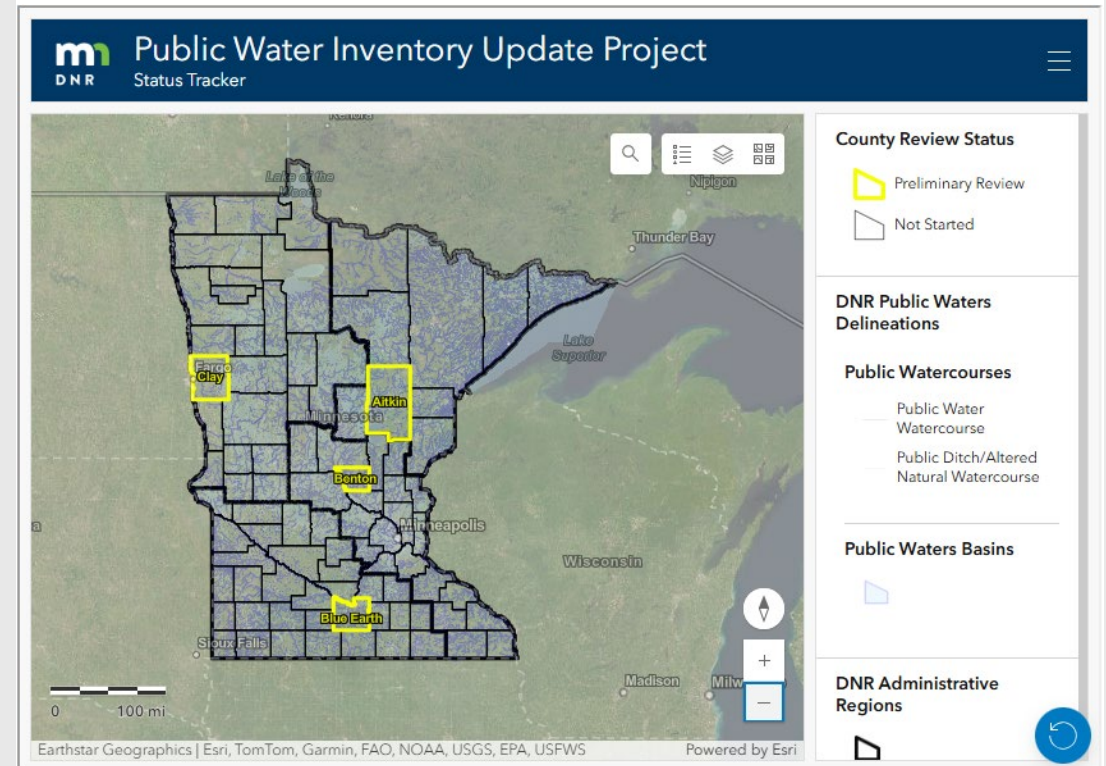


Where we are at: progress highlights



Project approach

- Update four counties at a time
 - One county underway in each of DNR's four administrative regions at any given time
- Counties will be updated on a quasi-alphabetical basis



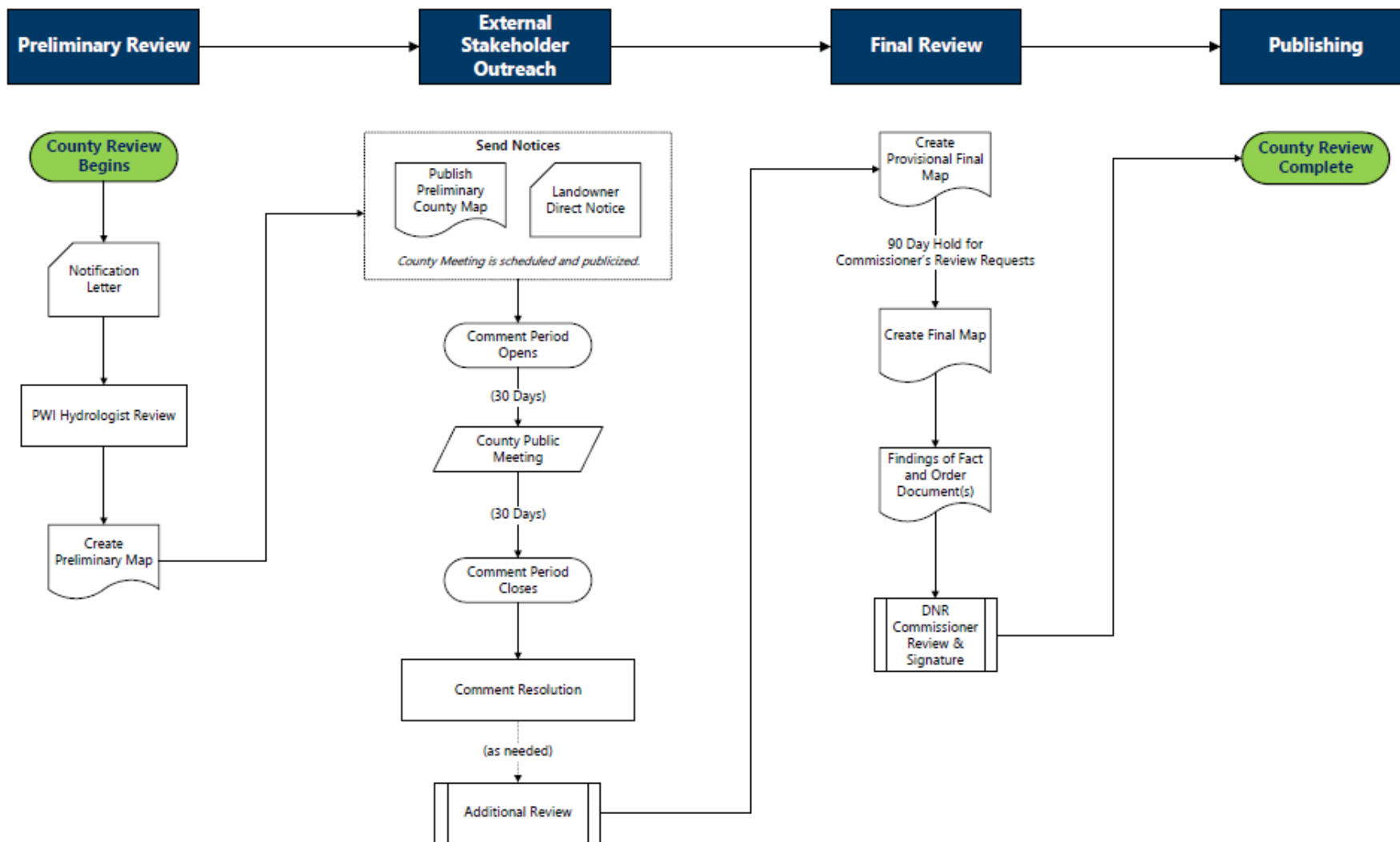
Project approach

- The DNR will send a notification letter to a county and begin technical review.
- The DNR will prepare a map of preliminary corrections with opportunity for review, questions and comments.
- Potentially affected landowners will receive direct mail notice of the preliminary map.
- A public meeting will be held in each county.
 - The comment period opens 30 days before the public meeting date and closes 30 days after the public meeting.
- Any comments received will be considered prior to finalization of PWI corrections for that county.
- Parties wishing to challenge a decision made by the DNR will have an opportunity to request a Commissioner's Review.
- A final map and list will be published.

PWI Update Project | Process Highlights

This diagram shows a simplified view of the DNR's process to review the Public Waters Inventory Updates for each county.

Author	PWI Update Project Team
Date	July 2025
Contact	pwi.update.dnr@state.mn.us



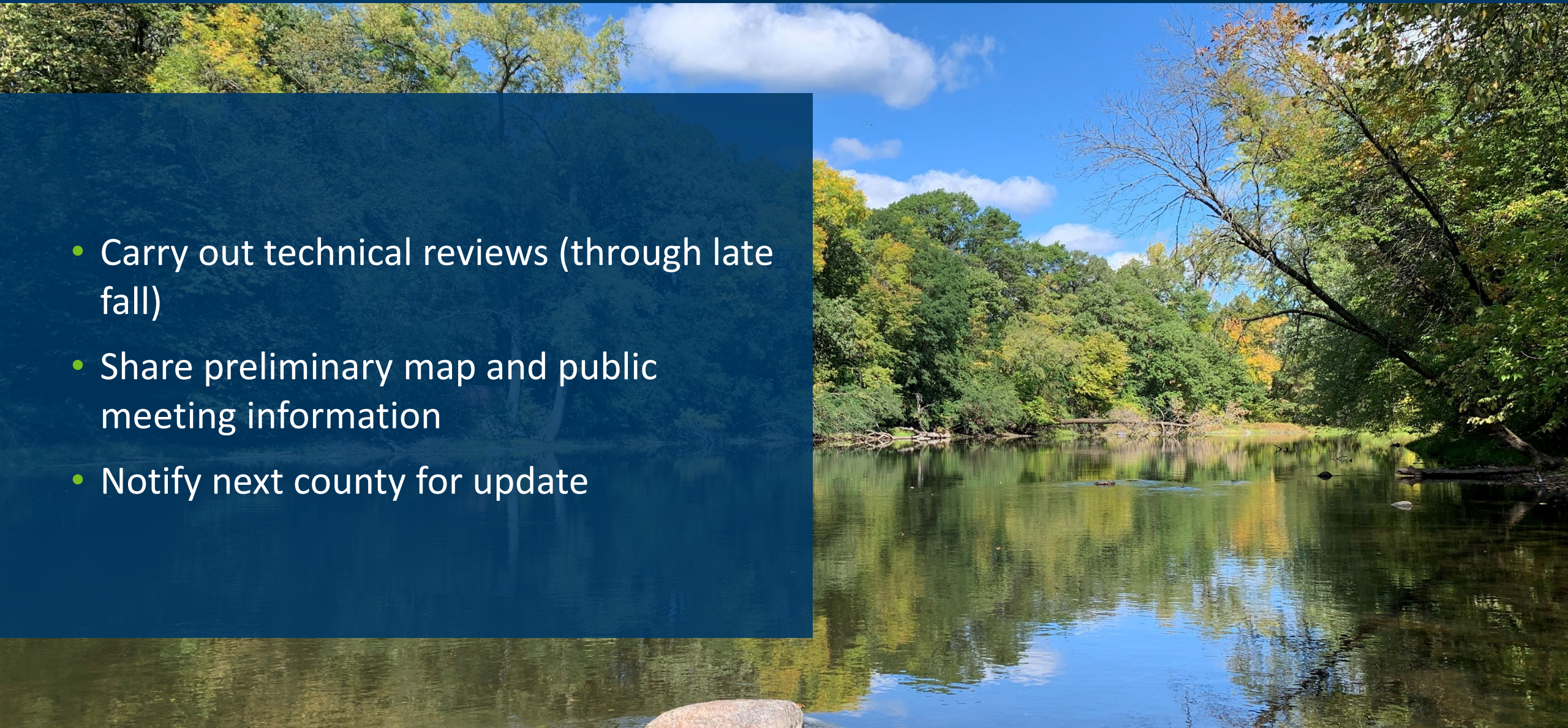
PWI Update tools

- Decision ArcPro Review Tool (“DART”)
 - Database to track review progress
- Project Web Map Tool
 - On project web page
 - Will host the feedback tool for comment period input



Next steps

- Carry out technical reviews (through late fall)
- Share preliminary map and public meeting information
- Notify next county for update



Thank You!

Randall Doneen

randall.doneen@state.mn.us



Minnesota Wetland Conservation Act Rulemaking MN Rules Chapter 8420

Drainage Work Group

August 21, 2025

Agenda

1)Background

2)Process

3)Notable Topics

4)Status

Wetland Conservation Act Statutes

- BWSR's authority stems from State Statute.
- Wetland Conservation Act statutes are primarily contained in:
 - Minn. Stat. Chapter 103G (Waters of the State)
- Relevant statutes also contained in Chapters:
 - 103A
 - 103B
 - 103F
 - 15
 - and others
- ***BWSR's rulemaking authority is limited by what statute allows or prescribes.***

Rulemaking Background/History

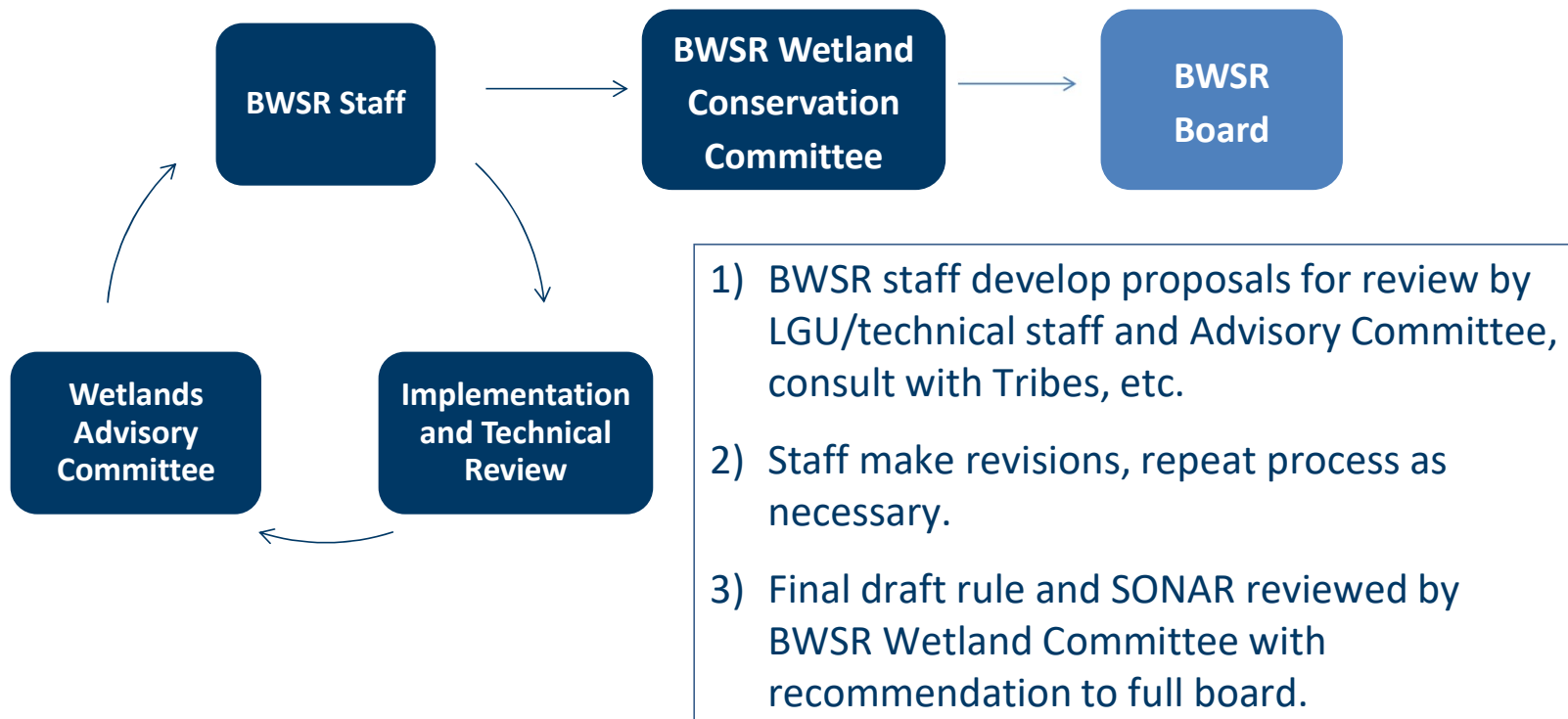
- 3 requests for comments posted in State Register (most recent July 2024).
 - All comments received posted on the BWSR website
- 7 Wetlands Advisory Committee mtgs.
- Numerous mtgs. with various stakeholder groups.
- Coordination with State & Federal agencies, LGU listening sessions, etc.
- Tribal coordination and consultation.
- BWSR Wetland Conservation Committee mtgs.
- 2 preliminary drafts of the WCA rule posted (11/12/24 and 4/25/25).

Guiding Principles of Rulemaking

BWSR will adhere to the following principles as we consider input and develop rule language:

- Consistency with statutory intent and the purpose of WCA
- Simplification and clarification
- Implementable
- Have a tangible result or outcome
- Improve accountability
- Minimize negative impacts to LGU workload
- Limit unintended consequences
- Balance public costs and benefits
- Seek stakeholder support
- Fairness and consistency

Rule Development Process



Note: All information will be shared publicly and other stakeholders & interested individuals will be provided ongoing opportunity throughout the rule development process to provide input.

Organization

- MN Farm Bureau
- MnDOT
- Assoc. of MN Counties
- SWCD Staff (Wright SWCD)
- League of MN Cities
- MN Rural Counties
- Mining MN
- Builders Assoc. of MN
- MN County Engineers Assoc.
- Aggregate Ready-Mix Assoc. of MN
- County Staff (LOW County)
- MN Center for Env. Advocacy
- Iron Mining Assoc. of MN
- Sierra Club
- MN Intercounty Assoc.
- MN Watersheds
- Red River Watershed Mgmt. Board
- MN Wetland Professionals Assoc.
- MN Assoc. of SWCDs
- MN Environmental Partnership
- MN Farmers Union
- MN Chamber of Commerce
- MN Ag Water Resource Center

Member

Hunter Pederson
Beth Brown
Brian Martinson
Andrew Grean
Craig Johnson
Neil Peterson
Julie Lucas
Grace Keliher
Jim Foldesi
John Cunningham
Josh Stromlund
Carly Griffith
Joel Asp
Margaret Levin
Matt Massman
Jan Voit
Mark Aanenson
Curt Kleist
Sheila Vanney
Steve Morse
Stu Lourey
Andrew Morley
Warren Formo

BWSR Wetlands Advisory Committee

Organizations & Participants

Representatives of the
organizations may vary as
alternates can be used.

Scope of WCA Rulemaking



- 1) Reconcile the rule with statute changes, incl. those from 2024.
 - 2) Clarify requirements and procedures, update and modernize outdated rule provisions, improve wetland mitigation outcomes, and increase consistency with federal wetland regulations.
 - 3) As time and capacity allows, implement changes identified during the rulemaking process to improve efficiency, effectiveness, and/or outcomes.
- ❖ Some statute changes can be incorporated as-is, or with a limited amount of work.
 - ❖ Several statute changes require substantial program development work to implement and will be held for a future rulemaking.

Authorities/Mechanisms for Implementation

1) Statute

2) Rule

3) Policy

4) Guidance

5) Training

❖ When considering input, we need to take into account the agency's authority and the appropriate implementation mechanism for each issue.

Notable Rulemaking Topics (Statute)

- New Wetland & Credit Classification System (HGM)
- Regulation of Non-PW Deepwater Habitats
- Presettlement Areas for Wetland Replacement
- Updates to Exemptions to match statute
- Modifications to replacement wetland siting criteria
- Multiple others (all statute changes posted on BWSR website)

Notable Rulemaking Topics (Non-Statute)

- Notice to Tribes of applications and enforcement
- Wetland Bank application review process
- Actions Eligible for Wetland Mitigation Credit
- BSA definition and process added
- Clarification of enforcement responsibilities and process
- Clarification of Rare Natural Communities provision
- Flexibility for Single User Banks

Future Rulemaking?

Topics to be held for consideration at a future rulemaking:

- Protection or mitigation of intermittent and perennial watercourses upstream of public waters (2024 Statute Change)
- Wetland Bank Decision Roles/Alternatives
- Wetland Credits for Stream Restoration (Quantification Tool)
- In-Lieu Fee Program for public use and Compensation Planning Frameworks (High Priority Areas)
- Utilization of new functional assessment tool

Statement of Need and Reasonableness

- A SONAR is supposed to explain the circumstances that have created the need for the proposed rules and why the rules are an appropriate solution for meeting the need.
- Governed by:
 - MN Administrative Procedures Act
 - MN Rules Chapter 1400
 - State Rulemaking Manual
 - Interagency template and guidance
- Will be posted and noticed along with the draft WCA rule.

Current Status

- Revisor's Office draft rule and comments received (late June).
 - *Numerous* comments and language changes.
 - Currently reviewing and making final language adjustments (extremely tedious!).
- Coordination with DNR and stakeholders regarding Rare Natural Communities.
- Consideration of feedback received.
- Ongoing Tribal consultation.
- Development of SONAR.

Next Steps

- ✓ Complete revisions based on Revisor's Office draft and comments.
- ✓ Further review Rare Natural Communities provision.
 - Mtg with certain stakeholders
 - Consult with DNR
- ✓ Develop final draft rule and SONAR.
 - Revisor's office develops certified copy of draft rule
 - Consultation with the Governor's office, MMB, and others
 - Review by BWSR Wetland Conservation Committee
 - Decision by BWSR board to initiate "formal" rule adoption process
- ✓ Posting in State Register; additional opportunities for review and comment.

<https://bwsr.state.mn.us/wca-rulemaking>

- ✓ Rule drafts
 - ✓ Comments received
 - ✓ Meeting recordings/presentations
 - ✓ Statute changes
 - ✓ Other rulemaking info and links
 - ✓ Contact information
- ❖ We will post the draft SONAR, the “final” draft rule, and other related information when completed.

https://bwsr.state.mn.us/wca-rulemaking

Grants ▾

Land ▾

Water ▾

Wetlands ▲

Capacity Development ▾

About & News ▾

WETLAND REGULATION

Wetlands Regulation in
Minnesota

Wetland Conservation Act
(WCA) Contacts

Joint Application Form

WCA Forms & Templates

WCA Program Guidance &
Information

WCA Rulemaking

WCA Program Reports

404 Assumption

MITIGATION & BANKING

Wetland Bank Credits and Fees

Wetland Bank Transaction Forms

Wetland Bank Guidance and Information

Local Government Road Wetland
Replacement Program

Agricultural Wetland Bank

In-Lieu Fee Mitigation Program

Wetland Bank & Mitigation Easements

DELINEATION, ASSESSMENT & RESTORATION

Wetland Delineation

Wetland Functional Assessment

Wetland Restoration

Wisconsin-Minnesota Functional
Assessment Initiative

Minnesota Stream Quantification Tool and
Debit Calculator

MN WETLAND PROFESSIONAL CERTIFICATION PROGRAM

Minnesota Wetland Professional Certification
Program Information

Wetland Training Schedule and Registration

Wetland Training Resources

Questions or Comments?

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Website: <https://bwsr.state.mn.us/wca-rulemaking>

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Memorandum

To: Drainage Work Group, c/o Tom Gile
From: Hannah J. Schacherl Jansen, Attorney
Re: Clean Water Act Updates to Minnesota Public Drainage Manual
Date: August 18, 2025

Introduction

The purpose of this memorandum is to review the information regarding the Clean Water Act provided in the Minnesota Public Drainage Manual in light of *Sackett v. EPA* and subsequent changes to Clean Water Act rules. Originally written in 1991, the Board of Water and Soil Resources and other stakeholders last updated the Manual in 2016. Since the last update, the definition of “waters of the United States” and, therefore, the jurisdiction of the Clean Water Act, has substantially changed. The Manual provides information about the Clean Water Act, including the definition of “Waters of the United States” (WOTUS), the discharge of dredged or fill material, exemptions, and the recapture provision.

Summary of Information Provided in Current Minnesota Public Drainage Manual

Waters of the United States (WOTUS)

- WOTUS is defined to include navigable waters, their tributaries, and most wetlands, which have been used in the past, are currently used, or may be susceptible to use in interstate or foreign commerce.
- The definition of WOTUS was jointly issued by the United States Environmental Protection Agency (EPA) and the USACOE in 2015 in response to Supreme Court decisions from 2001 and 2006 that questioned the extent of the Clean Water Act's (CWA) jurisdiction.
- The 2015 WOTUS rule became effective on August 28, 2015, but was stayed 43 days later by the Sixth Circuit Court of Appeals. The USACOE has since reverted to using prior regulations, relevant case law, and applicable policy to define WOTUS.
- In Minnesota, WOTUS often include streams, ditches, or wetlands, and can encompass waters that are or are not regulated by the state.
- As of summer 2021, the EPA and the Department of the Army announced their intention to revise the definition of WOTUS through a two-part rulemaking process: first to re-implement the pre-2015 WOTUS rules, and second to create a more durable definition based on Supreme Court precedent.

Discharge of Dredged or Fill Material

- A Section 404 permit is required if a project involves the discharge of dredged or fill material into a WOTUS.
- Dredged material is material excavated or dredged from WOTUS.
- Fill material is defined as material placed in WOTUS that either replaces a portion of the water with dry land or changes the bottom elevation of the water.
- Activities that may require a permit include levee and dike construction, land grading, road construction, and temporary stockpiling.

Exemptions and the Recapture Provision

- Certain activities that result in the discharge of dredged or fill material into a WOTUS may be exempt from needing a Section 404 permit.
- Exempt activities include normal farming, silviculture, and ranching activities; maintenance of currently serviceable structures like dikes and dams; construction or maintenance of farm ponds and irrigation ditches; and construction or maintenance of farm and forest roads.
- The recapture provision is a two-part test to determine if a project is eligible for a CWA Section 404 exemption.
 - Part one asks if the discharge is part of an activity to convert a WOTUS area to a new use.
 - Part two asks if the activity may impair the flow or circulation of WOTUS or reduce their reach.
- If the answer to both parts is "yes," a Section 404 permit is required.

Outdated Information

- **The Status of the 2015 WOTUS Rule:** The Manual states that the 2015 WOTUS rule was stayed by the Sixth Circuit Court of Appeals and that the U.S. Army Corps of Engineers (USACOE) had reverted to using prior regulations. This information is outdated.
 - Current WOTUS Rule was finalized in September 2023.
- **The "Significant Nexus" Standard:** The “significant nexus” standard, which was a key part of previous WOTUS definitions.
 - In its 2023 decision, *Sackett v. EPA*, 598 U.S. 651 (2023), the Supreme Court rejected this standard for determining federal jurisdiction over wetlands.

Comparison with Current Federal Rules and *Sackett v. EPA*

The Supreme Court's ruling in *Sackett v. EPA* (2023) established a new, narrower test for what constitutes a "Water of the United States" (WOTUS). The court held that the Clean Water Act's jurisdiction only extends to:

1. Relatively permanent, standing, or continuously flowing bodies of water that form streams, oceans, rivers, and lakes.
2. Wetlands that have a "continuous surface connection" to those waters, making it difficult to distinguish where the water body ends, and the wetland begins.

In light of *Sackett*, the USACOE and EPA revised the rule defining “WOTUS” to wetlands that are either adjacent to traditionally navigable waters susceptible to commerce or to relatively

permanent, standing or continuously flowing bodies of water with a continuous surface connection to those waters. 33 CFR § 328.3(a)(4). CWA jurisdiction does not extend to wetlands that have an attenuated connection with a traditionally navigable waterway.