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Updated WOTUS Definition Proposed Rule: What Does It Mean for Tribes?

The Environmental Protection Agency (EPA) and Army Corps of Engineers are [proposing to narrow the definition of “waters of the United States,”](#) or WOTUS, which may leave some Tribal lands without federal Clean Water Act (CWA) protections. The changes could particularly affect Tribes that rely on federal CWA implementation, and communities where seasonal waters are common. Although Tribes may use their own laws and regulatory authority to protect waters outside federal jurisdiction, differences in regulatory capacity and pollution crossing jurisdictional boundaries may limit their ability to fill those gaps.

The proposal is [open for public comment](#) until October 9, 2026.

What is WOTUS?

The [Clean Water Act \(CWA\)](#) is the federal government’s primary law for protecting the nation’s waters from pollution. But the CWA does not open every body of water in the country up to federal regulation. Instead, many CWA protections apply only to a specific category of waters called “waters of the United States,” or WOTUS. Simply put, [WOTUS is the legal designation that determines which water the federal government protects under the CWA.](#)

WOTUS is a legal definition, not a label based solely on the type of water or who owns the land. It generally [includes](#) navigable waters within the United States’ boundaries, such as oceans (up to three nautical miles from the shore), rivers, and lakes. Streams and wetlands may also qualify, depending on their characteristics and connection to other covered waters. WOTUS does not depend on whether water is located on federal, state, private, or Tribal land.

When a water body is designated as WOTUS, activities affecting it may be subject to federal [CWA requirements](#), including restrictions on pollutant discharges and [requirements for permits](#) before dredging or placing fill material into the water. If a water body falls outside the definition, those federal requirements generally do not apply.

The boundaries of WOTUS have changed over time and have been [the subject of extensive litigation](#). Most recently, the Supreme Court's 2023 decision in *Sackett v. EPA*, 598 U.S. 651, narrowed the circumstances in which the CWA covers wetlands. The Court held that a wetland must have a “continuous surface connection” with a covered water such that it is difficult to determine where the water ends and the wetland begins.

What is Changing?



In November 2025, EPA and the Army Corps of Engineers [proposed additional changes to the WOTUS definition](#), further narrowing the types of waters considered to be WOTUS. Changes include removing “interstate waters” as a separate category, excluding groundwater, and defining terms such as “relatively permanent” and “continuous surface connection.” The Sept. 9, 2026 supplemental proposal [offers additional alternatives for defining these terms](#). One alternative would generally limit federal protection to “perennial” waters: waters with standing or continuously flowing water every day of the year under ordinary conditions with limited exceptions for drought and certain temporary interruptions. In practical terms, this could exclude seasonal streams, wetlands, and other waters not continuously connected to larger bodies of water.

For example, a wetland on agricultural land may be readily recognizable to the person farming it but still fall outside the WOTUS definition if it lacks the required “continuous surface connection” to a river, stream, or lake considered WOTUS. In that case, federal CWA requirements generally would not apply to activities affecting the wetland. Similarly, under the proposed alternative, a stream that flows for much of the year but regularly dries up for periods during the year may not qualify as “perennial” and therefore may fall outside federal CWA jurisdiction.

The proposal also would remove federal jurisdiction from certain ditches constructed or excavated entirely in dry land, regardless of whether they contain water, and would explicitly exclude groundwater, including [groundwater](#) drained through agricultural subsurface drainage systems such as tile drains. The proposal would also clarify [exclusions](#) important to agricultural producers, including prior converted cropland, waste treatment systems, and certain ditches.

What Could the Changes Mean for Tribes?

For Tribal Nations, the proposed changes raise broader questions about Tribal sovereignty, regulatory capacity, culturally important waters, and who bears responsibility for protecting interconnected water systems when federal jurisdiction ends.

CWA § 518 allows eligible federally recognized Tribes to obtain [Treatment in a Similar Manner as a State \(TAS\)](#) to administer certain CWA programs within their reservations. [Tribes with TAS authority](#) can establish federally enforceable water quality standards that are more protective than federal minimum requirements. However, most eligible Tribes have not received TAS status to administer CWA regulatory programs. Some Tribes instead protect waters through their inherent sovereign authority and Tribal law, while others are still developing the resources and regulatory capacity necessary to administer their own water programs. As a result, many Tribal communities [rely more heavily on the federal government to implement CWA programs](#) and enforce water quality requirements.



Narrowing federal jurisdiction does not prevent Tribes from adopting their own protections for waters that the CWA no longer covers, but the practical ability to quickly fill those federal regulatory gaps varies significantly among Tribal Nations. The agencies [acknowledge](#) that reduced federal jurisdiction may affect Tribes differently than States because the federal government generally implements CWA programs on Tribal lands. Tribes that lack TAS status or the resources to administer independent Tribal programs may lose federal protection for waters without having an equivalent regulatory system ready to replace it.

Geography could magnify those effects. Many Tribal Nations are in the arid West, where streams and other waters may flow seasonally rather than year-round. The agencies [acknowledge](#) that fewer waters in these areas may satisfy a “relatively permanent” standard. A definition centered on perennial waters could remove federal protections from waters that may not flow continuously but remain important to ecosystems and Tribal communities.

For example, a stream may flow only during certain seasons but still connect to a larger river on Tribal lands used for fishing, cultural practices, agriculture, or other community needs. If the stream loses federal protection, discharges such as industrial waste, chemicals, and sewage may no longer be subject to CWA requirements. When the stream flows, these pollutants can move downstream, exposing the Tribal community that relies on the river to contaminated water.

Finally, Tribes with strong water-quality standards and their own regulatory systems can still be negatively affected by pollution originating outside Tribal jurisdiction. Tribal regulation can protect waters within a Tribe's authority, but it cannot prevent all pollution from entering those waters from an upstream jurisdiction (for example, *see: Arkansas v. Oklahoma*, 503 U.S. 91, 111 (1992)).

What Does This Mean for Tribal Agriculture?

For farmers, ranchers, and other producers both on and off Tribal lands, determining whether the land they operate on includes WOTUS is an important part of legal risk management, and the need for that risk management assessment doesn't change even if the regulatory definition of WOTUS changes. Although [most farming activities](#) are not subject to CWA regulations, if any waters used in those activities are considered WOTUS, then producers may need to comply with [certain CWA requirements](#), such as securing permits and water quality certification. Violations can lead to [large fines](#) and/or [criminal prosecution](#).

Each time the definition of WOTUS is adjusted, producers need to reconsider how it impacts them as part of their legal risk management strategies for their operations. In this case, the [EPA and the Army's agricultural fact sheet](#) describe the proposed WOTUS changes as providing farmers and other rural landowners with greater clarity and predictability about where federal



jurisdiction applies. Some farm organizations, such as the [American Farm Bureau](#), support the changes, noting that the rule as proposed will bring certainty for farmers.

For those farming or ranching on Tribal lands, however, there may be less certainty, since how these changes affect farming and ranching on Tribal lands will depend largely on how each Tribe chooses to regulate water quality in the absence of federal support. Some Tribes administer CWA programs under TAS status or through their own regulatory agencies, while others rely on federal protections. Narrowing federal jurisdiction over waters could clarify requirements and reduce regulatory burdens for producers, but it could also leave some waters without [water-quality standards, routine testing](#), or federal limits on direct discharges.

Impacts to agricultural operations on Tribal lands will also depend on what upstream jurisdictions choose to do with water quality management. As discussed above, even Tribes with their own water quality programs generally cannot regulate upstream activities outside their jurisdictional boundaries. If upstream waters lose CWA coverage, pollution from activities or direct discharges into those waters could flow downstream into Tribal waters, increasing risks for agricultural producers and Tribal communities.

If pollutants are added to upstream waters, Tribal producers could face future production challenges and increased regulatory burdens, specifically related to food safety compliance. [For example, producers of covered produce under the federal Food Safety Modernization Act \(FSMA\) are generally required to test for the presence of *E. coli* in agricultural water to prove that the water is safe to use for agricultural purposes.](#) Producers who don't have an option to use municipal water sources and use untreated ground or well water already need to test their water more frequently under the FSMA Produce Safety Rule (PSR). Relaxed upstream protections that allow waste to be dumped into waters could increase [E. coli presence](#) in downstream agricultural water. Even if upstream waters are not flowing continuously, many microorganisms that are harmful to humans can survive very harsh conditions.

The timing of the water's contact with fresh produce will also be critical in risk assessment for producers: if polluted water contacts fresh produce near harvest time, it greatly increases the likelihood that the produce carries harmful microbes that can cause foodborne illness. More *E. coli* in downstream waters at harvest time would require covered producers to undertake documented corrective actions to comply with the PSR and keep harvested produce safe from microbial contamination prior to sale. In this situation, farmers might be trading one regulatory burden under the CWA for another under FSMA. Either way, producers will want to carefully consider how to manage both sets of legal risks appropriately to protect their operations.

Tribal Consultation



EPA and the Army Corps of Engineers [consulted with Tribal governments while developing the 2025 proposal](#). Several Tribes advocated against revising the definition. Tribal feedback emphasized the need for a scientifically defensible, culturally informed approach to water protection. Tribes also encouraged the agencies to incorporate Indigenous knowledge, respect Tribal sovereignty, and recognize the interconnected nature of water resources.

Several Tribal representatives cautioned that natural or artificial features should not automatically be treated as breaking the connection between wetlands and other waters. Tribes recommended additional capacity-building and legislative solutions to give them the resources and authority to manage and protect their water rights.

The agencies are accepting [comments](#) on the supplemental proposal through October 9, 2026. Tribal comments can help identify where reduced federal jurisdiction may affect Tribal waters, rights, resources, and communities.