

LANGAN

Regulatory Update

EPA Proposes Clarified Definition of “Waters of the U.S.”

December 2025



WHAT YOU NEED TO KNOW

EPA’s proposed WOTUS rule narrows federal jurisdiction and clarifies key definitions, reducing permitting uncertainty and easing regulatory burdens for development.

On November 17, 2025, the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers proposed a new definition of “Waters of the United States” (WOTUS) under the Clean Water Act. This update aligns with the 2023 Supreme Court Sackett decision and significantly narrows federal jurisdiction.

Key Changes Favorable to Developers

- Narrower Federal Jurisdiction**
Only traditional navigable waters, relatively permanent tributaries, and wetlands that directly abut those waters will be regulated. Ephemeral streams, isolated wetlands, and most man-made drainage features are excluded.
- Clear Definitions Reduce Uncertainty**
Introduces precise definitions for “relatively permanent” and “continuous surface connection,” eliminating the vague “significant nexus” test that previously caused delays. “Continuous surface connection” would require wetlands to meet a new two-part test to be jurisdictional: 1) they must abut a jurisdictional water, and 2) they must have surface water at least during the wet season. Also, the proposed rule removes interstate waters from the categories of jurisdictional waters to make clear that such waters no longer gain jurisdiction by simply crossing state lines.
- Expanded Exclusions**
Explicit exclusions for ditches built in dry land, prior converted cropland, waste treatment systems, and groundwater. Interstate waters are no longer automatically jurisdictional.
- State & Local Control**
EPA emphasizes “cooperative federalism,” leaving regulation of excluded waters to states and tribes, which often means less stringent requirements.

Implications for Development

- Predictable Permitting:** Clear boundaries reduce delays and legal risk for housing, commercial, and infrastructure projects.
- Cost Savings:** Lower compliance burden and fewer federal permits required.
- Action Needed:** Public comment period runs **45 days** (closing January 5, 2026). We recommend reviewing projects and consider submitting supportive comments for the WOTUS Rule proposal.

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For questions please reach out to your Langan project manager or:



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