

# Implications of the 2025 WOTUS Revisions

## Executive Summary

On November 17, 2025, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army announced a proposed rule to revise the definition of "Waters of the United States" (WOTUS) under the Clean Water Act (CWA). This proposal narrows federal jurisdiction to "relatively permanent" waters—those with standing or continuously flowing surface water year-round or during the wet season—and adjacent wetlands or lakes/ponds with a continuous surface connection. Key exclusions include ephemeral streams, isolated wetlands, and groundwater. The rule was published in the Federal Register on November 20, 2025, initiating a 45-day public comment period ending January 5, 2026.

This whitepaper analyzes the proposed revisions, their potential implications, and strategies for preparation ahead of finalization. Aligned with the Supreme Court's *Sackett v. EPA* (2023) decision, the proposal emphasizes cooperative federalism, reducing federal oversight under CWA Sections 402 and 404 while shifting responsibilities to states and tribes.

### Key Implications:

- **Opportunities:** Streamlined permitting for agriculture, construction, and energy sectors, potentially lowering costs and delays.
- **Risks:** Unregulated pollution in arid regions from excluded ephemeral streams and isolated wetlands, threatening drinking water and flood control.
- **Ambiguities:** Tools like the Antecedent Precipitation Tool (APT) may yield inconsistent delineations.

Targeted at environmental professionals and industry leaders, this analysis draws from the proposed rule text. All insights are preliminary and subject to change based on finalization. ClearPath Environmental Consulting positions this as an educational resource to support proactive compliance planning while awaiting the final rule.

## Introduction

The Clean Water Act (CWA; 33 U.S.C. §1251 et seq.) establishes federal protections for the nation's waters, with the WOTUS definition delineating jurisdictional scope. However, the WOTUS definition has undergone whiplash revisions across presidential administrations, oscillating between expansive and restrictive interpretations that have created persistent regulatory uncertainty for stakeholders. For instance, expansions under one administration are often rolled back by the next, leading to fluctuating compliance requirements, legal challenges, and inconsistent enforcement. This pattern not only

complicates long-term planning but also increases costs for businesses and environmental managers adapting to shifting standards.

The proposed 2025 revisions, announced November 17, 2025, respond to *Sackett v. EPA* (2023) by eliminating the "significant nexus" test and limiting jurisdiction to "relatively permanent" waters with continuous surface connections. While this aims to provide clarity, it only exacerbates compliance challenges, as the definition remains vulnerable to future alterations with changes in political leadership or court rulings, potentially perpetuating the cycle of instability.

### Historical Context:

- **1972–1986:** Broad interpretations including adjacent wetlands.
- **2015 Clean Water Rule:** Expanded via "significant nexus" (*Rapanos v. United States*, 2006), linking waters based on ecological impacts.
- **2020 Navigable Waters Protection Rule:** Narrowed exclusions by rolling back 2015 expansions, emphasizing traditional navigable waters and excluding ephemeral streams and isolated wetlands.
- **2023 Rule:** Reinstated broader protections under the Biden administration, amended post-*Sackett* to conform to Supreme Court limits.
- **2025 Proposal:** Further narrows scope, promotes state/tribal primacy under CWA §101(b), building on the 2020 NWPR's restrictive approach.

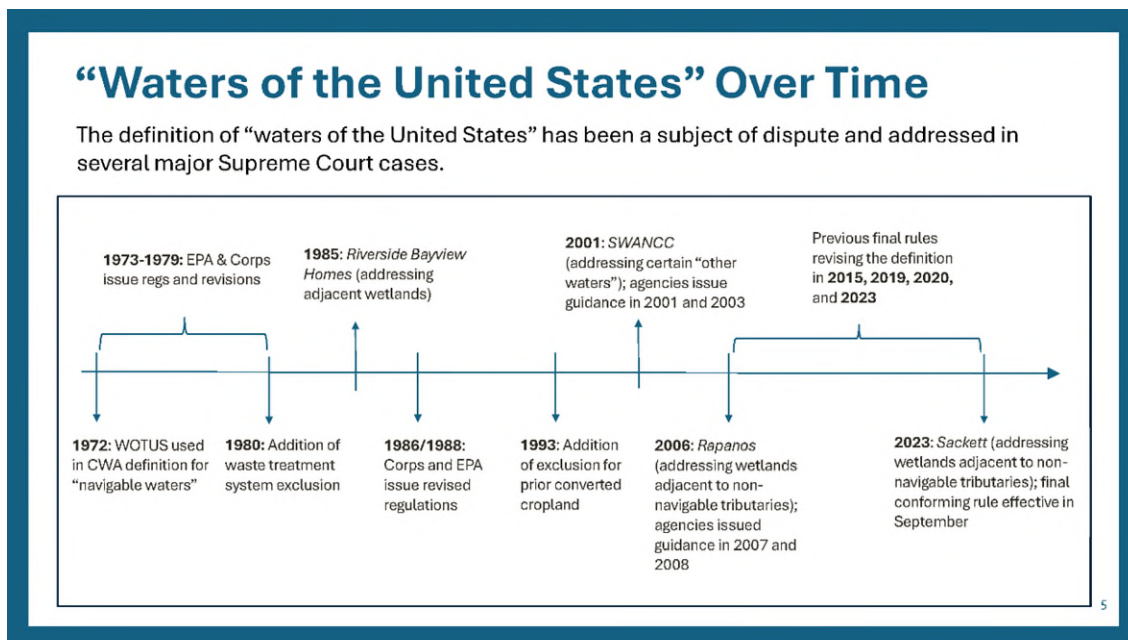


Figure 1. Evolution of the Meaning of “Waters of the United States” Over Time

As the proposed rule awaits finalization (public comments due January 5, 2026), this whitepaper educates on proposed changes, risks/opportunities, and preparatory strategies.

## Section 1: Detailed Analysis of Proposed Revisions

The proposal amends 33 CFR 328.3 and 40 CFR 120.2, retaining 1986 regulatory foundations while incorporating *Sackett*-compliant limits.

### Proposed Jurisdictional Categories

- Traditional Navigable Waters (TNWs) and Territorial Seas.
- Impoundments of jurisdictional waters.
- Tributaries with relatively permanent flow (year-round or wet season).
- Adjacent Wetlands: Only those with continuous surface connections.
- Relatively Permanent Lakes/Ponds.

### Key Exclusions

- Ephemeral streams.
- Isolated wetlands without surface connections.
- Groundwater and subsurface drainage.
- Ditches in dry land.
- Prior converted cropland (exclusion ends upon abandonment/reversion).

### Proposed Tools and Criteria

- **Relatively Permanent:** Year-round flow or wet season (precipitation > evapotranspiration).
- **Continuous Surface Connection:** Abutting with wet-season surface water.
- **Antecedent Precipitation Tool (APT):** Web-based tool for wet-season assessments, using field data and models.

**Table 1. Comparison Table: Current (2023) vs. Proposed (2025)**

Feature	Current (2023 Amended Rule)	Proposed (2025)
Ephemeral Streams	Included if significant nexus	Excluded
Isolated Wetlands	Included if significant nexus	Excluded unless connected
Groundwater	Generally excluded	Explicitly excluded
Interstate Waters	Standalone category	Must qualify under other criteria
Prior Converted Cropland	Excluded with abandonment rules	Clarified reversion triggers

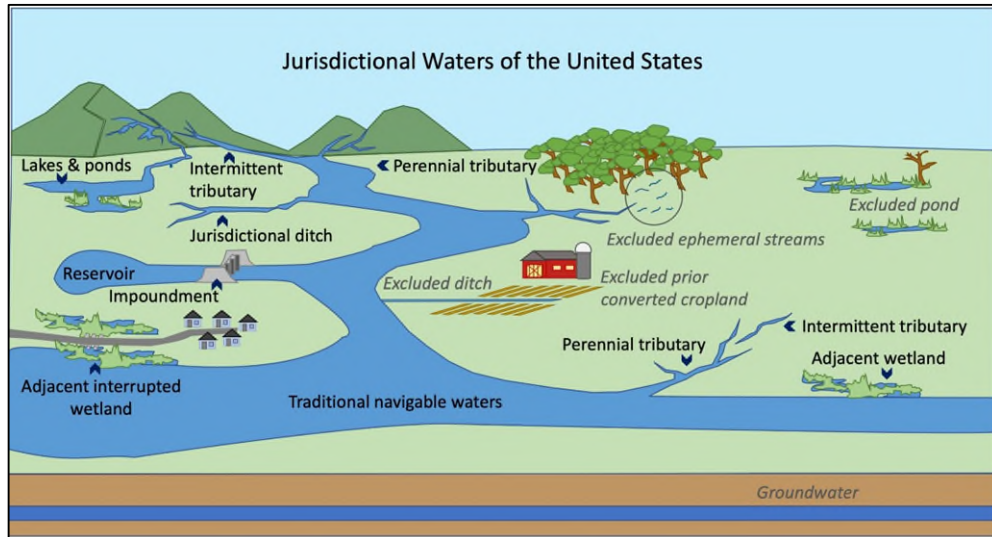


Figure 2 Jurisdictional Waters of the U.S. regulated under the 2020 Navigable Waters Protection Rule are listed in the black text. Waters excluded from regulatory control are listed in gray italicized text. Image credit: Sarah A. White, Clemson University.

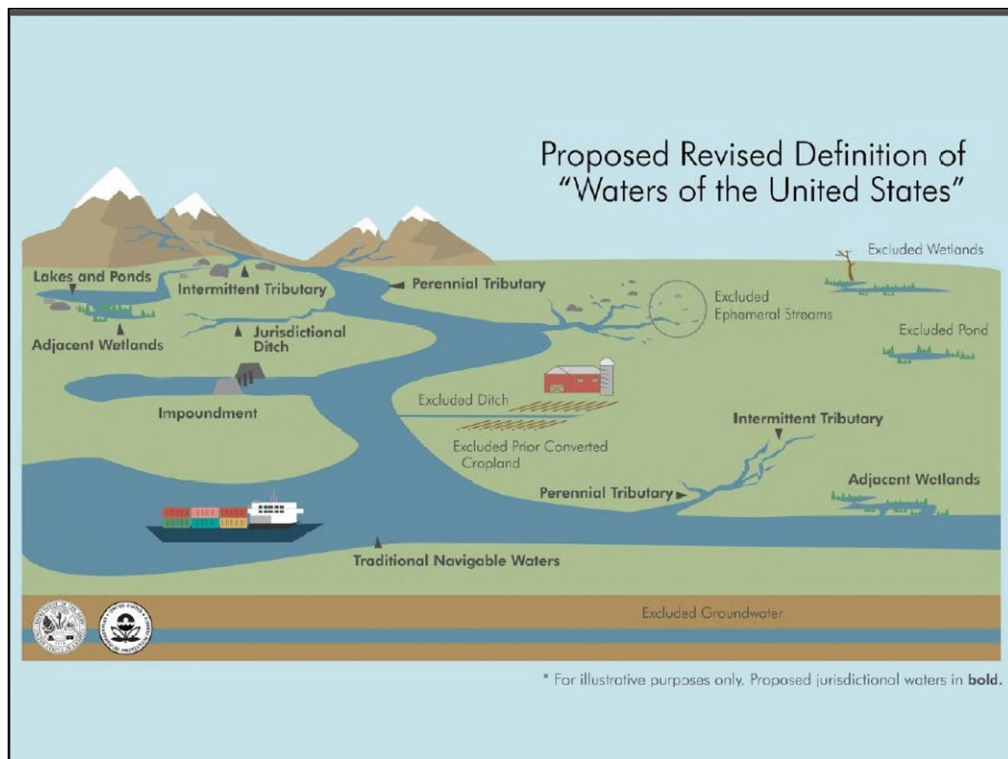


Figure 3 Illustration of waters covered under the EPA and Army Corps proposed definitions of "Waters of the United States." From EPA social media page

## Section 2: Implications of Proposed Revisions

The proposal reduces federal jurisdiction by ~50% for wetlands and ephemeral features, per EPA estimates.

### Potential Risks

- **Environmental:** Unprotected ephemeral streams (80% of arid waterways) risk pollution migration to drinking sources; weakened flood storage from isolated wetlands.
- **Regulatory Inconsistencies:** Regional APT variations may cause delineation disputes.
- **Legal:** Post-*Loper Bright* (2024), reduced deference invites challenges—proposed clarifications aim to mitigate but remain untested.

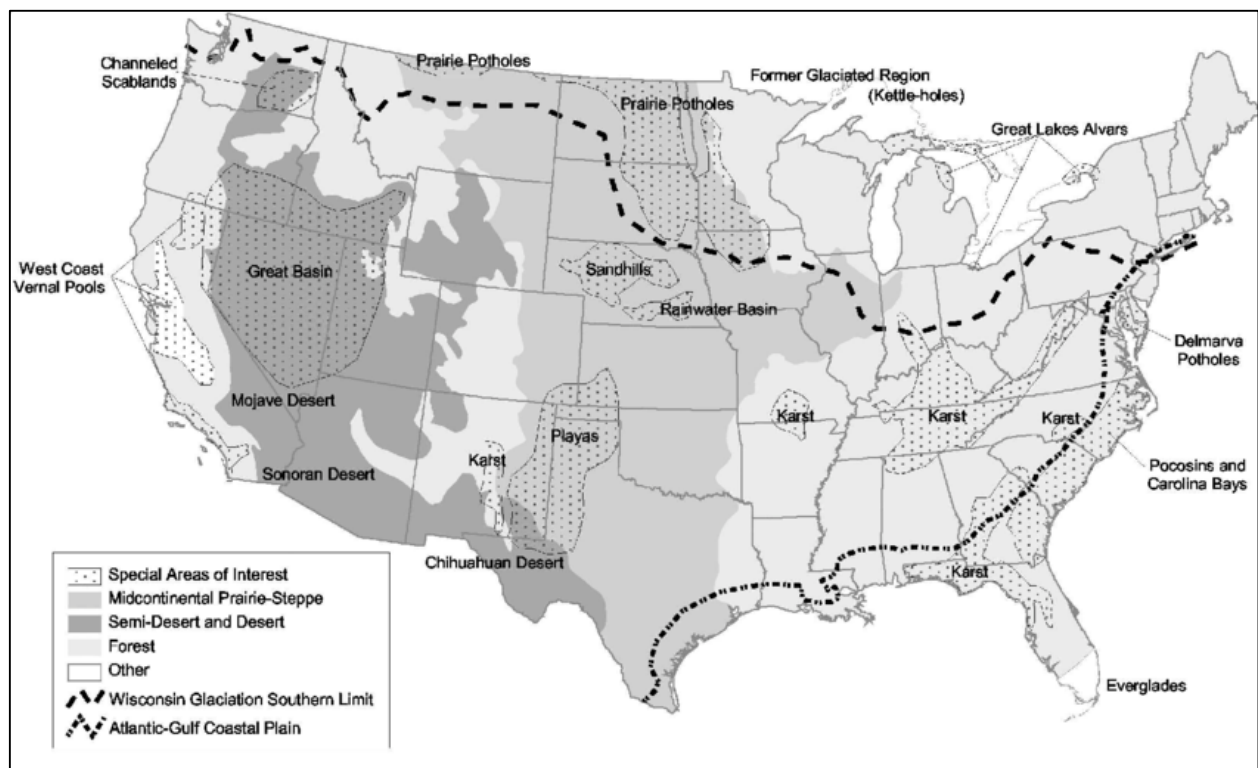


Figure 4 Map showing generalized regions where certain types of geographically isolated wetlands may be common. (Tiner, 2003)

Risks are substantiated by EPA factsheets; awaiting final rule for clarity.

## Potential Opportunities

- **Economic:** Fewer Section 402/404 permits; ~20–30% cost savings for developers/farmers.
- **Efficiency:** State-tailored programs enhance cooperative federalism.
- **Business:** Certainty aids project planning in energy/manufacturing.

## Section 3: Stakeholder Perspectives on the Proposal

Diverse views from pre-proposal consultations (45,000+ inputs) under Docket ID EPA-HQ-OW-2025-0093 (March 24–April 23, 2025; note: distinct from the 45-day public comment period under EPA-HQ-OW-2025-0322, starting November 20, 2025):

- **Agriculture (e.g., American Farm Bureau):** Supports exclusions for reduced burdens.
- **Environmental Organizations/NGOs (e.g., Environmental Defense Fund - EDF):** Opposes loss of protections; highlights science-based concerns over reduced safeguards, such as "dismantling wetlands protections and increasing flood risk by allowing developers to pave over wetlands" (EDF statement, November 17, 2025). Similarly, the National Wildlife Federation criticizes the narrowing for endangering streams and wetlands vital for water quality and biodiversity, stating the rule will "protect fewer streams and wetlands from pollution and destruction" (NWF press release, November 17, 2025).
- **Industry (e.g., Developers):** Welcomes permitting streamlining and cost savings.
- **States/Tribes:** Mixed; autonomy praised, but resource gaps noted for managing newly non-jurisdictional waters.

**Table 2. Balanced Table of Perspectives**

Stakeholder	Supportive Views	Critical Views
Agriculture	Fewer permits; cropland clarity	N/A
Environmental NGOs	N/A	Pollution/flood risks; science-based concerns over reduced safeguards
Industry	Cost savings	Implementation ambiguities
States/Tribes	Federalism	Enforcement burdens



## Recommendations

### Prepare for Final Rule Implementation

To navigate the uncertainties of the proposed 2025 WOTUS revisions, stakeholders should adopt proactive strategies that emphasize adaptability, state-level integration, and ongoing monitoring. These recommendations are drawn from EPA guidelines, historical WOTUS precedents, and best practices in environmental management, focusing on minimizing compliance risks while aligning with cooperative federalism principles. They are preliminary and should be tailored to specific operations once the rule is finalized.

- **Site Assessments:** Conduct preliminary hydrologic reviews using the Antecedent Precipitation Tool (APT) and other approved methods (e.g., Streamflow Duration Assessment Methods) to evaluate potential jurisdictional boundaries. This involves gathering site-specific data on flow permanence, surface connections, and wetland adjacency, potentially through field surveys or remote sensing. Early assessments can identify vulnerabilities in arid or seasonal regions, reducing future permitting delays; reference EPA's weight-of-evidence approach for robust delineations.
- **State Alignment:** Map and integrate tribal and state programs for managing non-jurisdictional waters, such as ephemeral streams and isolated wetlands. Review state-specific CWA equivalents (e.g., under Section 401 certifications) and tribal water quality standards to fill potential federal gaps. This may include participating in state assumption processes or adopting voluntary protections, ensuring seamless compliance across jurisdictions and mitigating interstate pollution risks.
- **Risk Mitigation:** Adopt Best Management Practices (BMPs) for excluded features, including erosion control, sediment barriers, and pollution prevention measures to safeguard water quality even without federal oversight. For example, implement stormwater management plans or habitat restoration in vulnerable areas, drawing from EPA's nonpoint source guidance. This proactive approach can prevent environmental liabilities and support sustainability goals, particularly in sectors like agriculture and development.
- **Expert Consultation:** Engage qualified advisors for comprehensive audits, including legal reviews of property delineations and compliance gap analyses. Consultants with experience in CWA Sections 402 and 404 can provide tailored strategies, such as scenario planning for rule changes. Prioritize firms familiar with regional challenges to ensure practical, cost-effective recommendations.
- **Monitor Developments:** Regularly check EPA.gov, the Federal Register, and state environmental agency updates for final rule publication, amendments, and implementation timelines. Set up alerts for related legal challenges (e.g., post-Loper Bright) and participate in industry webinars for real-time insights. This ongoing vigilance allows for agile adjustments, minimizing disruptions from the rule's potential whiplash effects.

## Conclusion

The proposed 2025 WOTUS revisions offer potential permitting efficiencies for industries by narrowing federal jurisdiction, but they also introduce uncertainties that stakeholders must navigate carefully. As detailed in Section 2, the exclusions of ephemeral streams and isolated wetlands could shift oversight to states and tribes, potentially leading to varied protections across regions. While the proposal aligns with cooperative federalism and Supreme Court precedents, its implementation may exacerbate the historical whiplash in WOTUS definitions, complicating long-term compliance planning as outlined in the Introduction.

Regarding potential risks to water quality, analyses from environmental organizations and regulatory reviews indicate that without federal protections, these non-jurisdictional waters—such as ephemeral streams in arid areas and isolated wetlands—face heightened vulnerability to pollution and degradation. This could result in downstream impacts, including reduced flood control, diminished drinking water quality, and harm to aquatic ecosystems, as pollutants migrate from unprotected features to jurisdictional waters. These risks are projected based on precedents from prior narrow definitions (e.g., the 2020 Navigable Waters Protection Rule) and scientific connectivity reports, which highlight the role of these waters in maintaining overall watershed health. However, actual outcomes will depend on state-level responses and the final rule's details, underscoring the need for proactive monitoring.

Stakeholders should prepare for the final rule by implementing the strategies in the Recommendations section, such as site-specific assessments and state program alignments, to address ambiguities and ensure balanced protections.



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