



Federal Jurisdiction Over Wetlands and Waters of the U.S. (WOTUS) to be Impacted by New Proposed Rule

On November 17, 2025, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (COE) published the latest proposed rule defining “waters of the United States” (WOTUS). The proposed rule, which implements portions of the federal Clean Water Act, was developed following public comment on the agencies’ earlier release of “[joint guidance](#)” provided in a March 12, 2025, memorandum to field staff regarding implementation of the phrase “continuous surface connection.” That phrase was central to the issues addressed by the U.S. Supreme Court in [Sackett v Environmental Protection Agency](#), 598 U.S. 651 (2023).¹

The agencies’ press release states that the most recent proposed changes are “intended to provide clarity and consistency to the continuous surface connection definition.” The agencies identified several of the key proposed revisions:

- Defining key terms like “relatively permanent,” “continuous surface connection,” and “tributary” to delineate the scope of WOTUS consistent with the Clean Water Act and U.S. Supreme Court precedent;
- Establishing that jurisdictional tributaries must connect to traditional navigable waters either directly or through other features that provide predictable and consistent flow;
- Reaffirming that wetlands must be indistinguishable from jurisdictional waters through a continuous surface connection, which means that they must touch jurisdictional water and hold surface water for a requisite duration year-after-year;
- Strengthening state and tribal decision-making authorities by providing regulatory guidelines while recognizing their expertise in local land and water resources;

- Preserving and clarifying exclusions for certain ditches, prior converted cropland, and waste treatment systems; and adding a new exclusion for groundwater; and
- Incorporating locally familiar terminology, such as “wet season,” to help determine whether a water body qualifies as WOTUS.

In addition, the proposed rule limits the definition of “wetlands” to those that have “surface water at least during the wet season and abut a jurisdictional water” – the purpose of which is to further limit the scope of “permafrost wetlands” that are considered to have a continuous surface connection under the proposed rule.

A copy of the pre-publication version of the proposed rule can be accessed [here](#).

Once the proposal is published in the *Federal Register*, it will be open for public comment for 45 days. The EPA and COE will also host two hybrid public meetings to discuss the proposal and receive comments.

This blog was drafted by [John L. Watson](#), an attorney in the Spencer Fane Denver, Colorado, office. For more information, visit www.spencerfane.com.

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¹ See the Spencer Fane blog written by John L Watson dated March 18, 2025, and titled: [“Waters of the U.S. \(WOTUS\): In Light of Pending Litigation That Stays the 2023 Rule, And Before New Rules Are Issued, EPA Attempts to Clarify the Definition.”](#)

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