

WOTUS Rule Update

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Kevin will provide an update on pertinent changes from the new Waters of the U.S. Rule and discuss where it stands today.



2023 SCOTUS Rulings & 2025 WOTUS

2023 SCOTUS cases directly impacting 2025 WOTUS:

**Sackett v. EPA (Sackett)
and**

**Loper Bright Enterprises v.
Raimondo (Looper Bright)**

**Federal jurisdiction removed for
isolated wetlands
(Significant Nexus out)**

**Looper Bright formally overturned
the “Chevron” defense doctrine**

WOTUS 2025

2025 proposed WOTUS published Nov. 20, 2025
Public comment closed Jan. 5, 2026
Final Rule expected ~~late Q1~~ ~~early Q2 2026~~ with
minimal changes?

Highlights

- Federal jurisdiction removed for isolated wetlands
- Relatively Permanent Water (RPW) defined
 - Wet Season introduced
 - Perennial only and/or number of days of continuous flow/ “bright line” considered
- OHWM alone insufficient for jurisdiction
- Exemptions appear codified
- (a)(1)(iii) interstate waters eliminated



WOTUS 2025

A jurisdictional wetland must have a continuous surface connection (1) abut (touch) jurisdictional water and (2) have surface water present at least during the **wet season**.

Relatively Permanent Water (RPW):

Relatively permanent are those that are standing or continuously flowing year-round or at least during the **wet season***.

WOTUS 2025

Tributary Definition

Body of water with **relatively permanent flow**, and a bed and banks, 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**.

Not 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**.



EPA Evaluating Tools for Wet Season & RPW

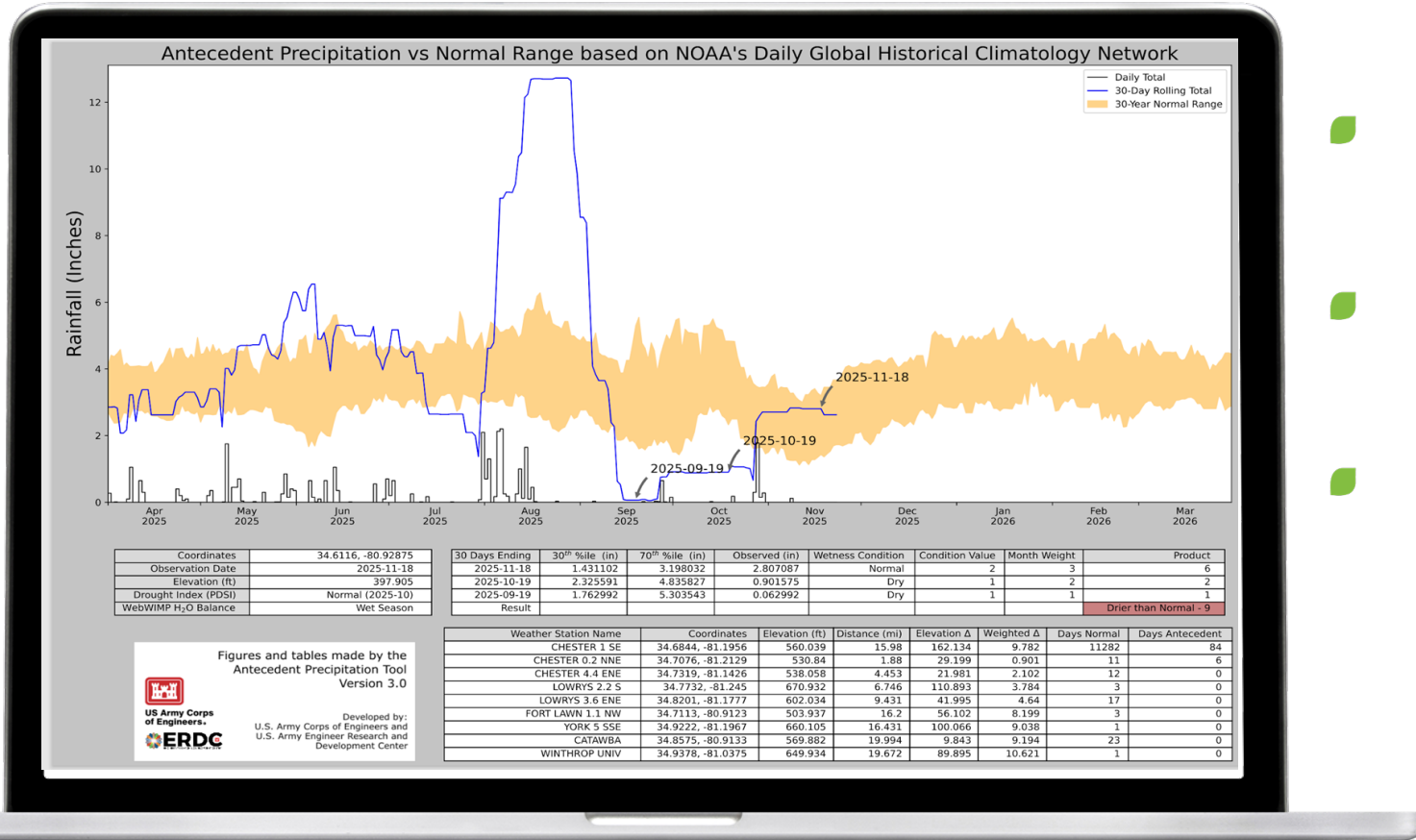
Desktop:
APT (Antecedent
Precipitation Tool) 3.0
& Web WIMP (WW)



Field:
Stream Duration
Assessment Method
(SDAMs) & possibly
state flow regime
forms (NC, TN, VA, NM,
etc.)



Wet Season & APT 3.0 with Web Wimp



- Potential for multiple field observations
- EPA acknowledged lag time with APT and WW
- DRG implementing wells, trail cameras, and on-site weather stations to reduce lag

Wet Season & APT 3.0 with Web Wimp

Terms:

DIFF is the rainfall and estimated snowmelt minus the adjusted potential evapotranspiration (mm/month).

DST is the estimated change in soil moisture from the end of the previous month to the end of the current month (mm/month).

DEF is the estimated deficit or unmet atmospheric demand for moisture (mm/month).

Mon	DIFF	DST	DEF	Conclusion
Jan	92	0	0	Wet Season
Feb	75	0	0	Wet Season
Mar	84	0	0	Wet Season
Apr	21	0	0	Wet Season
May	-21	-21	0	Dry Season
Jun	-47	-45	2	Dry Season
Jul	-35	-24	11	Dry Season
Aug	-26	-13	13	Dry Season
Sep	-6	-3	3	Dry Season
Oct	20	20	0	Wet Season
Nov	47	47	0	Wet Season
Dec	69	39	0	Wet Season

<---Selected Month

SDAMs & State Flow Regime Forms

Tools that could be used to define flow regime outside of Wet Season

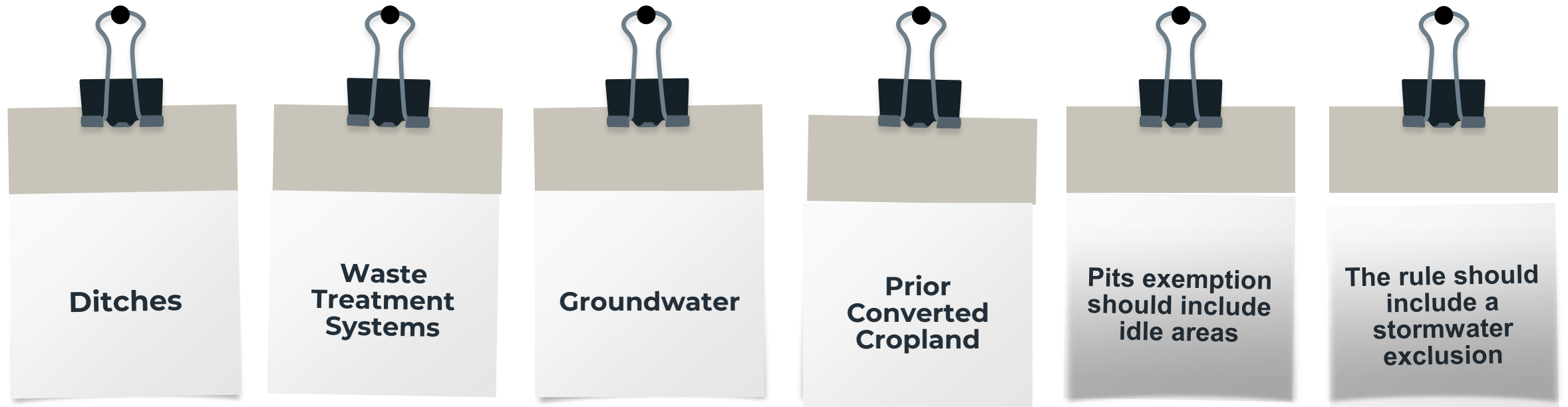
SDAMs:

A regional, rapid field-based protocols developed by the EPA and the USACE to classify a stream's flow regime at the reach scale.

State Flow Regime Forms:

Ecoregion, rapid based protocols developed by State Agencies to classify stream flow regimes (NM, VA, NC, TN & CA)

Proposed Exclusions



Questions Remain

- When will the New Rule be finalized
- How will the EPA ultimately define an RPW
- OHWM alone cannot create jurisdiction, but culverts will require consideration

