



# CLIENT ADVISORY

## Federal Register/Vol. 90:222/ November 20, 2025/Proposed Rules Updated Definition of “Waters of the United States” Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency

**Explanation:** A proposed revision to the Waters of the United States (WOTUS) rule, published in the Federal Register on November 20, 2025, narrows federal jurisdiction under the Clean Water Act. This revision primarily focuses on "relatively permanent" waters and adjacent wetlands with a "continuous surface connection" to those waters.

This revision clears up the ambiguity regarding the inclusion of intermittently flowing streams in the definition “relatively permanent.” In other words, only ephemeral streams are excluded from both jurisdiction and acting as a continuous surface connection.

The overarching goal of this updated definition is to provide clarification of jurisdictional calls on the ground. It is also intended to leave waters that are not within the narrower definition of federal waters for the states and tribes to control (not unlike the Navigable Waters Protection Rule that I gave a presentation on in Tulsa during the first Trump administration).

**From the Executive Summary:** The agencies intend to provide greater regulatory certainty and increase Clean Water Act program predictability and consistency by clarifying the definition of “waters of the United States.” This proposed rule is also intended to implement the overall objective of the Clean Water Act to restore and maintain the quality of the Nation’s waters while respecting State and Tribal authorities over their own land and water resources.

**Quote from the USEPA’s website:** The overall intent in limiting federal jurisdiction is to create a general loosening of permitting requirements across the United States with the aim of the rule “to play a key role in EPA’s Powering the Great American Comeback initiative by protecting water resources, strengthening cooperative federalism, and supporting American industry, energy producers, the technology sector, farmers, ranchers, developers, businesses, and landowners.”

The November 2025 proposed rule for WOTUS narrows federal jurisdiction by defining "relatively permanent" waters as those that are standing or flowing year-round or at least during the "wet season," which excludes ephemeral streams. It also requires a "continuous surface connection" for a wetland to be jurisdictional, meaning the wetland must physically touch (abut) a WOTUS and have surface water connecting it during the wet season. This new definition, which aims to align with the Supreme Court's [Sackett v. EPA](#) decision, also excludes ditches dug entirely in dry land (non-hydric soils) and codifies the exclusion of groundwater connections.

Key definitions under the proposed new rule:

- **Relatively Permanent Waters:** Waters that are standing or continuously flowing year-round or at least during the wet season are considered "relatively permanent." This excludes ephemeral streams, which only have surface water in direct response to precipitation.
- **Continuous Surface Connection:** To be jurisdictional, a wetland must now meet two criteria: It must abut (touch) a jurisdictional water; and the wetland itself must have surface water present at least during the wet season.
- **Tributaries:** Jurisdictional tributaries must connect to traditional navigable waters either directly or through other features that provide predictable and consistent flow.
- Exclusions:
  1. **Ditches:** Ditches excavated entirely in dry land are now explicitly excluded from the definition.
  2. **Groundwater:** The rule formally codifies the exclusion of groundwater and subsurface drainage systems.
  3. **Waste treatment systems:** The definition of excluded waste treatment systems is refined to include all components of a system designed to meet Clean Water Act requirements.
  4. **Prior converted cropland:** The definition is updated to clarify when the designation is lost. Ensures that prior converted cropland only loses its designation when it has been abandoned and reverts to wetlands.
  5. **Interstate Waters:** Automatic jurisdiction for interstate waters is removed unless they meet other criteria.