



Updated Definition of “Waters of the United States” Supplemental Notice of Proposed Rulemaking

Office of the Assistant Secretary of the Army for Civil Works and EPA's Office of Water
September 2026

Presentation Outline

1. Background
2. Initial Notice of Proposed Rulemaking (NPRM) Recap
3. Supplemental Notice of Proposed Rulemaking (SNPRM) Overview



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.”



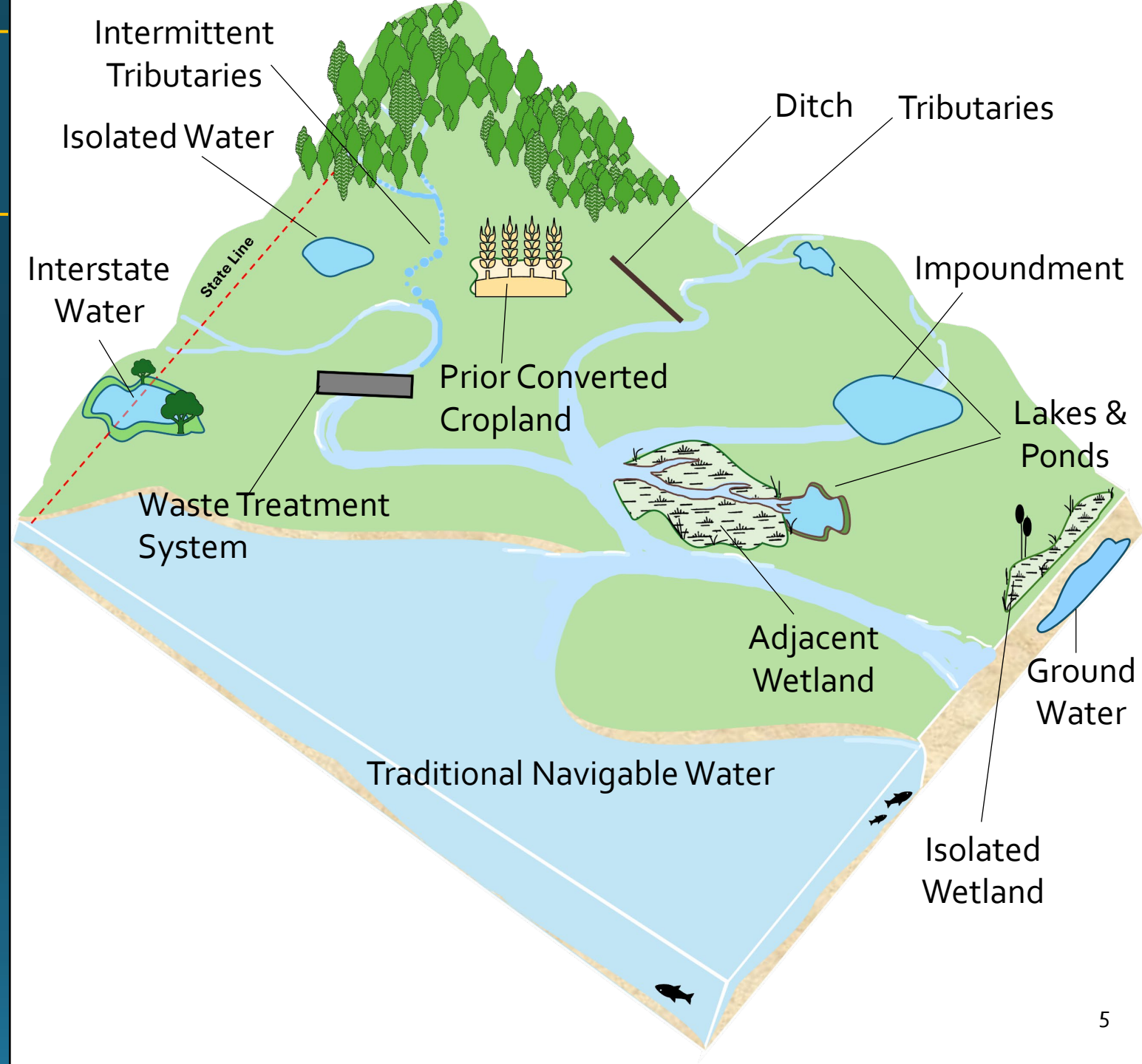
The CWA does not define “waters of the United States.”



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 and/or supplemental.



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

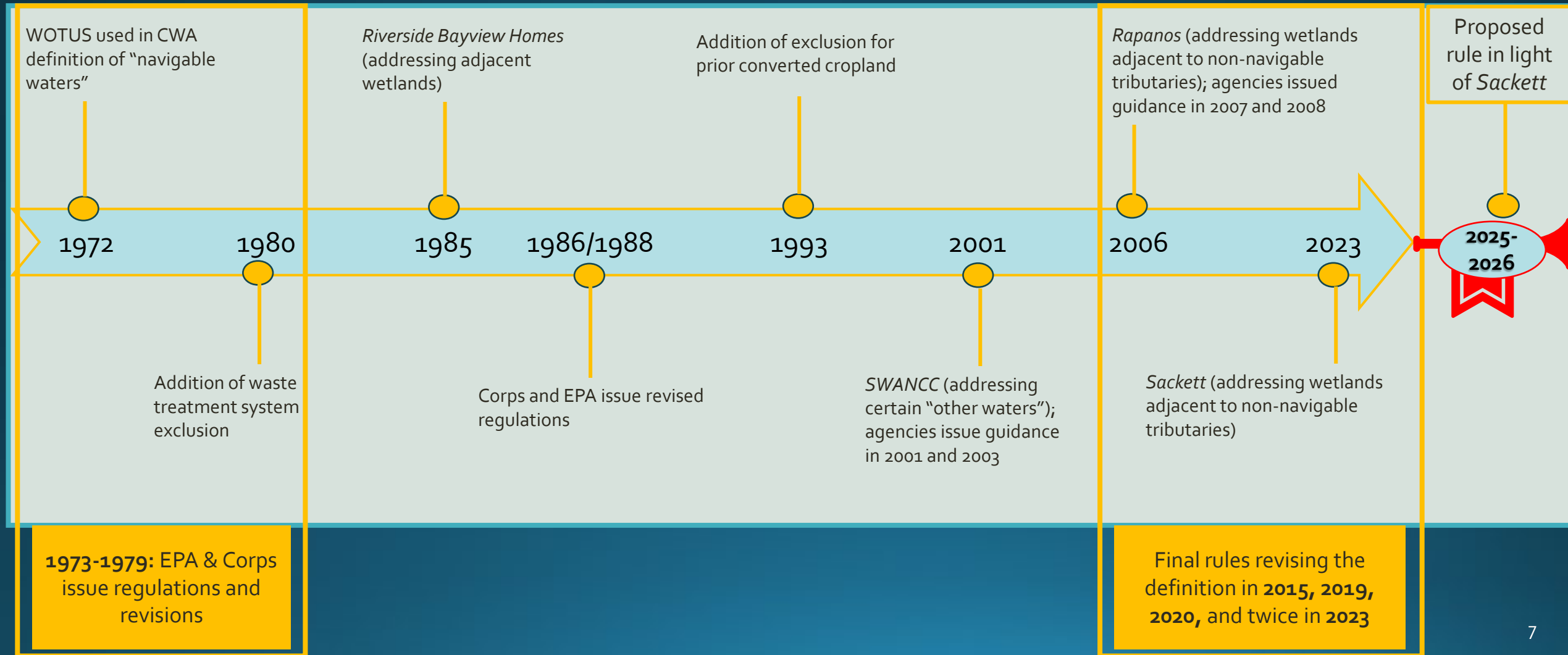
Discharge of Dredged &/or Fill Material

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.



Initial Notice of Proposed Rulemaking Recap

Updated Definition of “Waters of the United States”

Read the Initial NPRM at: <https://www.federalregister.gov/documents/2025/11/20/2025-20402/updated-definition-of-waters-of-the-united-states>

See Overview Presentation at: https://www.epa.gov/system/files/documents/2025-12/wotus-proposed-rule_508c.pdf



The proposed rule was informed by input from a pre-proposal recommendations docket, nine public listening sessions, and consultation comments from States, Tribes, and local governments.



On November 20, 2025, the agencies published the proposed rule in the *Federal Register* with a 45-day public comment period, which closed on January 5, 2026 (90 FR 52498).



The agencies received over 220,000 comments on the proposed rule and hosted three public meetings and one Tribal meeting to seek feedback on the proposal.

Supplemental Notice of Proposed Rulemaking Overview

Purpose of the Supplemental Notice of Proposed Rulemaking

- Seeks public input on additional regulatory alternatives informed by comments received in the initial comment period.
- Provides an additional opportunity for public engagement that will be considered in addition to the feedback received on the regulatory alternatives in the 2025 proposed rule.

The Supplemental Notice of Proposed Rulemaking

Proposes a new definition of the term

- “***Perennial***”

Seeks comment on supplemental regulatory options for the revised definitions of

- “***Relatively permanent***”
- “***Continuous surface connection***”

The agencies continue to consider the regulatory options proposed in the 2025 NPRM in tandem with these supplemental regulatory options and will consider comments received on both notices.

Proposed Definition of “Perennial”

“Perennial”

“Having standing or continuously flowing water **every day** of the year during **ordinary conditions**”

Or, alternative option consistent with the 2020 Navigable Waters Protection Rule:
“Surface water flowing continuously year-round”

“Perennial” is a term used in the supplemental proposed definitions of “relatively permanent” and “continuous surface connection.”



Relatively Permanent

Supplemental Option for Proposed Definition of “Relatively Permanent”

“Relatively Permanent”

Means **perennial** bodies of water. A body of water does not lose its relatively permanent status if it dries up as a result of **anomalous events** such as **drought** or **dry spell**. A body of water also does not lose its relatively permanent status if it dries up for no more than a single period of up to 30 consecutive days in any given year as a result of **non-anomalous events** resulting in a temporary interruption such as **low tide** or a **regularly occurring dry spell**.

- *An “**anomalous**” event is something that is unusual or caused by unforeseen circumstances or conditions.*
- *“**Drought**” would be interpreted to extend continuously across no more than a five-year timeframe, after which the drought condition would be nullified for purposes of identifying “relatively permanent” waters.*

Anomalous events



A

Lacks flow for 365 consecutive days due to an anomalous drought or dry spell lasting **less than 5 consecutive years**.



B

Flows for 365 consecutive days.



C

Lacks flow for 365 consecutive days due to anomalous drought or dry spell **lasting longer than 5 consecutive years**.



Anomalous events

Anomalous events

Non-anomalous events

D

Lacks flow for up to 30 consecutive days **once a year** due to regularly occurring dry spell.



E

Flows for 365 consecutive days.



F

Lacks flow for **more than 30 consecutive days** due to regularly occurring dry spell.



G

Lacks flow for 10 consecutive days **twice a year** due to regularly occurring dry spells.



Non-anomalous events

Non-anomalous events

Supplemental Option for Proposed Definition of “Relatively Permanent”

- A body of water does not lose its relatively permanent status if it dries up as a result of anomalous events such as drought or dry spell.
- A body of water also does not lose its relatively permanent status if it dries up for no more than a single period of up to 30 consecutive days in any given year as a result of non-anomalous events resulting in a temporary interruption such as low tide or a regularly occurring dry spell.

Additional Areas for Comment

For the supplemental option for defining “relatively permanent,” the agencies seek comment on the following:

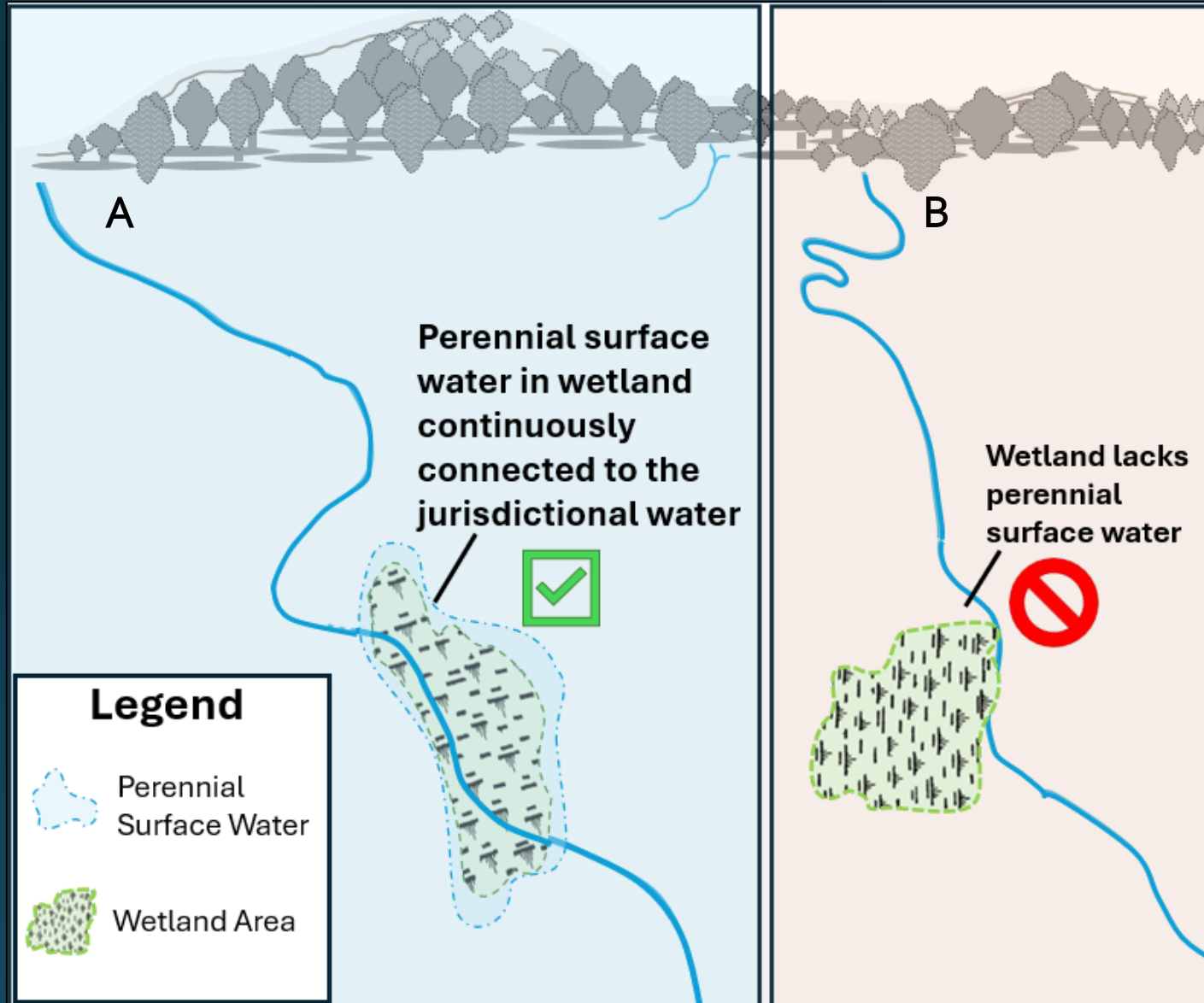
- The **30 consecutive day temporal qualifier** for non-anomalous temporary interruptions occurring for a single period in the year and whether a different numerical threshold is more consistent with *Sackett* and the *Rapanos* plurality.
- The applicability of the proposed definitions of “relatively permanent” and “perennial” to both anomalous and non-anomalous events.

Additional information on the supplemental definition of “relatively permanent” is included in the preamble to the SNPRM.



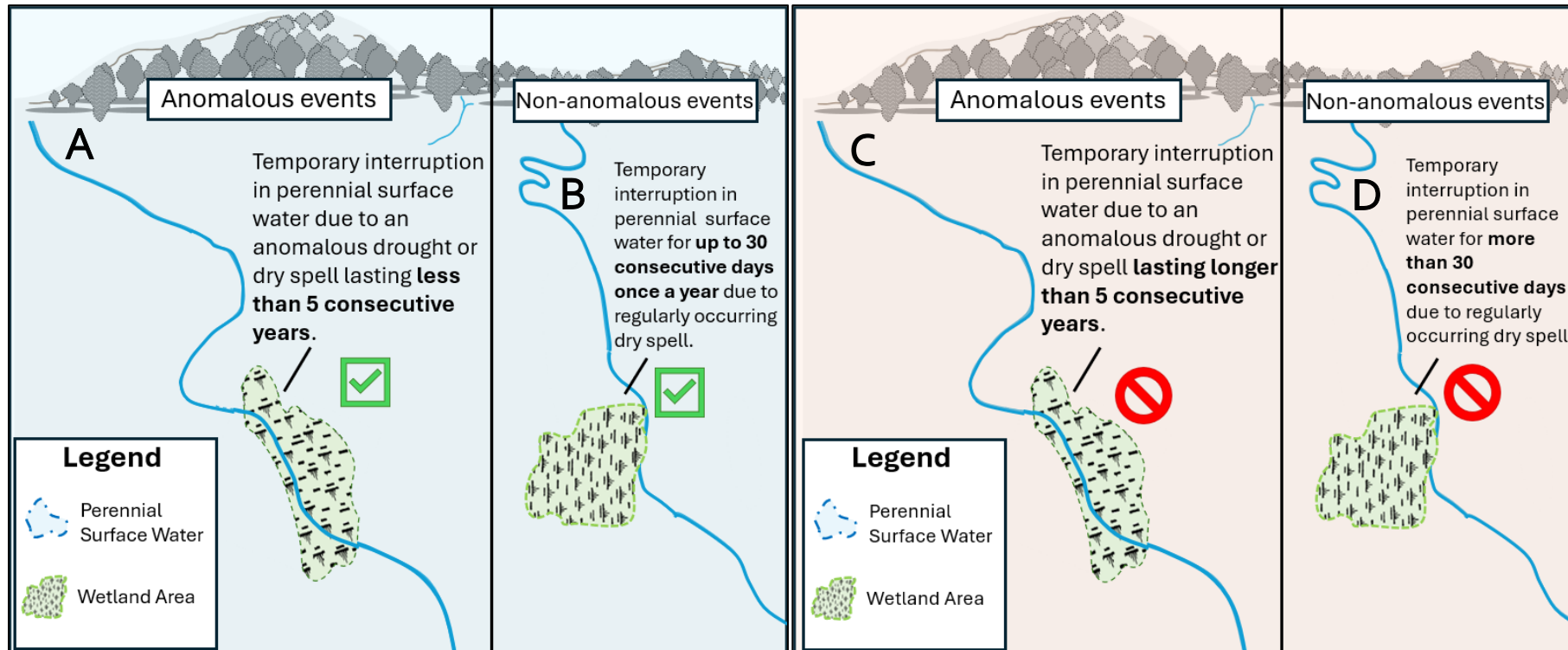
Continuous Surface Connection

Supplemental Option for Proposed Definition of “Continuous Surface Connection”



Continuous surface connection means perennial surface water in a wetland that is continuously connected with the surface water in the jurisdictional water such that it is difficult to determine where the jurisdictional water ends and the wetland begins. Temporary interruptions in the surface water connection may occur as the result of anomalous events such as drought or dry spell. A temporary interruption in the surface water connection lasting no more than a single period of up to 30 consecutive days in any given year may also occur as a result of non-anomalous events such as low tide or a regularly occurring dry spell.

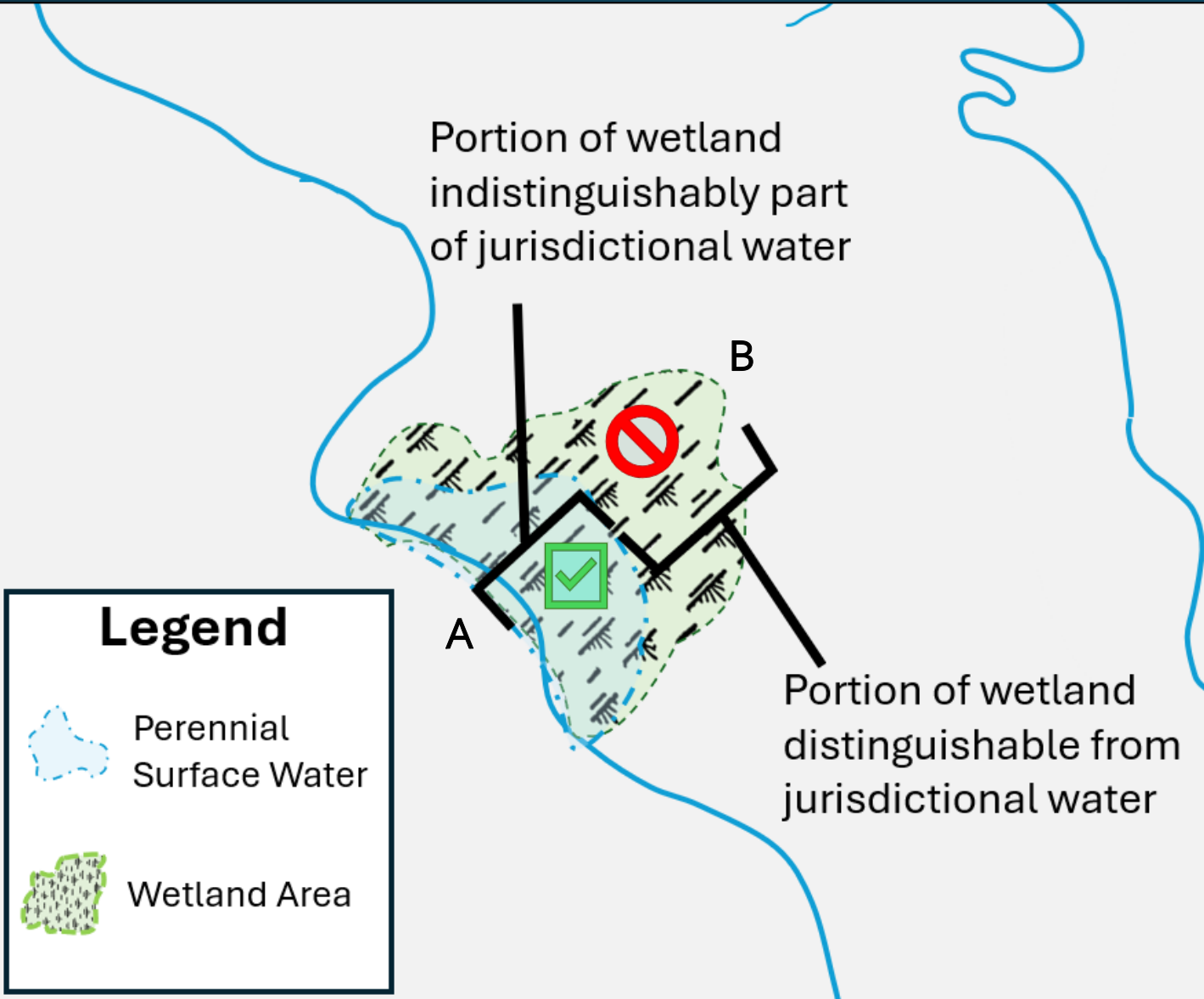
Supplemental Option for Proposed Definition of “Continuous Surface Connection”



A temporary interruption in the surface water connection may occur as the result of anomalous events such as drought or dry spell.

A temporary interruption in the surface water connection lasting for no more than a single period of up to 30 consecutive days in any given year may also occur as a result of non-anomalous events such as low tide or a regularly occurring dry spell.

Supplemental Option for Proposed Definition of “Continuous Surface Connection”



Only the portion of the wetland that is indistinguishably part of the jurisdictional water would be itself jurisdictional (*i.e.*, Wetland Portion A).

Requests for Comments on Supplemental Option for “Continuous Surface Connection”

*The agencies **solicit comment** on...*

- The definition of perennial or alternative definitions of the term in the context of “continuous surface connection.”
- An alternative approach whereby the concept of indistinguishability from *Sackett* would preclude use of the terms “adjacent” and “abutting.”
 - Under this approach, the agencies would delete the definition of “adjacent” from their regulations and revise the current adjacent wetlands category of jurisdictional waters at paragraph (a)(4) to instead include only “wetlands that are indistinguishably part of a body of water that itself is jurisdictional under (a)(1) through (3) of this section.”

Qualitative Supplemental Economic Analysis Information

Qualitative Supplemental Economic Analysis Information

Note...

Data **limitations** and availability make it **challenging and uncertain** for the agencies to **quantify** any associated **change in scope** of “waters of the United States” based on the additional options for defining “relatively permanent” and “continuous surface connection” in the SNPRM.

The agencies have concluded that, in magnitude, both the **cost savings** and **forgone benefits** are **greater** for the package of options presented in the SNPRM than for the package of options presented in the NPRM.

The agencies anticipate...

- That **most intermittent streams** that are considered “relatively permanent” **under current regimes** would **not satisfy** the requirements in the supplemental option for the proposed definition of “**relatively permanent.**”
- The **majority of wetlands** that are jurisdictional as adjacent wetlands **under current regimes** would **not have a “continuous surface connection”** under the supplemental definition of that term.
- The potential **impacts** of the definitions of “continuous surface connection” and “relatively permanent” would be **significant** for Clean Water Act jurisdiction of streams and wetlands relative to the baseline, particularly in the arid West.
- Clean Water Act **section 404 program** would likely see the most **programmatic changes** under the options in the SNPRM.

For More Information

The supplemental notice of proposed rulemaking as well as information about the November 2025 proposed rule are available at:

<https://www.epa.gov/wotus/updated-definition-waters-united-states>.

Please email CWAwotus@epa.gov with questions.

Information on commenting on the supplemental notice:

<https://www.regulations.gov/docket/EPA-HQ-OW-2025-0322>

For more information on the definition of “waters of the United States,” please visit

<https://www.epa.gov/wotus>.