



Updated Definition of “Waters of the United States” Proposed Rule

EPA's Office of Water and Office of the Assistant Secretary of the Army for Civil Works
Comment Period Opened November 20, 2025

Presentation Outline

1. Background
2. Proposed Regulatory Text
3. How to Comment on the Proposed Rule
4. Next Steps



Background

“Waters of the United States” and the Clean Water Act

“Waters of the United States” is a **threshold term** in the Clean Water Act (CWA) that **establishes the geographic scope of federal jurisdiction** under the Act.



CWA regulatory programs address “navigable waters,” defined in the statute as “the waters of the United States, including the territorial seas.”



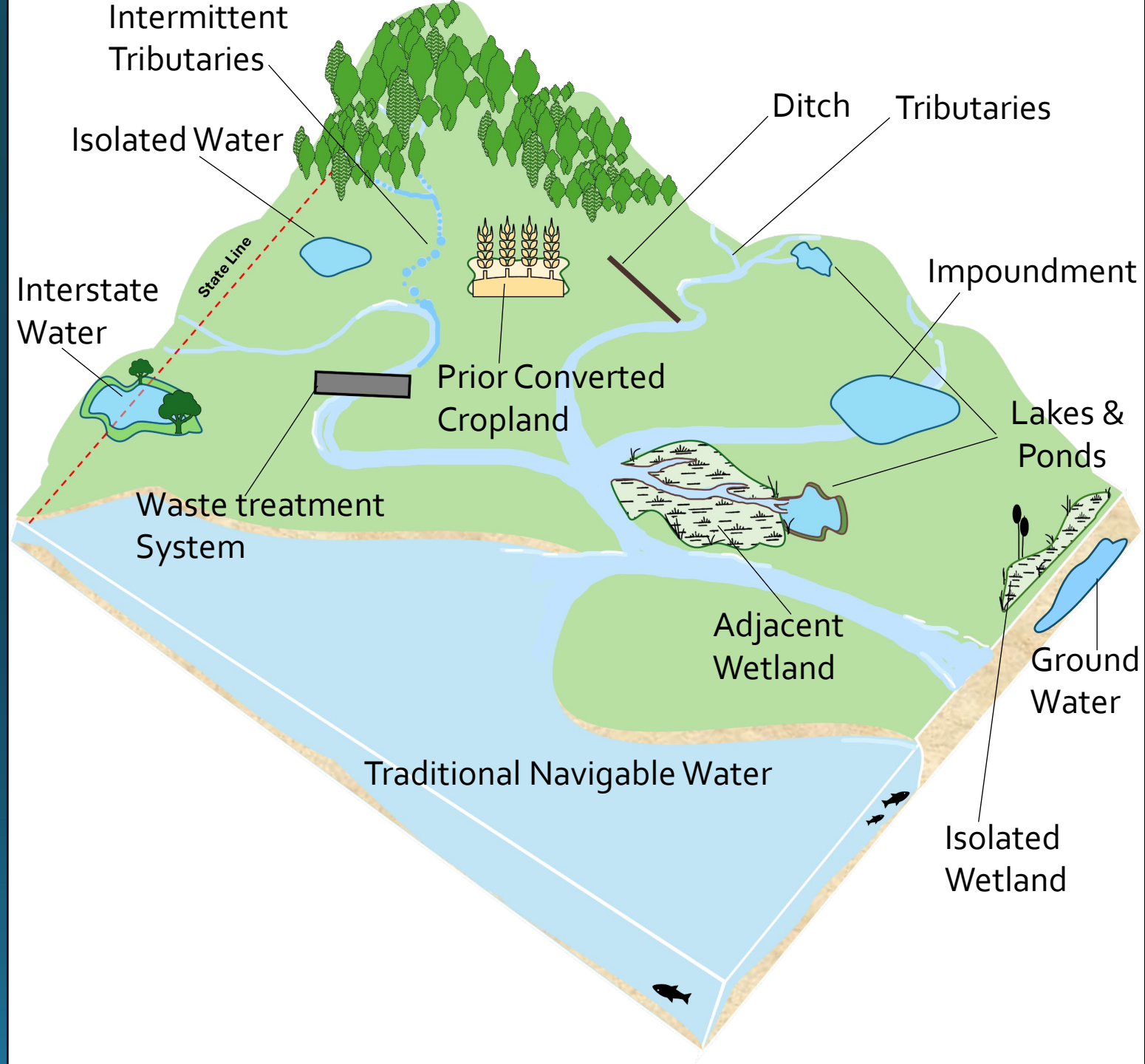
The CWA does not define “waters of the United States.”



The EPA and the Department of the Army have defined “waters of the United States” by regulation since the 1970s.

Categories of Water Features

Note: Waters/features shown on this slide are for illustrative purposes only and are not meant to depict jurisdictional status. They may or may not be subject to CWA jurisdiction under the proposed rule.



Why “Waters of the United States” Matter

“Navigable Waters”: **Waters of the United States**, including the Territorial Seas

303

Water Quality Standards & TMDLs

311

Oil Spill Programs

401

State/Tribal Certification

402

Pollutant Discharge Permits

404

Discharge of Dredged &/or Fill Material

Definition of “Waters of the United States”

1. Affects the **extent** to which **CWA provides protection** over waters for the listed programs
2. Influences **how States** and authorized **Tribes** for certain CWA programs can **implement** those programs
3. May influence how States and Tribes **strategize for protecting their resources** into the **future**—such as whether to pursue authorization for additional CWA programs

“Waters of the United States” Over Time

The definition of “waters of the United States” has been a subject of dispute and addressed in several major Supreme Court cases.

WOTUS used in CWA definition of “navigable waters”

Riverside Bayview Homes (addressing adjacent wetlands)

Addition of exclusion for prior converted cropland

Rapanos (addressing wetlands adjacent to non-navigable tributaries); agencies issued guidance in 2007 and 2008

Proposed rule in light of *Sackett*

1972

1980

1985

1986/1988

1993

2001

2006

2023

2025

Addition of waste treatment system exclusion

Corps and EPA issue revised regulations

SWANCC (addressing certain “other waters”); agencies issue guidance in 2001 and 2003

Sackett (addressing wetlands adjacent to non-navigable tributaries)

1973-1979: EPA & Corps issue regulations and revisions

Final rules revising the definition in **2015, 2019, 2020, and twice in 2023**

The *Sackett* Decision (2023)

While the 2023 Rule was not directly before the Court, the Court considered the jurisdictional standards set forth in the rule.

- The Court concluded that **the significant nexus standard was inconsistent** with the Court's interpretation of the CWA.
- The Court concluded that the *Rapanos* plurality was correct: the CWA's use of "waters" encompasses only those **relatively permanent**, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes.
- The Court also agreed with the *Rapanos* plurality that adjacent wetlands are "waters of the United States" when the wetlands have a **continuous surface connection** to bodies that are "waters of the United States" in their own right, so that there is no clear demarcation between "waters" and wetlands.

Pre-Proposal Outreach and Engagement

March/
April
2025

Federalism and Tribal consultations

March/
April
2025

~46,000 written recommendations received to the
pre-proposal recommendations docket

April/
May
2025

9 Listening sessions

Goals of the Updated Definition of “Waters of the United States”

**Proposed Definition to
Protect Water
Resources, Accelerate
Growth & Economic
Opportunity**

- Next step toward establishing a common-sense, durable definition.
- Would fully implement the Supreme Court decision in *Sackett*.
- Would protect water quality by striking balance between Federal and State authority embodied in the CWA, recognizing that States and Tribes are best positioned to appropriately manage their local land and water resources.
- Would cut red tape and provide clarity for American industry, energy producers, farmers, ranchers, developers, businesses, and landowners.
- Informed by input from multiple sources, including a pre-proposal recommendations docket, information from nine public listening sessions, and consultation comments from States, Tribes, and local governments.

Proposed Regulatory Text

Guideposts: Fully Implement *Sackett*, Durable, Support Economic Growth while
Protecting Waters, Consistent and Predictable, Implementable



Paragraph (a): Categories of WOTUS

Proposed Regulatory Text

Paragraph (a) Jurisdictional Waters – Proposed Changes

Note: Categories of jurisdictional waters are shorthand. See 33 CFR 328.3(a) and 40 CFR 120.2(a).

Stays the Same:

- (a)(1)
 - (ii) Traditional Navigable Waters
 - (ii) The Territorial Seas
- (a)(2) Impoundments
- (a)(3) Tributaries
- (a)(4) Adjacent Wetlands

Proposed Changes:

Eliminate:

- (a)(1)(iii) Interstate Waters

Revise:

- (a)(5) Lakes and Ponds

Paragraph (a)

Proposed Revisions:



Deleting the interstate waters category under paragraph (a)(1)(iii) and deleting “intrastate” from the paragraph (a)(5) category for lakes and ponds.

(a) Waters of United States means:

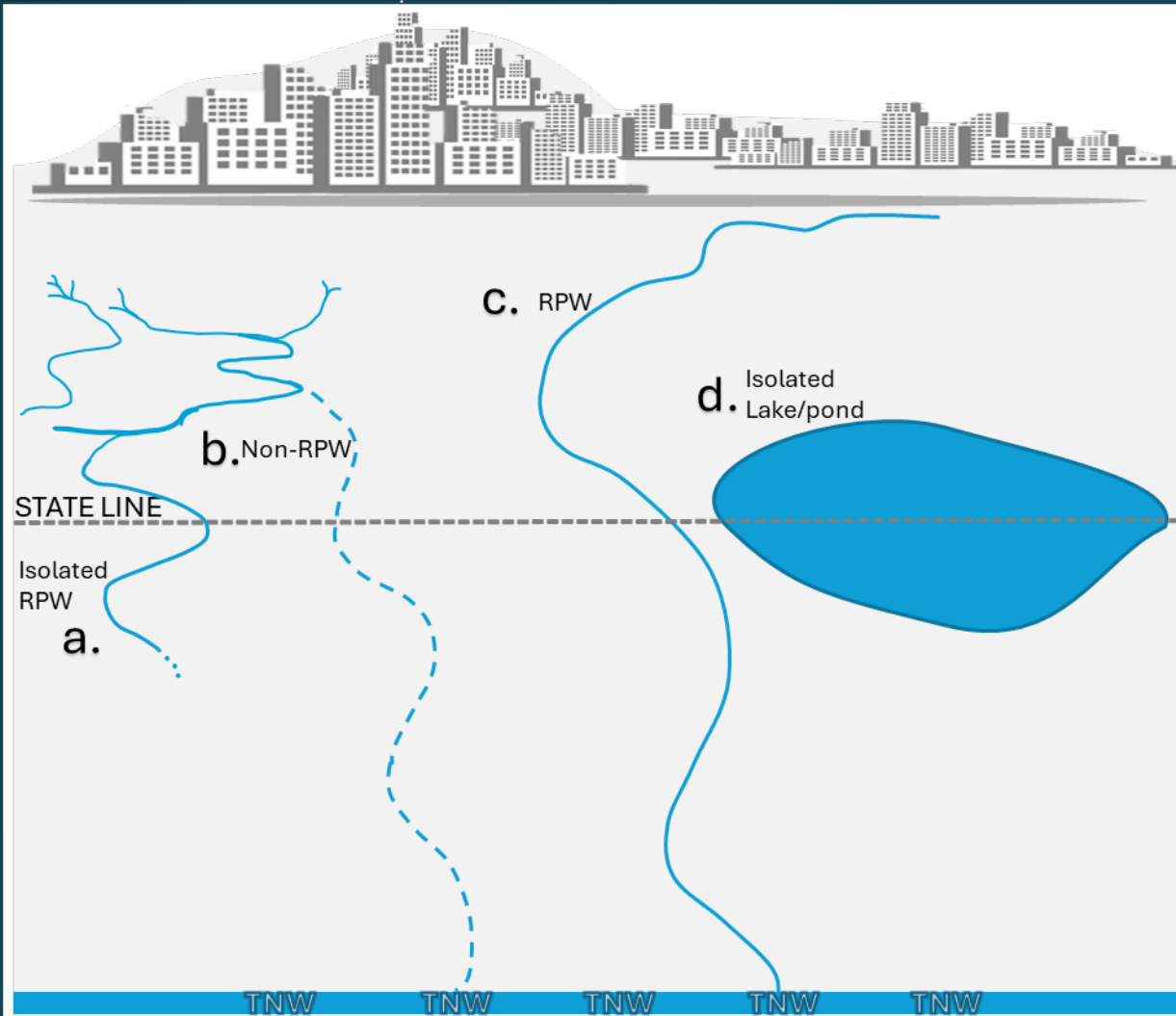
(1) Waters which are:

- (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; or
- (ii) The territorial seas; ~~or~~
- ~~(iii) Interstate waters;~~

(5) ~~Intrastate~~ Lakes and ponds not identified in paragraphs (a)(1) through (4) of this section that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of this section.

Proposed
Regulatory
Text
Changes

Proposed Deletion of Interstate Waters Category



WOTUS? *Yes: c & TNW | No: a, b, & d*

- *The standards for jurisdiction established in Sackett did not contain an exception for waters that happen to cross state lines.*
- *Makes rule text simpler to implement.*
- *To be jurisdictional, interstate waters would need to fall under another jurisdictional category (e.g., relatively permanent water (RPW) tributary) consistent with the 2020 Rule.*



Paragraph (b): Waters/Features Excluded from the Definition of WOTUS

Proposed Regulatory Text

Paragraph (b) Exclusions- Proposed Changes

Stays the Same

- (b)(4) Artificially irrigated areas that would revert to dry land
- (b)(5) Artificial lakes and ponds
- (b)(6) Artificial reflecting or swimming pools
- (b)(7) Waterfilled depressions
- (b)(8) Swales and erosional features

Proposed Changes

Revise:

- (b)(1) Waste Treatment Systems*
- (b)(2) Prior Converted Cropland*
- (b)(3) Ditches*

*Definitions also proposed

Add:

- (b)(9) Groundwater

Paragraph (b)

Proposed Revisions:



Waste Treatment Systems: Proposed revisions to the (b)(1) exclusion and addition of (c)(11) definition.



Prior Converted Cropland: Proposed revisions to the (b)(2) exclusion and addition of (c)(7) definition; clarify that CWA exclusion would cease upon abandonment of agricultural use *and* reversion of cropland back to wetland.



Ditches: Proposed revisions to the (b)(3) exclusion and addition of (c)(4) definition.



Groundwater: Proposed addition of exclusion at (b)(9).

(b) The following are not “waters of the United States”:

(1) Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act;

(2) Prior converted cropland designated by the Secretary of Agriculture. The exclusion would cease upon a change of use, which means that the area is no longer available for the production of agricultural commodities. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA;

(3) Ditches (including roadside ditches) constructed or excavated wholly *entirely* in and draining only dry land and that do not carry a relatively permanent flow of water;

(9) Ground water, including groundwater drained through subsurface drainage systems.

Proposed
Regulatory
Text
Changes



Waste Treatment System Exclusion

Excluded in some form since 1980



Proposed Waste Treatment System Exclusion Revision

- *Simplifies exclusion and adds definition consistent with 2020 Rule.*
- *Provides clarifying examples.*
- *Ensures both active and passive systems are eligible for the exclusion.*
- *Grandfathers pre-Clean Water Act waste treatment systems as eligible for the exclusion.*



Paragraph (c)

Proposed Revisions:



The agencies are proposing to add definitions of:

- “continuous surface connection”
- “ditch”
- “prior converted cropland”
- “relatively permanent”
- “tributary”
- **“waste treatment system”**



in paragraph (c) of their regulations. *This will result in the renumbering of some of the existing definitions.*

(c) In this section, the following definitions apply:

(11) Waste treatment system means all components of a waste treatment system designed to meet the requirements of the Clean Water Act, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

Proposed
Regulatory
Text
Changes



Prior Converted Cropland Exclusion

Wetland areas that were converted to cropland prior to December 1985
Excluded in some form since 1993



Prior Converted Cropland Exclusion Proposed Revision

Exclude: Prior converted cropland – definition clarifies that exclusionary status is lost upon “abandonment.”

- *Consistent with 2020 Rule.*
- *Consistent with historic practice from 1993 preamble language.*
- *Burden of identifying PC cropland falls to EPA/Corps, but agencies can consider USDA determinations.*
- *Only loses PC cropland status for CWA purposes if land has not been used for production of an ag product for at least once in last five years.*
- *Provides many helpful examples for ag producers when land is not “abandoned” (e.g., conservation practices).*

Paragraph (c)

Proposed Revisions:



The agencies are proposing to add definitions of:

- “continuous surface connection”
- “ditch”
- “**prior converted cropland**”
- “relatively permanent”
- “tributary”
- “waste treatment system”



in paragraph (c) of their regulations. *This will result in the renumbering of some of the existing definitions.*

(c) In this section, the following definitions apply:

(7) **Prior converted cropland** means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered prior converted cropland for purposes of the Clean Water Act when the area is abandoned and has reverted to wetlands, as defined in paragraph (c)(1) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

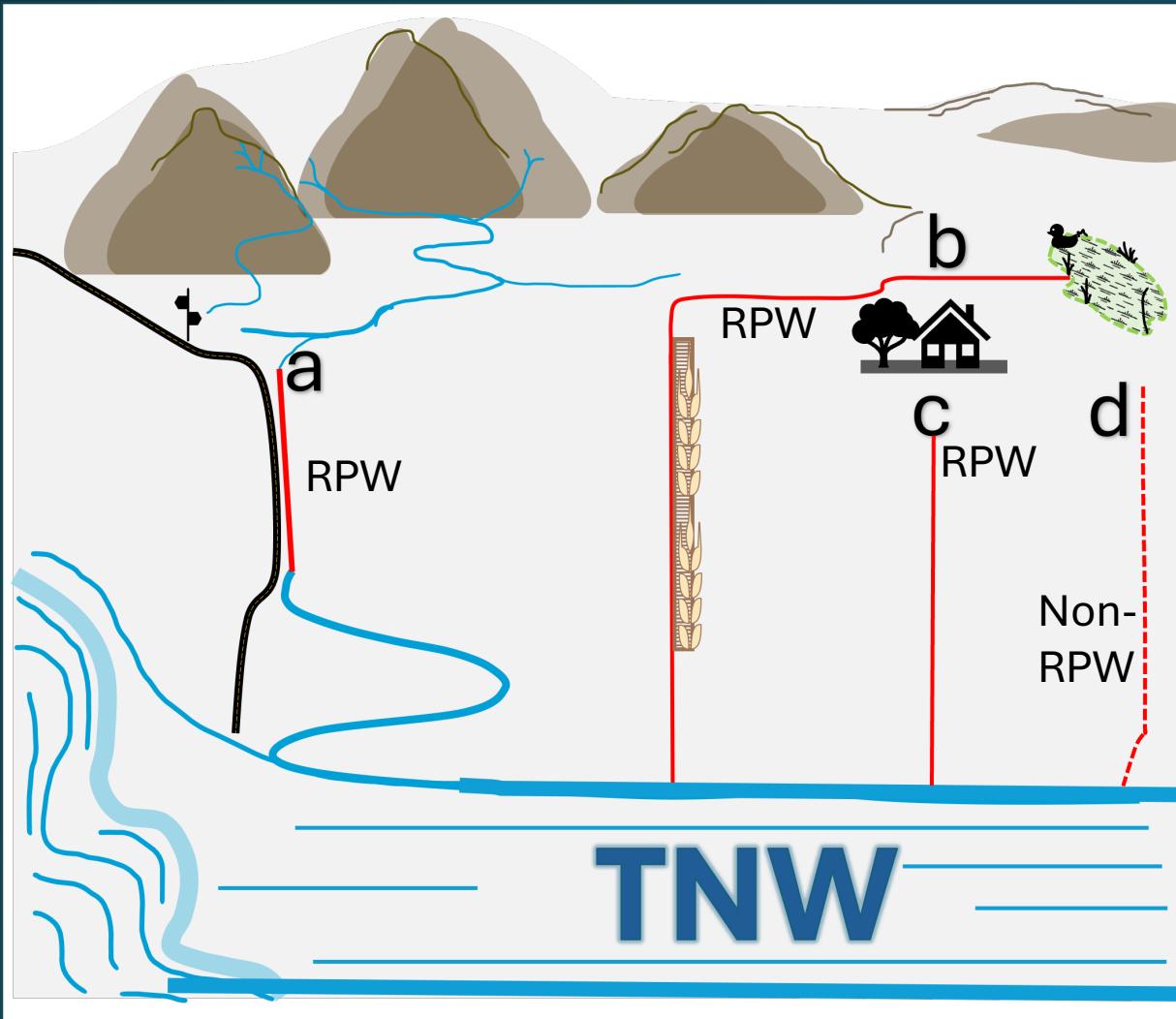
Proposed
Regulatory
Text
Changes



Ditch Exclusion

Excluded in some form since 1970s

Proposed Ditch Exclusion Revision



Exclude: Ditches (including roadside ditches) constructed or excavated entirely in dry land.

WOTUS? Yes: a & TNW | No: b, c, & d

- *Would include ditch definition from 2020 Rule.*
- *Excludes some RPW ditches.*
- *Familiar as dry land ditches have been excluded in some form for many years.*
- *Default to non-jurisdictional status when evidence is not sufficient to support historical construction conditions.*

Paragraph (c)

Proposed Revisions:



The agencies are proposing to add definitions of:

- “continuous surface connection”
- “**ditch**”
- “prior converted cropland”
- “relatively permanent”
- “tributary”
- “waste treatment system”



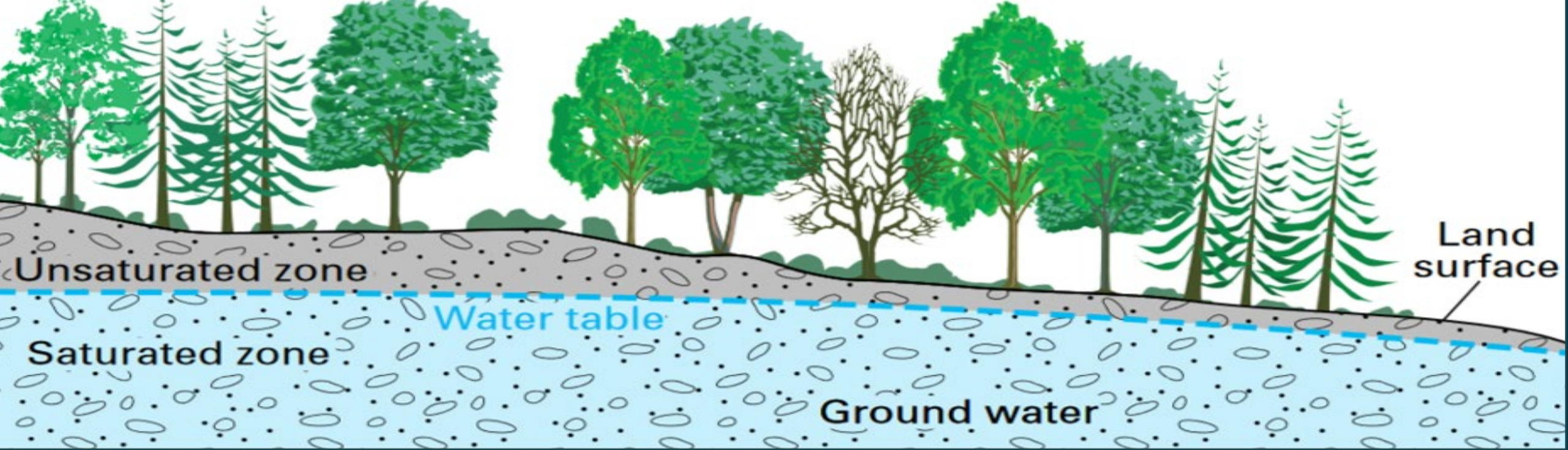
in paragraph (c) of the regulations. *This will result in the renumbering of some of the existing definitions.*



(c) In this section, the following definitions apply:

(4) **Ditch** means a constructed or excavated channel used to convey water.

Proposed
Regulatory
Text
Changes

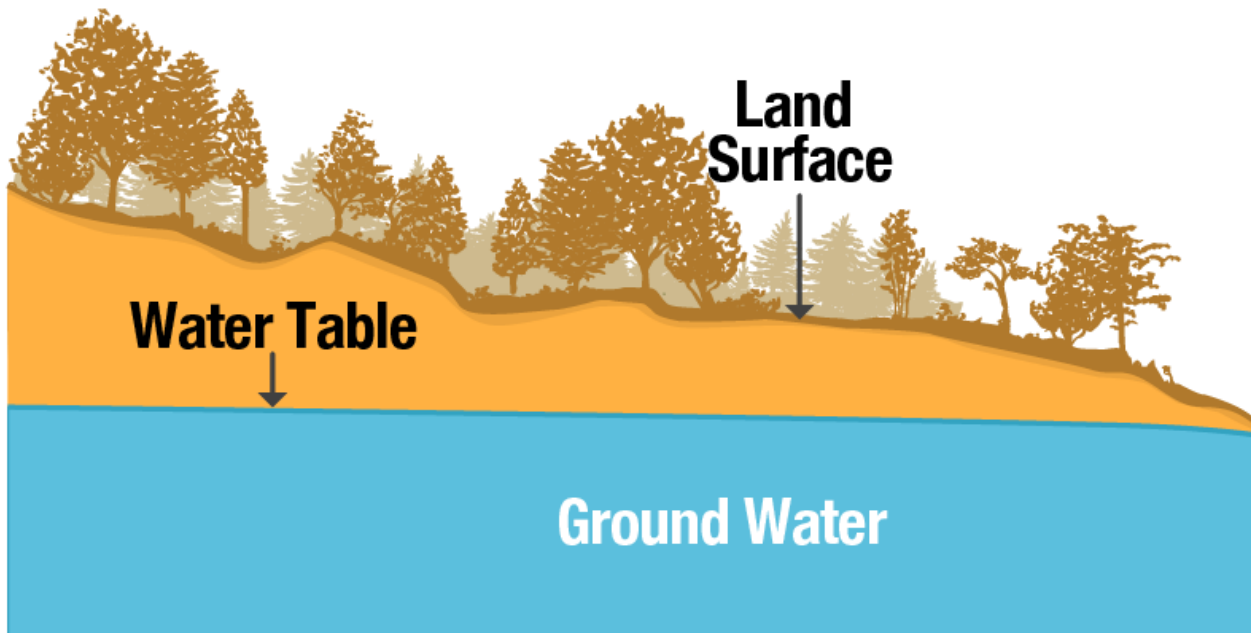


Groundwater Exclusion

Consistent with 2020 Rule Exclusion

Proposed Groundwater Exclusion

Adds exclusion for groundwater, including groundwater drained through subsurface drainage systems



- *Have never interpreted WOTUS to include groundwater.*
- *Underscores that groundwater is not considered a WOTUS through the proposed addition of an exclusion.*
- *Unchanged from current practice and the 2020 Rule exclusion.*

Notes for Exclusions Generally

- Certain excluded features may convey relatively permanent flow to a downstream jurisdictional tributary, thereby serving as a connection for upstream and downstream jurisdictional tributaries.
- Excluded features that connect jurisdictional waters do not become WOTUS themselves.
- Some excluded features might be point sources.
- The agencies' definition of "waters of the United States" does not affect the longstanding activity-based permitting exemptions provided by the Clean Water Act.

Paragraph (c)

Definitions

Proposed Changes

Proposed Regulatory Text

Paragraph (c) Definitions- Proposed Changes

Stays the Same

- Wetlands
- Adjacent
- High tide line
- Ordinary high water mark
- Tidal waters

Proposed Changes

Add:

- Continuous surface connection
- Ditch*
- Prior converted cropland*
- Relatively permanent
- Tributary
- Waste treatment system*

* described in previous slides



Continuous Surface Connection Wetlands and Lakes/Ponds

Paragraph (c)

Proposed Revisions:



The agencies are proposing to add definitions of:

- “**continuous surface connection**”
- “ditch”
- “prior converted cropland”
- “relatively permanent”
- “tributary”
- “waste treatment system”



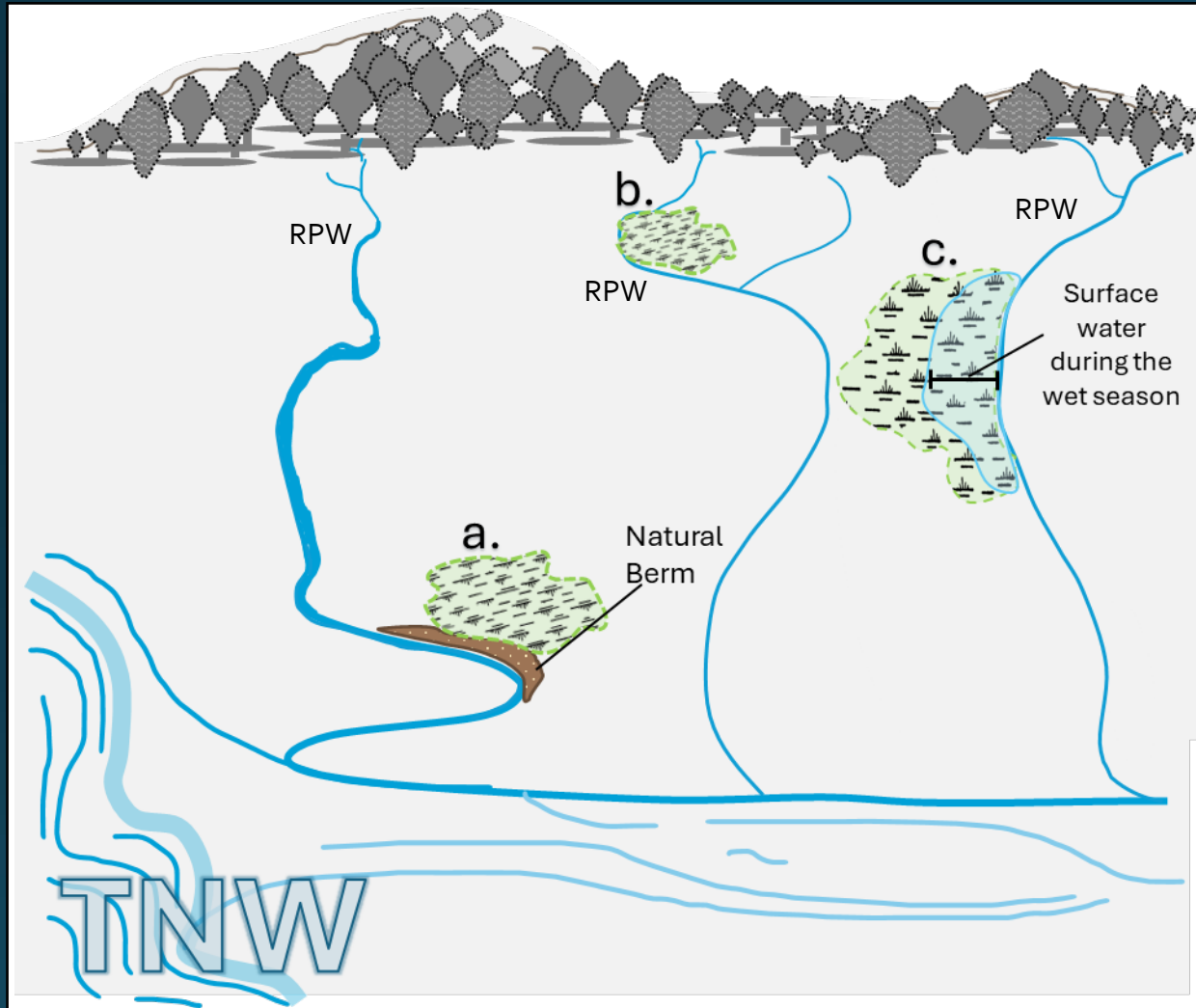
in paragraph (c) of their regulations. *This will result in the renumbering of some of the existing definitions.*

(c) In this section, the following definitions apply:

(3) **Continuous surface connection** means having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water.

Proposed
Regulatory
Text
Changes

Proposed Definition of Continuous Surface Connection



Definition: Having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water.

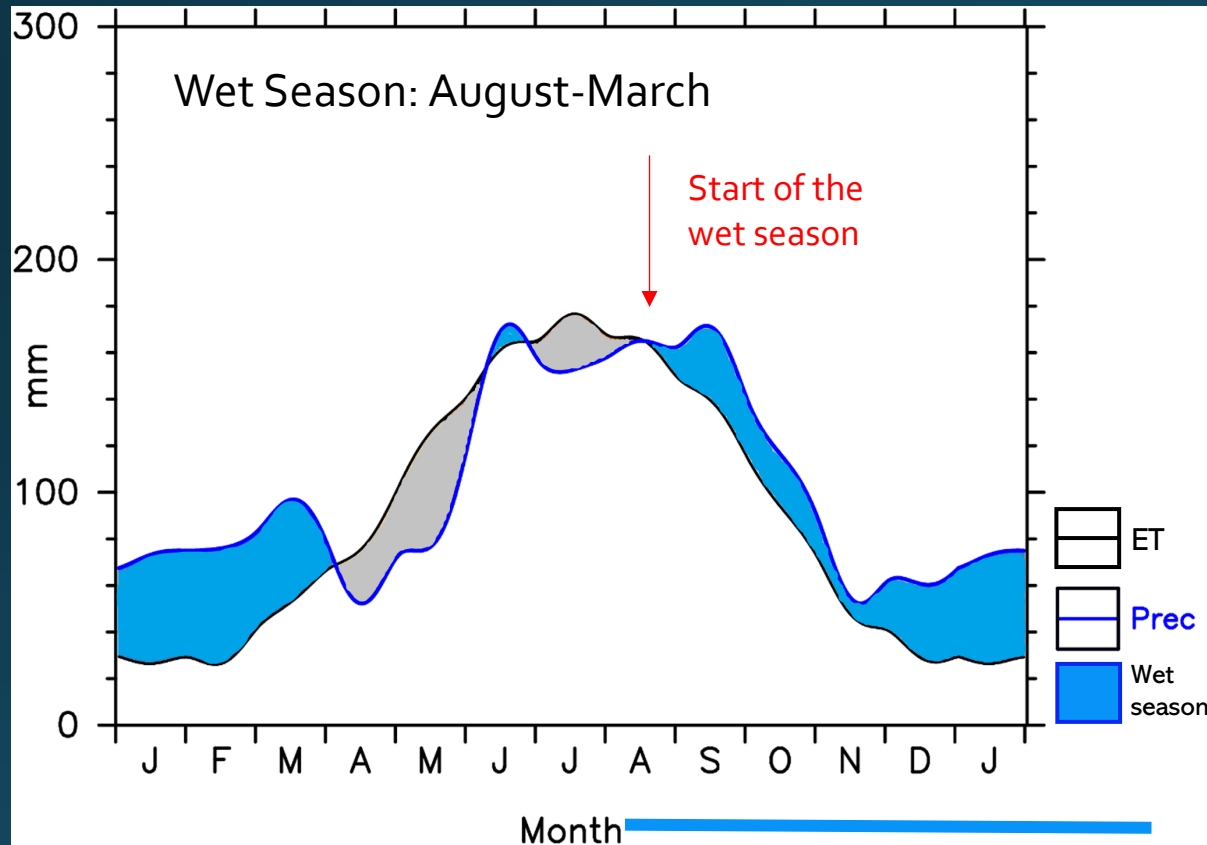
WOTUS? Yes: Part of c, & TNW | No: a, b, & Part of c

- When surface water persists at least throughout the wet season.
- Consistent with Sackett's focus on indistinguishability between the jurisdictional water and the adjacent wetland.

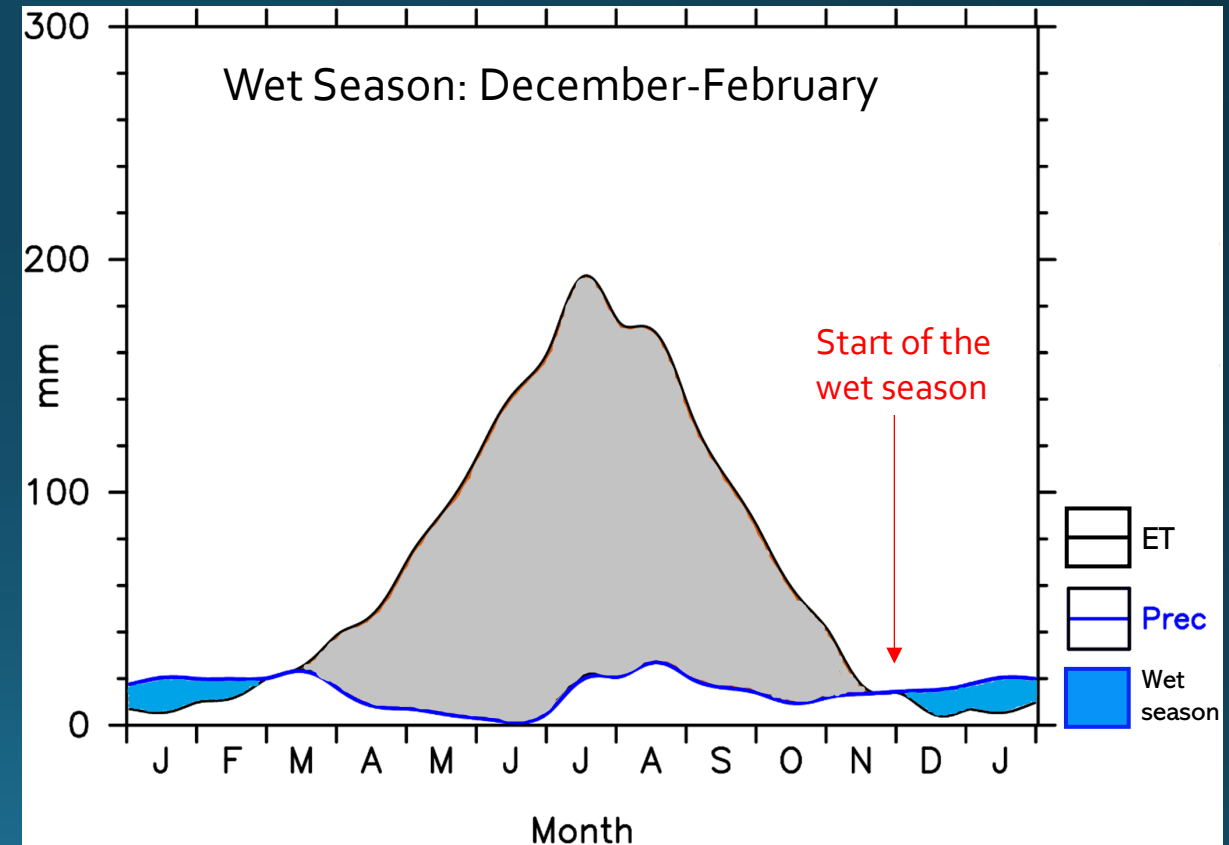
Proposed Implementation of Wet Season

Described in the preamble as when monthly average precipitation (Prec) exceeds monthly average evapotranspiration (ET) (depicted in blue shading below). Landowner information and tools (e.g., WebWIMP) can be used to identify.

Southeast (Jacksonville, FL) (Wet Season = 8 months)



Arid West (Arizona) (Wet Season = 3 months)



Example WebWIMP Output



Relatively Permanent Tributaries and Lakes/Ponds

Paragraph (c)

Proposed Revisions:



The agencies are proposing to add definitions of:

- “continuous surface connection”
- “ditch”
- “prior converted cropland”
- “**relatively permanent**”
- “tributary”
- “waste treatment system”



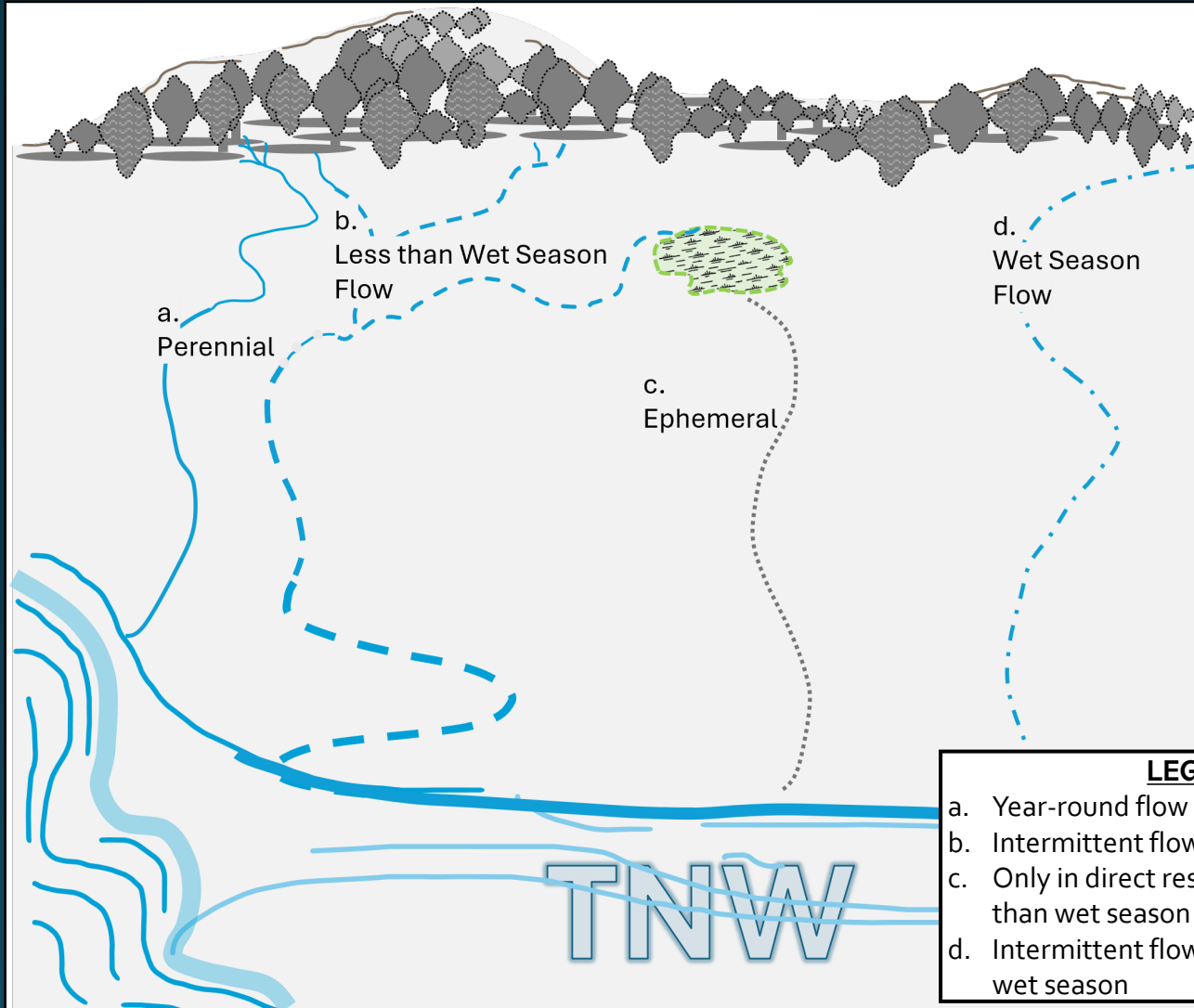
in paragraph (c) of their regulations. *This will result in the renumbering of some of the existing definitions.*

(c) In this section, the following definitions apply:

(8) **Relatively permanent** means standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season.

Proposed
Regulatory
Text
Changes

Proposed Definition of Relatively Permanent



Definition: Standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season.

WOTUS? Yes: a, d, & TNW | Out: b & c

- *Allows for more regionalization.*
- *Can use visual observations and other tools to identify flow duration.*
- *Use of wet season provides consistency with proposed continuous surface connection language.*

Paragraph (c) Proposed Revisions:



The agencies are proposing to add definitions of:

- “continuous surface connection”
- “ditch”
- “prior converted cropland”
- “relatively permanent”
- **“tributary”**
- “waste treatment system”

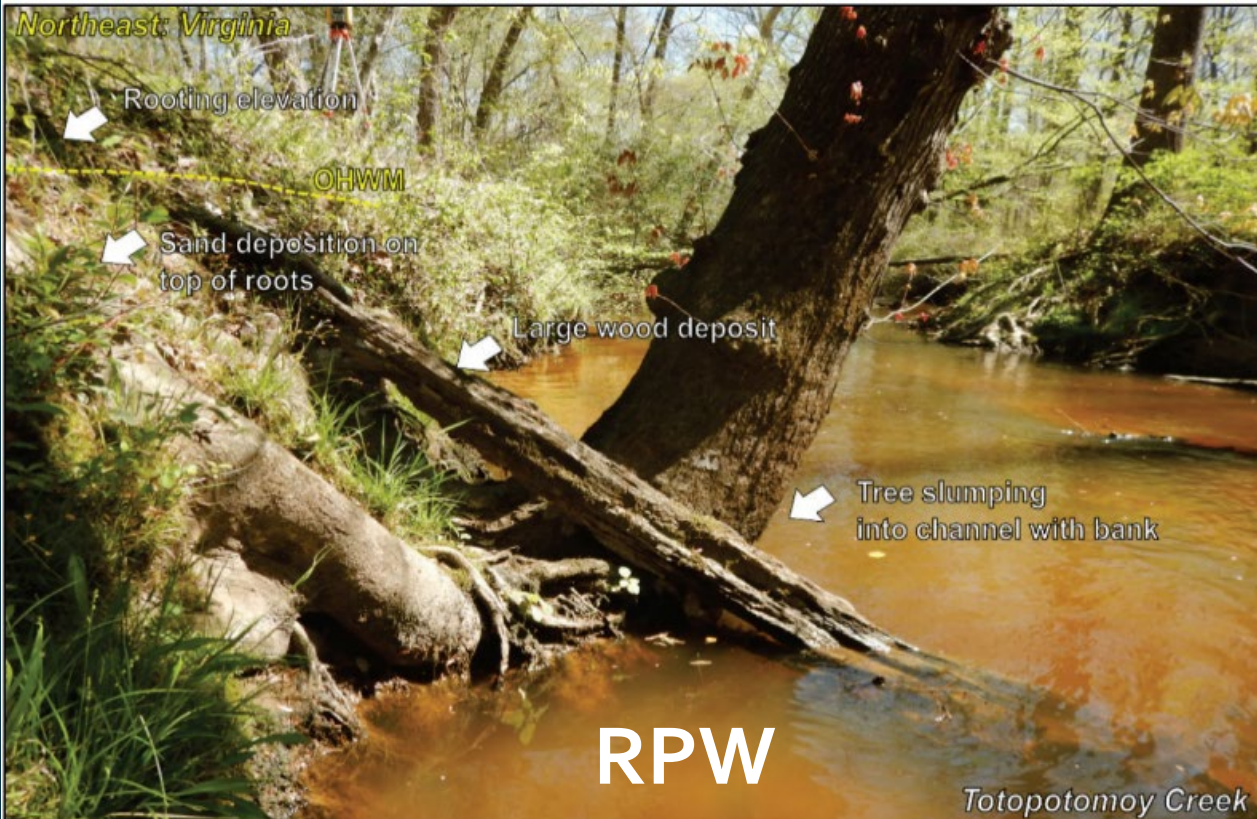


in paragraph (c) of their regulations. *This will result in the renumbering of some of the existing definitions.*

(c) In this section, the following definitions apply:

(10) Tributary means a body of water with relatively permanent flow, and a bed and bank, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow. A tributary does not include a body of water that contributes surface water flow to a downstream jurisdictional water through a feature such as a channelized non-jurisdictional surface water feature, subterranean river, culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, wetland, or similar natural feature, if such feature does not convey relatively permanent flow. When the tributary is part of a water transfer (as that term is applied under 40 CFR 122.3) currently in operation, the tributary would retain jurisdictional status.

Proposed
Regulatory
Text
Changes

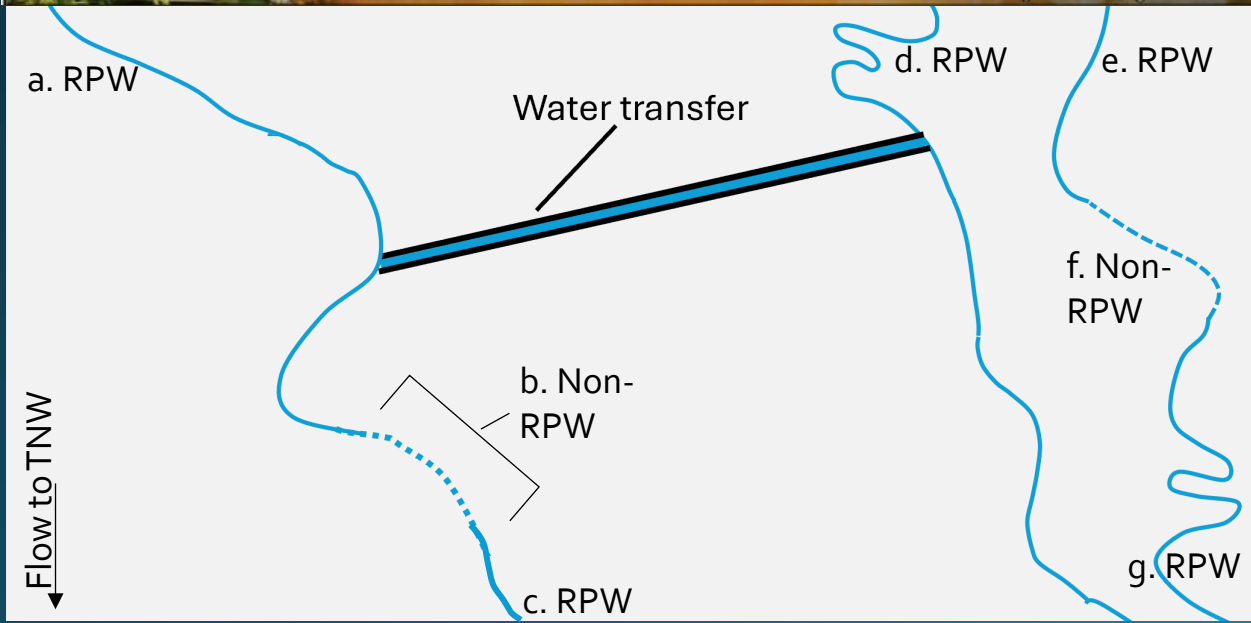


Proposed Tributary Definition

A body of water with relatively permanent flow, and a bed and banks, that connects to a downstream traditional navigable water or the territorial seas.

Non-RPW features break jurisdiction of upstream waters, unless part of a water transfer system.

WOTUS? Yes: a, c, d, & g | No: b, e, & f



- Water features such as grassed waterways would not be jurisdictional even with relatively permanent flow.
- Proposed approach would ensure CWA section 402 permits are not required for systems that are part of an active water transfer.
- Similar to 2020 Rule.



Other Topics

Other Topics

Discussed in Preamble



Permafrost Wetlands and Wetland Mosaics:
Preamble Clarification and Specific Solicitation of Comments



Stormwater Management Systems:
Preamble Clarification



Burden of Proof for Jurisdiction:
Preamble Discussion



Implementation Tools/Techniques:
Preamble Discussion



Alternative Approaches:
Preamble Discussion

Regulatory Impact Analysis Summary

The agencies analyzed the effects of the proposed changes **qualitatively**

Impacts to Waters Relative to Baseline

The agencies anticipate the change to the proposed definition of “*continuous surface connection*” and the approach whereby *non-relatively permanent flow in a channel would break jurisdiction* of upstream relatively permanent flow to be the *most impactful* in terms of reducing the scope of jurisdictional waters relative to the baseline as a result of implementing the *Sackett* decision.

Impacts to CWA Programs

The agencies anticipate the proposed rule changes as a result of implementing the *Sackett* decision would be *most significant for the Clean Water Act section 404 program*, reducing the number of section 404 permits issued and potentially the number of acres of wetland impacts mitigated, relative to the baseline.

The agencies solicit comment on potential methods and datasets that could be used to quantify cost savings and forgone benefits for the final rule.

How to Comment on the Proposed Rule

Written comments can be submitted via the public docket, identified by **Docket ID No. EPA-HQ-OW-2025-0322**, to the Federal eRulemaking Portal: <https://www.regulations.gov>.

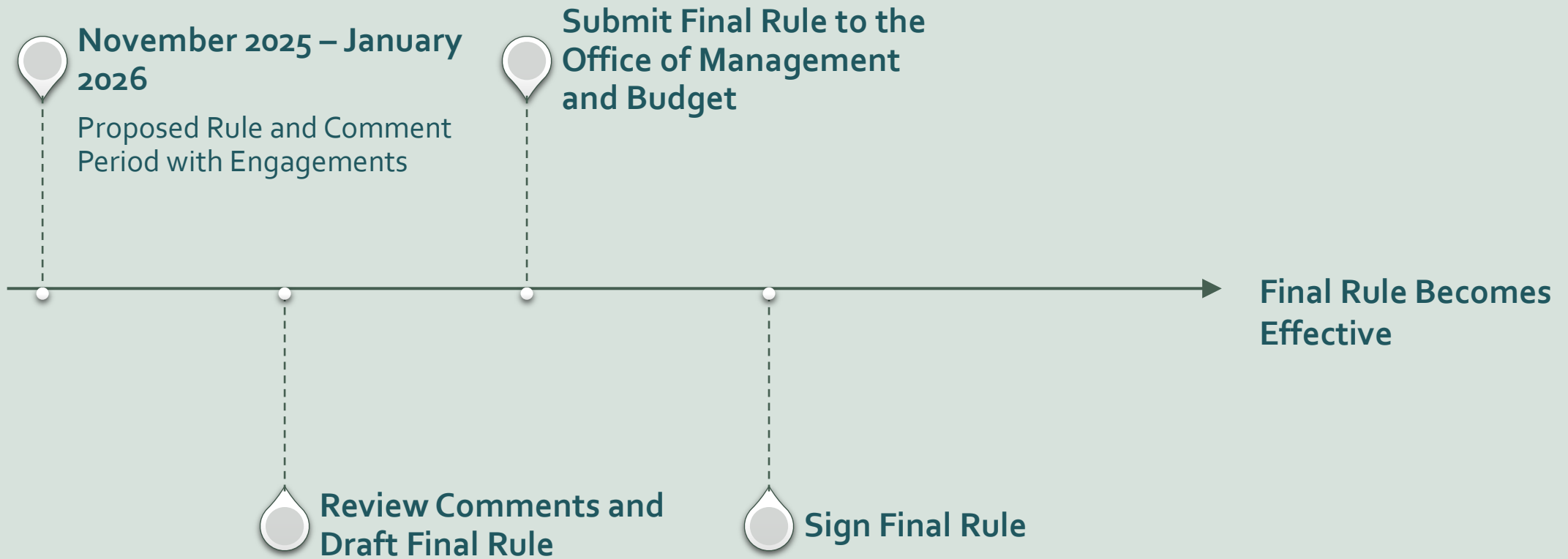
Comments may be submitted anytime during the 45-day public comment period **closing January 5, 2026**.

The agencies hosted hybrid and virtual public meetings in December 2025.

For information on these meetings and how to register please visit <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>.

*The agencies **solicit comment on all aspects of the proposed rule**, including the Regulatory Impact Analysis. The preamble and RIA highlight specific topics for comment, including alternative approaches.*

Next Steps



For More Information

The *Federal Register* notice for the proposed rule and additional materials are available at: <https://www.epa.gov/wotus/updated-definition-waters-united-states>.

If you have any questions, please email CWAwotus@epa.gov.

For more information on the definition of WOTUS, please visit <https://www.epa.gov/wotus>.