

Training: 2025 Continuous Surface Connection Guidance



April 29, 2025



Today's Presentation

- Overview of 2025 Continuous Surface Connection Guidance
- Status of Case-Specific Policy Memoranda
- Examples of Common Scenarios and Application of the 2025 Continuous Surface Connection Guidance
- Next Steps



The information provided in this presentation is generally relevant to implementing either the 2023 rule, as amended, or the pre-2015 regulatory regime consistent with Sackett. Determinations of jurisdiction are case-specific determinations based on the record, and factual concerns or questions about the application of any guidance may be addressed in the context of a particular determination.

Overview of 2025 Continuous Surface Connection (CSC) Guidance: *Sackett* Decision

On May 25, 2023, the U.S. Supreme Court in *Sackett v. Environmental Protection Agency* “conclude[d] that the ***Rapanos* plurality was correct**” and rejected Justice Kennedy’s “significant nexus” standard. 598 U.S. 651, 671, 680 (2023). As a result, the **agencies can apply only the *Rapanos* plurality standard as informed by *Sackett*** in determining when adjacent wetlands are subject to Clean Water Act jurisdiction.

In 2006, the *Rapanos* plurality said that “**adjacent**” means “**physically abutting**,” and used “**abutting**” and “**adjacent**” interchangeably. 547 U.S. 748; *see also id.* at 742 (“*Riverside Bayview* rested upon the inherent ambiguity in defining where water ends and abutting (‘adjacent’) wetlands begin[.]”). Most importantly, the plurality clarified that “the statutory definition [of ‘navigable waters’ at 33 U.S.C. § 1362(7)] can be read to include some wetlands – namely, those that **directly ‘abut’ covered waters.**” *Id.* at 747, footnote 12 (emphasis in original).

Overview of 2025 Continuous Surface Connection (CSC) Guidance

On March 12, 2025, EPA and the Department of Army issued a memorandum to the field concerning the **proper implementation of a “continuous surface connection” consistent with *Sackett*** across **both currently operative regulatory regimes**.^{*} The EPA and the Department of the Army will apply this guidance when determining if a wetland has a “continuous surface connection” to a requisite jurisdictional water under the Clean Water Act.

In order to provide national consistency and eliminate confusion about the scope of "adjacent wetlands," this new guidance in light of *Sackett* **clarifies** the meaning of the **“continuous surface connection” requirement** and provides **more defined direction for implementation**.

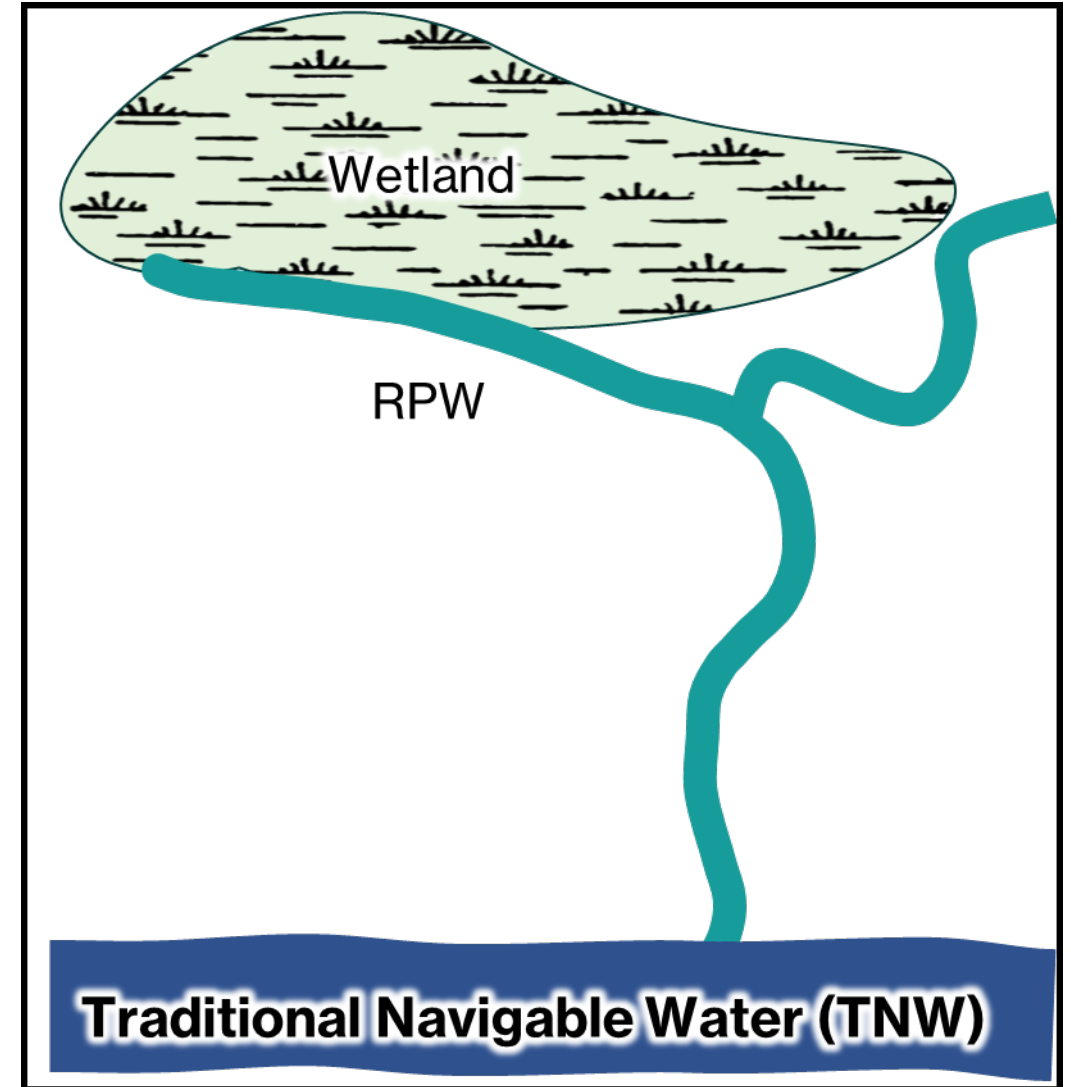
^{*} As a result of ongoing litigation, there are currently two operative regulatory regimes being implemented across the country as of the date of this presentation – the Amended 2023 Rule and the pre-2015 regulatory regime implemented consistent with *Sackett*. See [EPA’s Rule Status and Litigation Update webpage](#) for additional information.

Overview of 2025 Continuous Surface Connection (CSC) Guidance

This guidance is operative under the Amended 2023 Rule and the pre-2015 regulatory regime consistent with *Sackett*.

- **Wetlands meet the CSC requirement when they abut (or touch) waters that are “waters of the United States” in their own right.**
- Wetlands “are considered jurisdictional under the plurality standard” where they directly abut such waters “(e.g., they are not separated by uplands, a berm, dike, or similar feature).” 2008 *Rapanos* Guidance at 7, fn. 29.

For more detail, see [the 2008 Rapanos Guidance](#).



Status of Case-Specific Policy Memoranda - Rescinded

The 2025 Continuous Surface Connection Guidance **rescinded** the following memoranda due to their reliance on discrete features serving as a CSC which is inconsistent with the guidance.

Memoranda for draft approved jurisdictional determinations (JDs) completed under the Amended 2023 Rule ([available on the web](#)).

- Memorandum on NWP-2023-602 – This memorandum addresses whether the specific subsurface storm drain at issue can serve as a continuous surface connection for adjacent wetlands.
- Memorandum on NAP-2023-01223 – This memorandum addresses whether site specific discrete features can provide a continuous surface connection for adjacent wetlands.
- Memorandum on POH-2023-00187 (pdf) - This memorandum addresses whether site specific discrete features can provide a continuous surface connection for adjacent wetlands.
- Memorandum on MVR-2023-0828 (pdf) - This memorandum addresses whether site specific natural landforms can provide evidence of a continuous surface connection.

Memoranda for draft approved JDs completed under the pre-2015 regulatory regime ([available on the web](#)).

- Memorandum on NWK-2022-00809 – This memorandum addresses whether site specific discrete features can provide a continuous surface connection for adjacent wetlands.
- Memorandum on SWG-2023-00284 – This memorandum addresses whether site specific discrete features can provide a continuous surface connection for an adjacent wetland.
- Memorandum on LRB-2023-00451 – This memorandum addresses whether certain site specific features can provide a continuous surface connection for an adjacent wetland.
- Memorandum on NWK-2024-00392 (pdf) - This memorandum addresses whether site specific discrete features can provide a continuous surface connection for an adjacent wetland.

Status of Case-Specific Policy Memoranda - In Effect

The following case-specific memoranda were not impacted by the 2025 Continuous Surface Connection Guidance and remain in effect.

Memoranda for draft approved JDs completed under the Amended 2023 Rule ([available on the web](#)).

- Memorandum on LRB-2021-01386 (pdf) - This memorandum addresses the concept of how to identify the wetland area which is then assessed under the jurisdictional standard.
- Memorandum on MVS-2023-00288 (pdf) - This memorandum addresses the concept of how to identify tributary reaches for purposes of assessing tributaries
- Memorandum on NWS-2023-923 (pdf) - This memorandum addresses the concept of how to apply the waste treatment system exclusion.

Memoranda for draft approved JDs completed under the pre-2015 regulatory regime ([available on the web](#)).

- Re-evaluate Jurisdiction NWO-2003-60436 (pdf) - This memorandum addresses the concept of how to identify the wetland area which is then assessed under the jurisdictional standard.
- Evaluating Jurisdiction LRL-2023-00466 (pdf) - This memorandum addresses the concept of when ponds are considered part of the tributary network.
- Re-evaluate Jurisdiction SAS-2001-13740 (pdf) - This memorandum addresses the concept of how to apply the waste treatment system exclusion.

For purposes of assessing tributaries, implementation of the relatively permanent standard and when to assess natural, man-altered, or man-made water bodies as part of the tributary network remains consistent with the *Rapanos* and *Sackett* decisions and is not impacted by the 2025 Continuous Surface Connection Guidance.

Examples of Common Scenarios You May See in the Field and Application of the 2025 Continuous Surface Connection Guidance

Wetlands meet the CSC requirement under the guidance when they abut waters that are “waters of the United States” in their own right.

Example 1

Background: Wetland -> RPW ditch.

Is the feature a “water of the United States” in its own right?

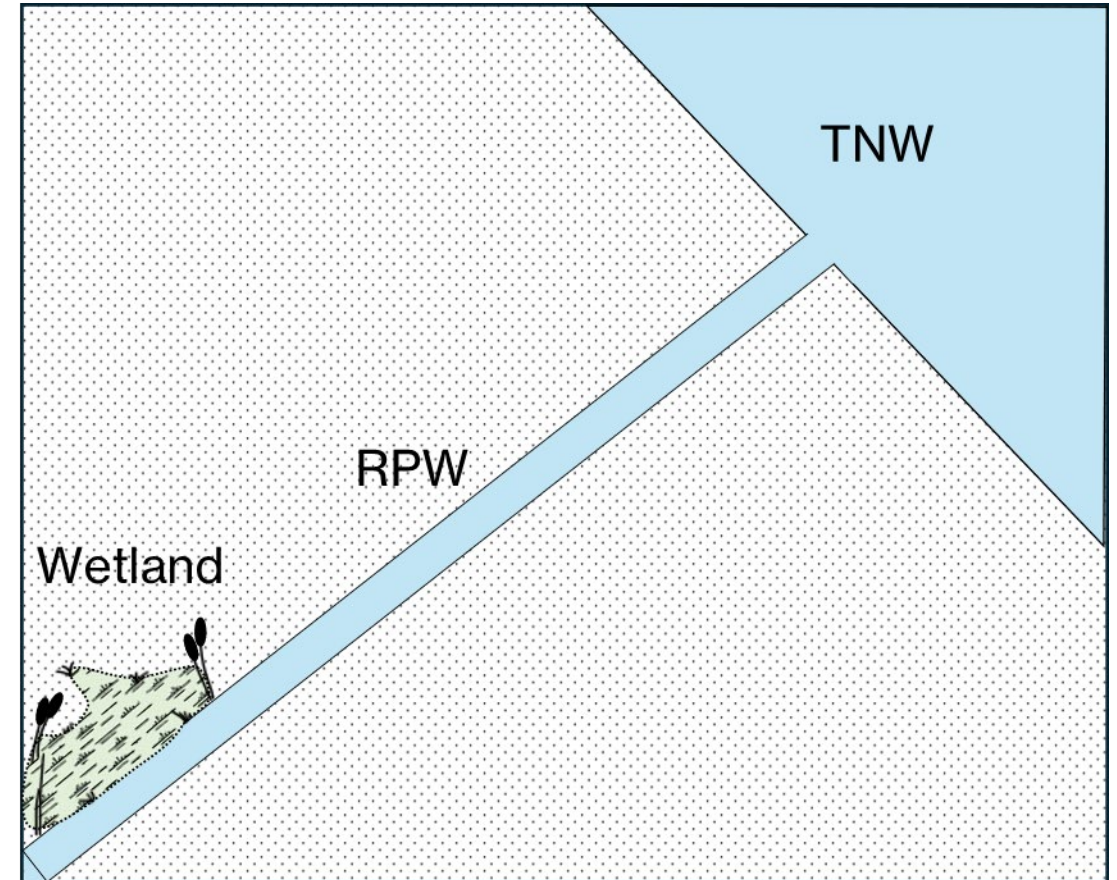
Yes, the ditch does not meet any of the exclusions (or generally non-jurisdictional categories) and is a relatively permanent water (RPW) that is connected to a traditional navigable water (TNW). A tributary includes natural, man-altered, or man-made water bodies that carry flow directly or indirectly into a TNW, the territorial seas, or an interstate water. Relatively permanent tributaries are jurisdictional.

Is the wetland abutting a “water of the United States”?

Yes.

Does the wetland meet the CSC requirement and is thus an adjacent wetland?

Yes.



Example 2

Background: Wetland -> RPW. The ordinary high water mark of the RPW extends through the culvert to the wetland.

Is the feature a “water of the United States” in its own right?

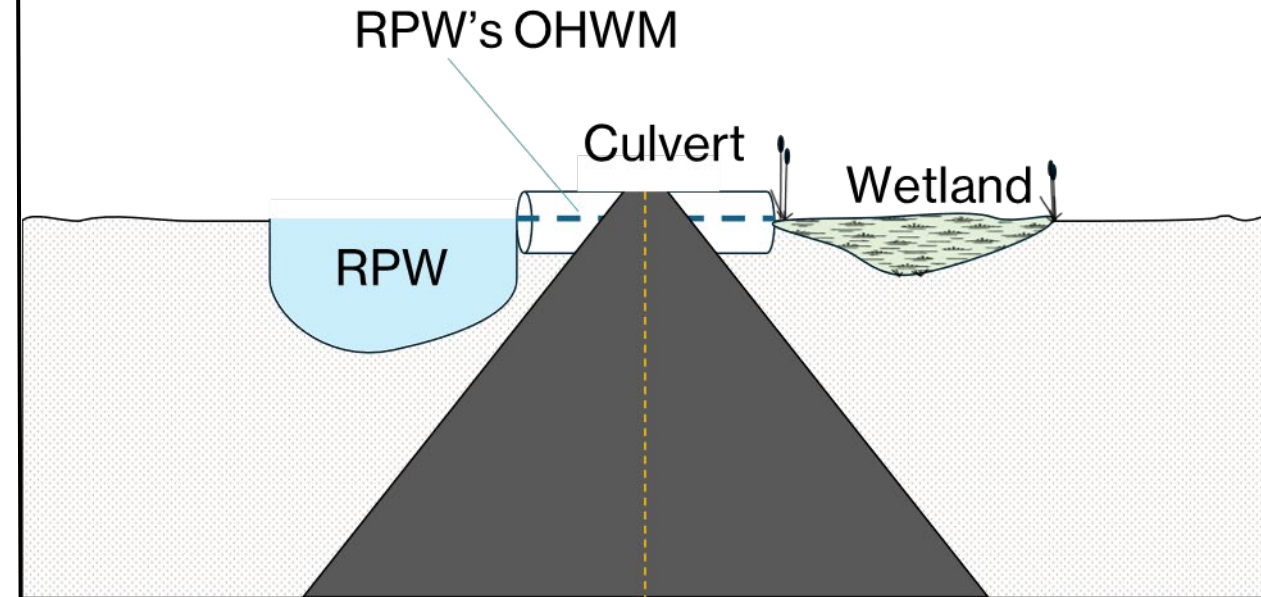
Yes, it is an RPW that connects to a TNW.

Is the wetland abutting a “water of the United States”?

Yes, the OHWM of the RPW extends through the culvert and touches the wetland.

Does the wetland meet the CSC requirement and is thus an adjacent wetland?

Yes.



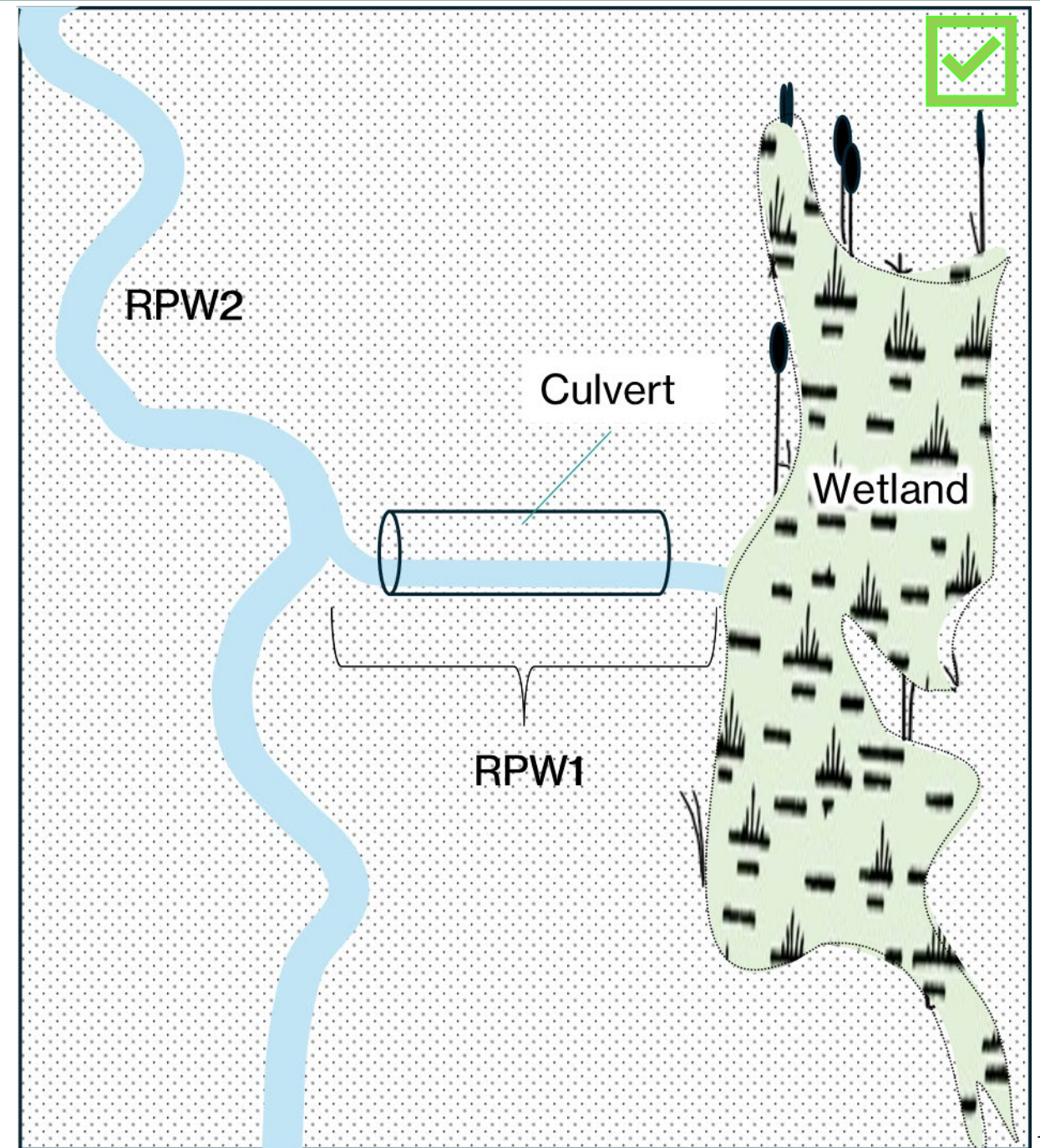
Example 3

Background: Wetland -> RPW1. Majority of RPW1 passes through a culvert.

Is the feature a “water of the United States” in its own right?
Yes, RPW1 is an RPW that connects to a TNW; the culvert has an observable ordinary high water mark and thus is treated as part of the relatively permanent tributary.

Is the wetland abutting a “water of the United States”?
Yes, RPW1 and the wetland touching (i.e., not separated).

Does the wetland meet the CSC requirement and is thus an adjacent wetland?
Yes.



Example 4

Background: Wetland is completely surrounded by uplands.

Is the feature a “water of the United States” in its own right?

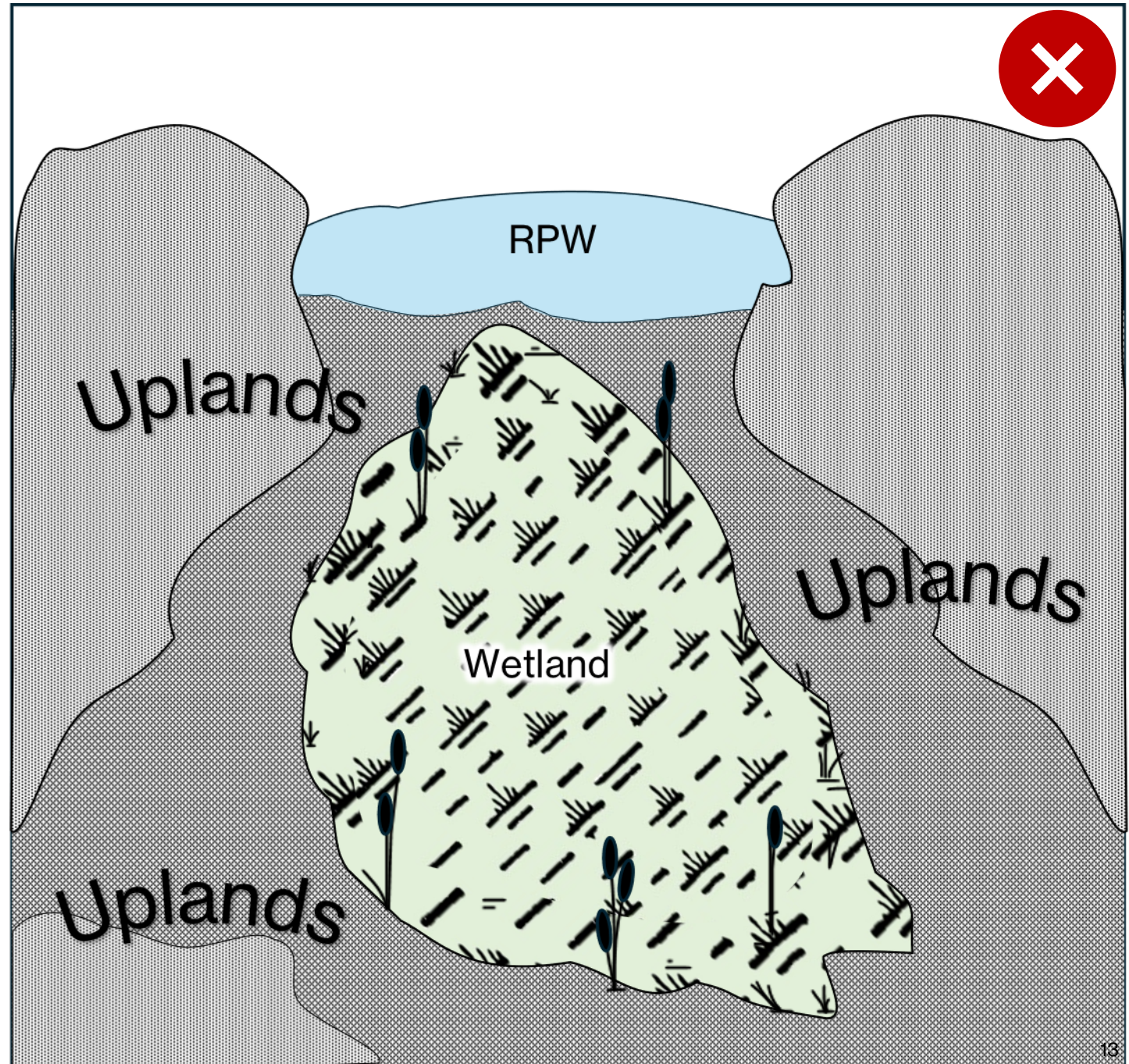
Yes, the water is an RPW connected to a TNW.

Is the wetland abutting a “water of the United States”?

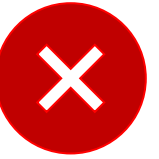
No, the wetland is separated from an RPW by uplands.

Does the wetland meet the CSC requirement and is thus an adjacent wetland?

No.



Example 5



Background: A legally constructed man-made berm separates the wetland from the RPW.

Is the feature a “water of the United States” in its own right?

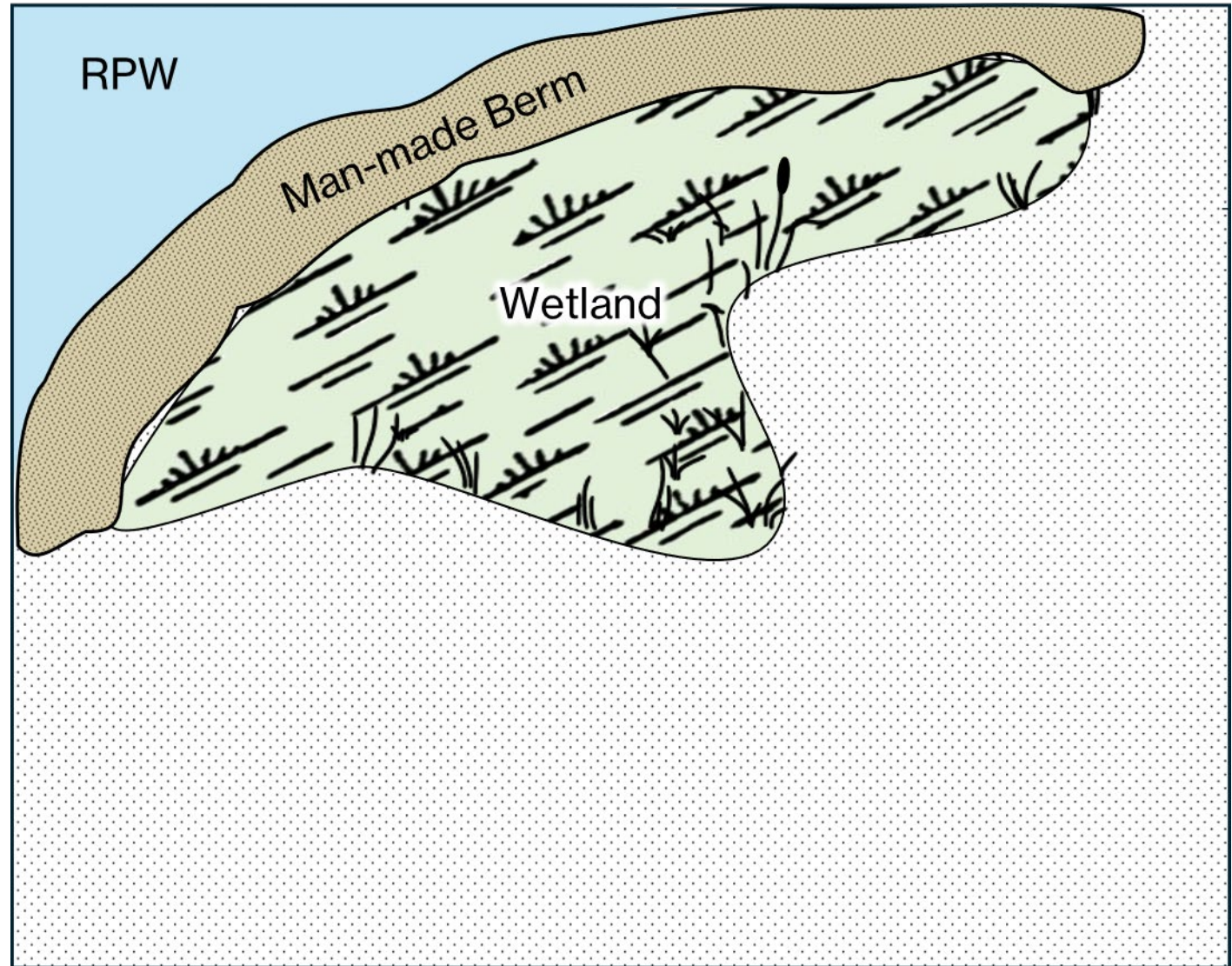
Yes, the water is an RPW connected to a TNW.

Is the wetland abutting a “water of the United States”?

No, the wetland is completely separated from the RPW by a man-made berm.

Does the wetland meet the CSC requirement and is thus an adjacent wetland?

No.



Example 6

Background: Wetland -> non-RPW -> RPW.

Is the feature a “water of the United States” in its own right?

Non-RPW: No, is not a “water of the United States” because it is excluded under the Amended 2023 Rule or is considered generally not jurisdictional under the pre-2015 regulatory regime.

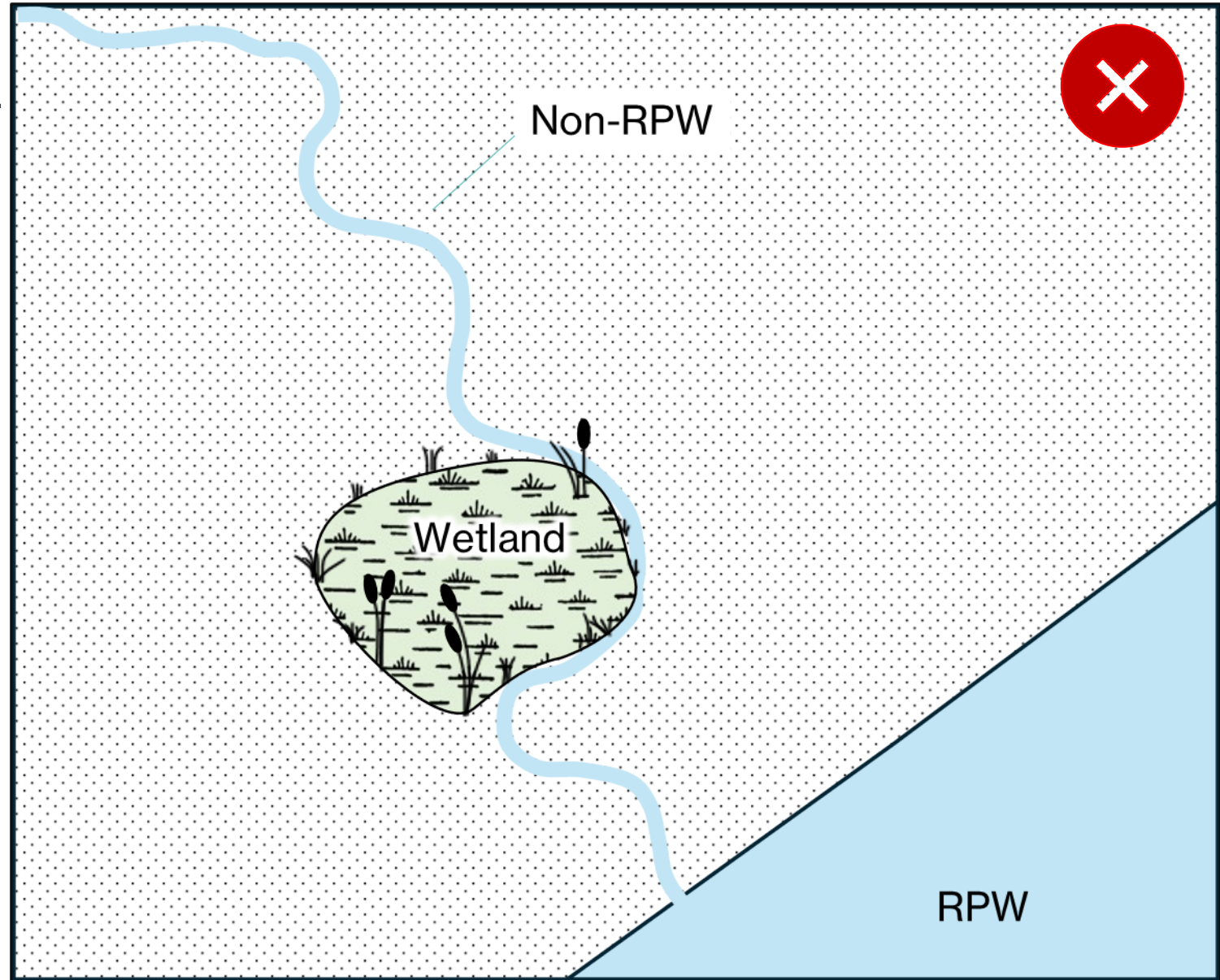
RPW: Yes, the water is an RPW connected to a TNW.

Is the wetland abutting a “water of the United States”?

No, the wetland touches a non-RPW which flows into the RPW. Because discrete features cannot be used to establish a CSC, the wetland is not abutting the RPW.

Does the wetland meet the CSC requirement and is thus an adjacent wetland?

No.



Example 7



Background: Wetland -> swale -> RPW.

Is the feature a “water of the United States” in its own right?

Swale: No, the lacks an ordinary water mark and relatively permanent flow.

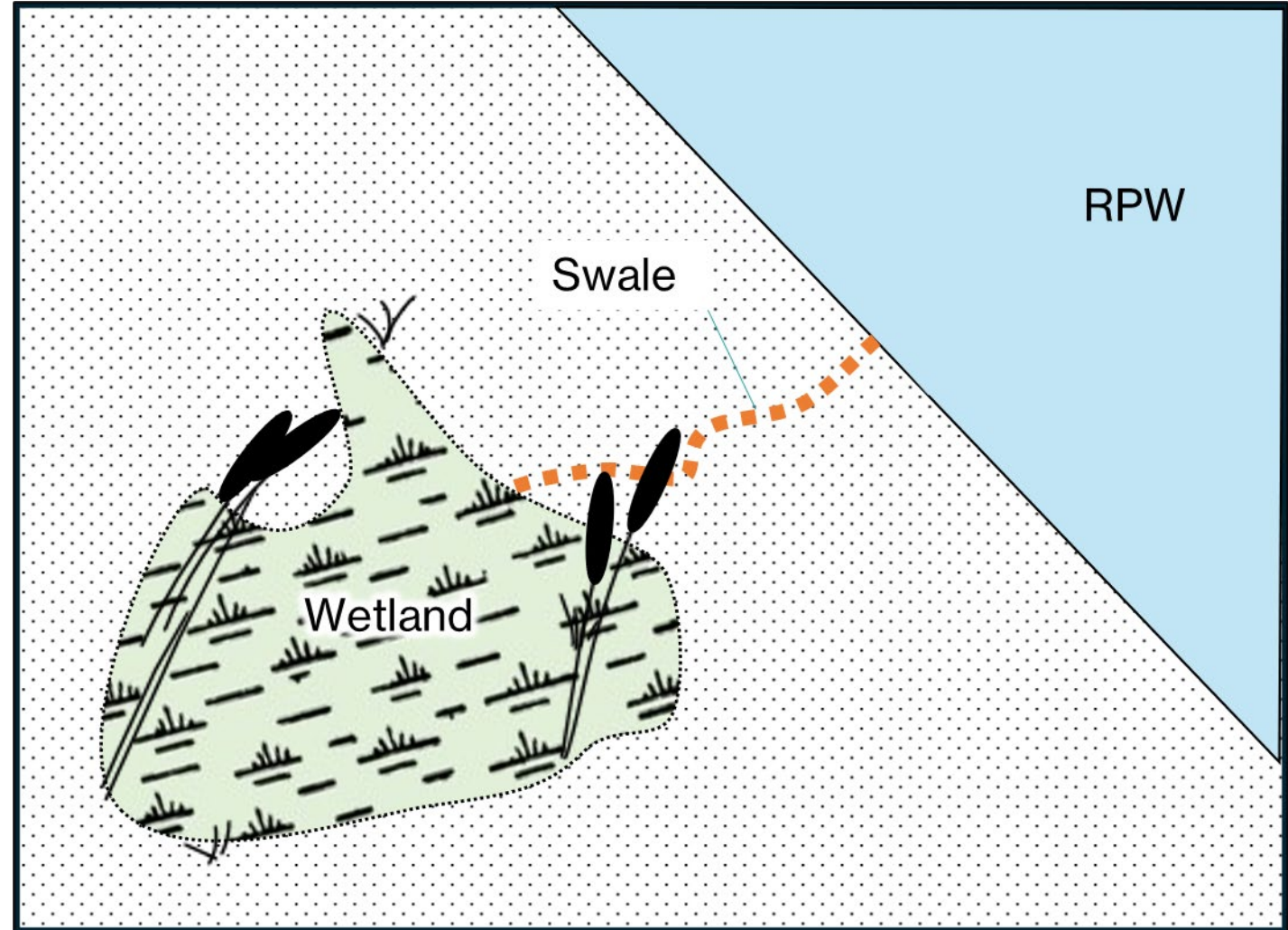
RPW: Yes, the RPW has relatively permanent flow and is connected to a TNW.

Is the wetland abutting a “water of the United States”?

No, the wetland touches a swale which flows into the RPW. Because discrete features cannot be used to establish a CSC, the wetland is not abutting the RPW.

Does the wetland meet the CSC requirement and is thus an adjacent wetland?

No.



Next Steps

On March 12, 2025, EPA and the Department of Army,

- Issued “continuous surface connection” guidance
- Announced new rulemaking effort
- Announced *Federal Register* “WOTUS Notice” announcing listening sessions and recommendations docket in preparation for rulemaking (published March 24, 2025)

For additional information, visit [EPA’s Public Outreach and Stakeholder Engagement Activities Webpage](#)

Next Steps: 2025 Rule Efforts

- Listening sessions for co-regulators, stakeholders, and the public are planned for April and May 2025.
- EPA and Army received written recommendations through a public docket (Docket No. EPA-OW-2025-0093) until April 23, 2025.
- Written recommendations submitted by the public can be found on the docket at <https://www.regulations.gov/document/EPA-HQ-OW-2025-0093-0001/comment>.

Next Steps: 2025 Rule Efforts

- Ensure implementation aligns with the *Sackett* decision
- Focus on clarity, simplicity and improvements that will stand the test of time
- Prioritize practical implementation approaches
- Provide for durable, stable and more effective and efficient jurisdictional determinations and permitting actions
- Consider experiences of and input received from Tribes, States, local governments, diverse stakeholder groups, and the public

Next Steps: 2025 Rule Efforts

The Agencies are Seeking Input on Three Key Areas:

- **The Scope of “Relatively Permanent” and to What Features This Phrase Applies**
 - Characteristics to inform definition
 - How to identify “relatively permanent” tributaries in the field
- **The Scope of “Continuous Surface Connection” and to Which Features This Phrase Applies**
 - Definition of “continuous surface connection”
 - Scope of “connection to”
 - Definition of “adjacent”
 - Recommendations for implementation
- **The Scope of Jurisdictional Ditches**
 - Characteristics for clear and implementable distinctions between jurisdictional and non-jurisdictional ditches
 - Definition of “ditch”

For Further Information

- The 2025 Continuous Surface Connection Guidance is available at <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf> and <https://www.usace.army.mil/Media/Announcements/Article/4117958/12-march-2025-epa-and-army-announce-guidance-and-a-wotus-notice-the-final-respo/>.
- Visit <https://www.epa.gov/wotus> for more information about the Amended 2023 Rule, the pre-2015 regulatory regime, and the agencies' current rulemaking efforts.