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For over 20 years, Adam has managed environmental regulatory and compliance projects including Section 404 permitting and NEPA documentation and coordination for clients such as railroads, port authorities, state departments of transportation, local governments, and regional mobility authorities. His environmental specialty areas include wetland delineations, section 404 permitting, habitat surveys, and threatened and endangered species assessments.

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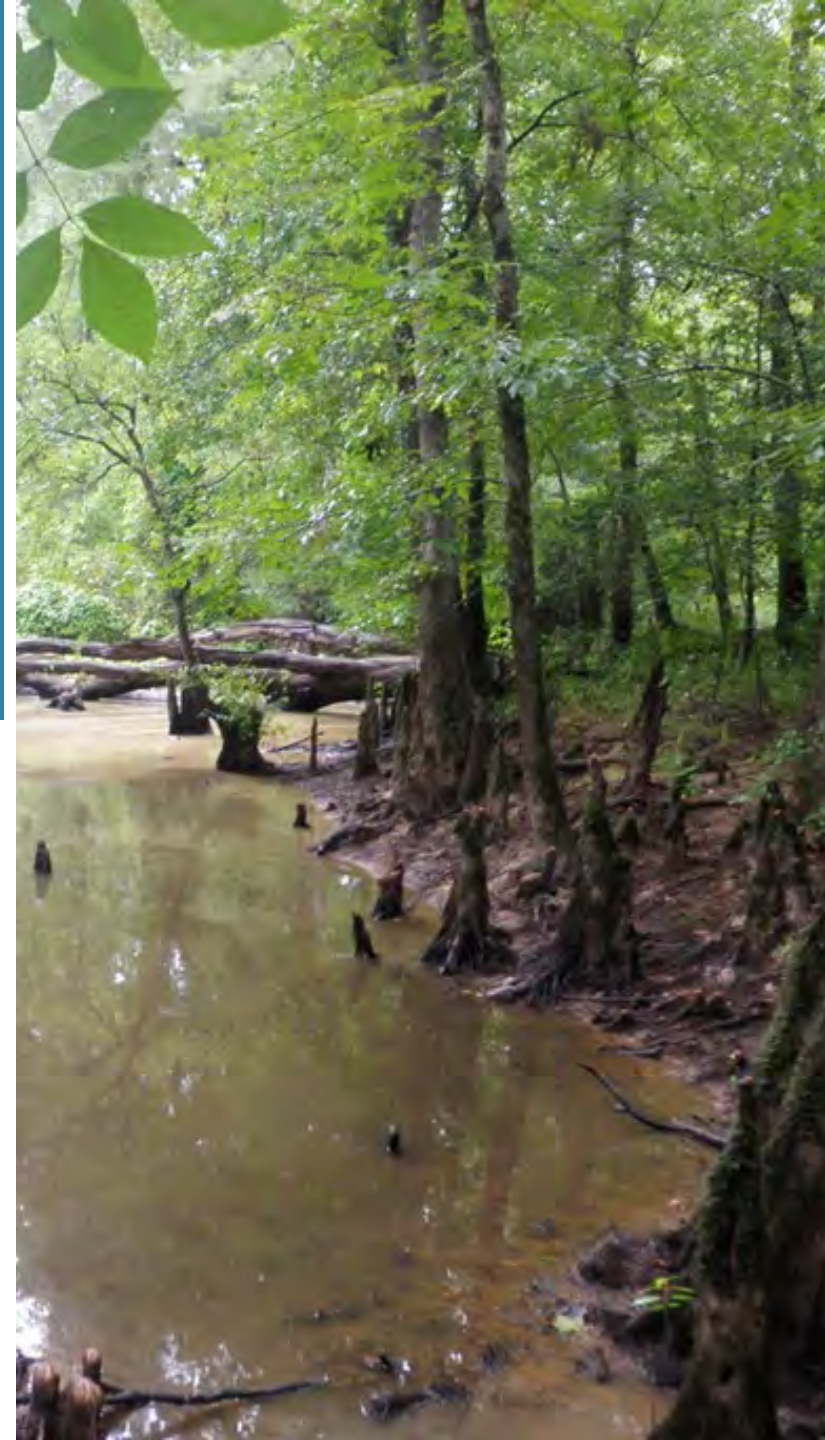
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# Update on Revised Waters of the U.S. (WOTUS) Definitions

Adam Roberts



April 21, 2026



## AGENDA

**01** Brief History

**02** Revised WOTUS Definitions

**03** Conclusion

# 01 Brief History



# Which Waters are WOTUS – Rulemaking & Litigation

- 1985 - US v. Riverside Bayview Homes\*
- 1986 – Migratory Bird Rule
- 2003 – SWANCC v. USACE\*
- 2006 - Rapanos & Carabell Ruling\*
- 2007-2008 – Interim & Revised Rapanos Guidance
- 2011-2015 Clean Water Rule
- 2015 - Federal Court Stay on 2015 Clean Water Rule
- 2017 - Executive Order to Revise Clean Water Rule
- 2018 - EPA and USACE Propose WOTUS Definitions
- 2019 - Agencies repeal 2015 Rule
- 2020 – Navigable Water Protection Rule (repealed 2022)
- January 2023 – Revised WOTUS Rule
- May 2023 – Sackett v. EPA\*
- Sept 2023 – Revised WOTUS definitions
- 2023 – 2025 – Litigation and "memos"
- Nov 2025 – Proposed Rule for Updated WOTUS Definitions
- Mid- to Late 2026 – Final Rule of WOTUS Definitions (pending)

\* Supreme Court Rulings

# Sackett vs. EPA Ruling

U.S. Supreme Court - May 25, 2023

- Unanimous decision to reverse 9<sup>th</sup> Circuit
  - Majority opinion / Ruling by Justice Alito
  - 3 concurring opinions
  - Highlighted need for “exceedingly clear language” to shift federal / state balance
- Substantial reduction of federal jurisdiction over water resources





# Sackett vs. EPA Ruling – Major Outcomes

- “Significant nexus” under Rapanos Guidance (2008) is not valid
- Two-part test for WOTUS:
  - Adjacent waters shall be rivers, lakes, streams, or other relatively permanent waters connected to traditional navigable waters (i.e., WOTUS).
  - Wetlands must have a “continuous surface connection” to WOTUS, making it difficult to determine where the “water” ends and the “wetland” begins.



# Sackett Effects

## Forecast

- Ephemeral streams and non-contiguous wetlands will not likely be WOTUS
- Intermittent streams with "seasonal" flow? (definitions pending)
- Approx. 50-75% reduction of federal jurisdiction over waters
  - Greatest change for inland, semi-arid, and arid regions
  - Less change in the coastal zone
- State program revisions and potential additions



# Sackett Effects - Status

- Oklahoma still operating under the “pre-2015 regulatory regime consistent with Sackett”
- March 12, 2025, EPA and USACE Memorandum to the Field on “continuous surface connection”
- November 20, 2025, EPA and USACE published a proposed rule to revise WOTUS definitions.



# Waters of the U.S.

## Pre-2015 Regulatory Definition

- Navigable waters
- Interstate waters
- Other waters that could affect interstate or foreign commerce
- Impoundments of WOTUS
- Tributaries of WOTUS
- Territorial sea
- Wetlands adjacent to WOTUS



**02**

# **Revised Waters of the U.S. Definitions**



# Waters of the U.S.

".....[s]treams, oceans, rivers, and lakes—and wetlands that are connected and indistinguishable from such (*relatively permanent\**) waterbodies. It will accelerate economic prosperity by revising, for example, exclusions for certain ditches, prior converted cropland, and waste treatment systems and by adding an exclusion for groundwater. "



EPA, November 2025 press release  
Final definitions pending

(\*added for clarification)

# Waters of the U.S.

## Proposed Revisions (Nov 2025)

- Define “relatively permanent”
- Define “tributary”
- Define “continuous surface connection”
- Remove interstate category
- Clarify excluded ditches
- Clarify excluded prior converted cropland
- Clarify excluded waste treatment systems
- Add groundwater exclusion



# Waters of the U.S.

## Relatively Permanent Waters

- Standing or continuously flowing year-round or at least during the “wet season”
- Extended periods of predictable, continuous surface hydrology
- Applicable to lakes, ponds and tributaries





# Waters of the U.S.

## Tributary

- “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.”
- Does not include a body of water that contributes surface water flow to a downstream jurisdictional water through features that do not convey relatively permanent flow



# Waters of the U.S. (Wetlands)

## Continuous Surface Connection

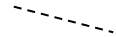





- “having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water”
- Only portions of wetland with semipermanent surface hydrology
- Not separated by uplands, a berm, dike, or similar feature









# Post-Sackett WOTUS – Projected Extents

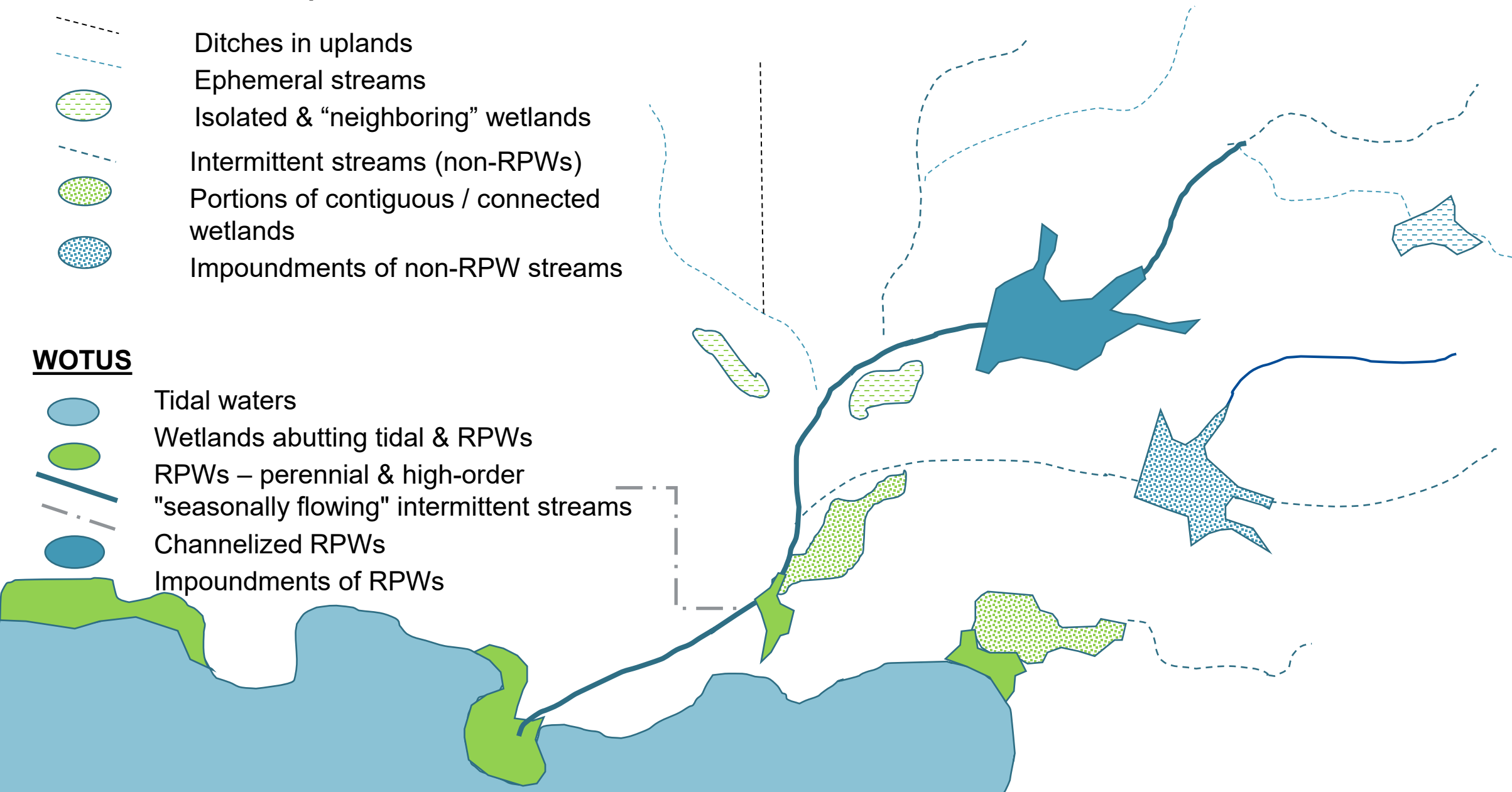
## Not WOTUS

## Proposed Fall 2025 Definitions

-  Ditches in uplands
-  Ephemeral streams
-  Isolated & "neighboring" wetlands
-  Intermittent streams (non-RPWs)
-  Portions of contiguous / connected wetlands
-  Impoundments of non-RPW streams

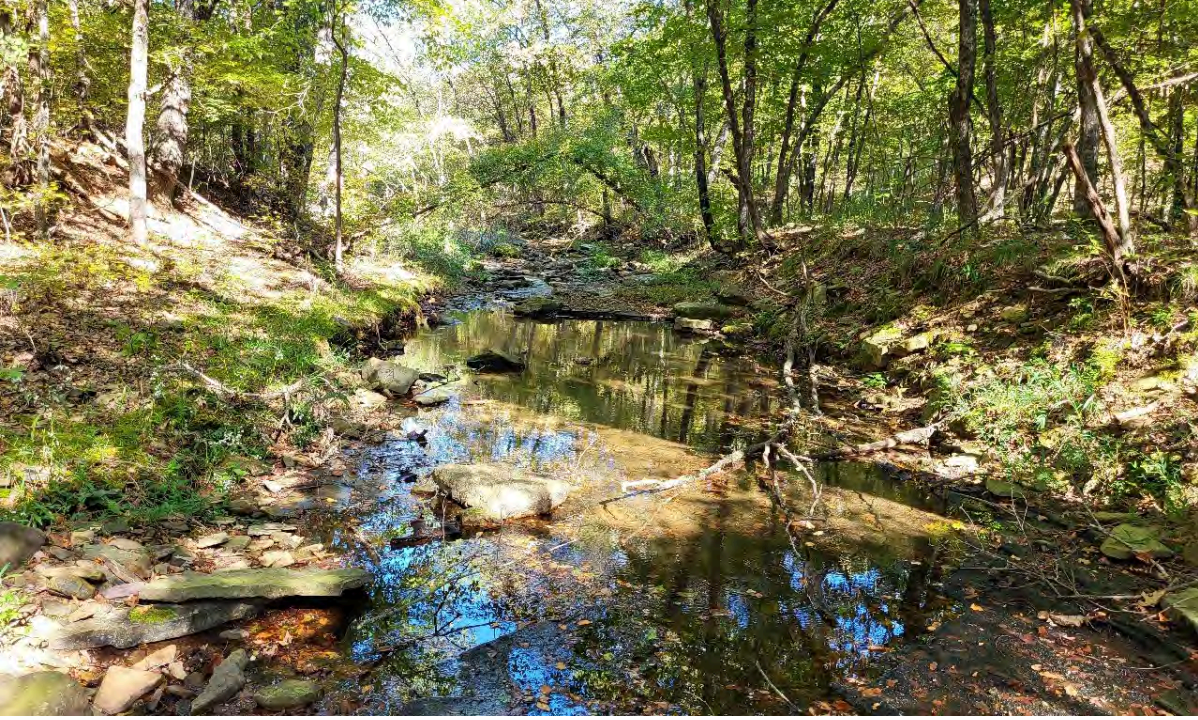
## WOTUS

-  Tidal waters
-  Wetlands abutting tidal & RPWs
-  RPWs – perennial & high-order
-  "seasonally flowing" intermittent streams
-  Channelized RPWs
-  Impoundments of RPWs



# 03 Conclusion





# Challenges

- What is the “wet season”?
- Regional and geological differences
- “Normal” conditions
- Data collection



# Strategies

## Antecedent Precipitation Tool (APT)

- Developed by USACE
- Compare recent and 30-year normal precipitation
- 30-day rolling totals weighted
- Specific date and site
- Single point or watershed analysis

<https://www.epa.gov/wotus/antecedent-precipitation-tool-apt>

Antecedent Precipitation Tool

Use Gridded Precipitation?

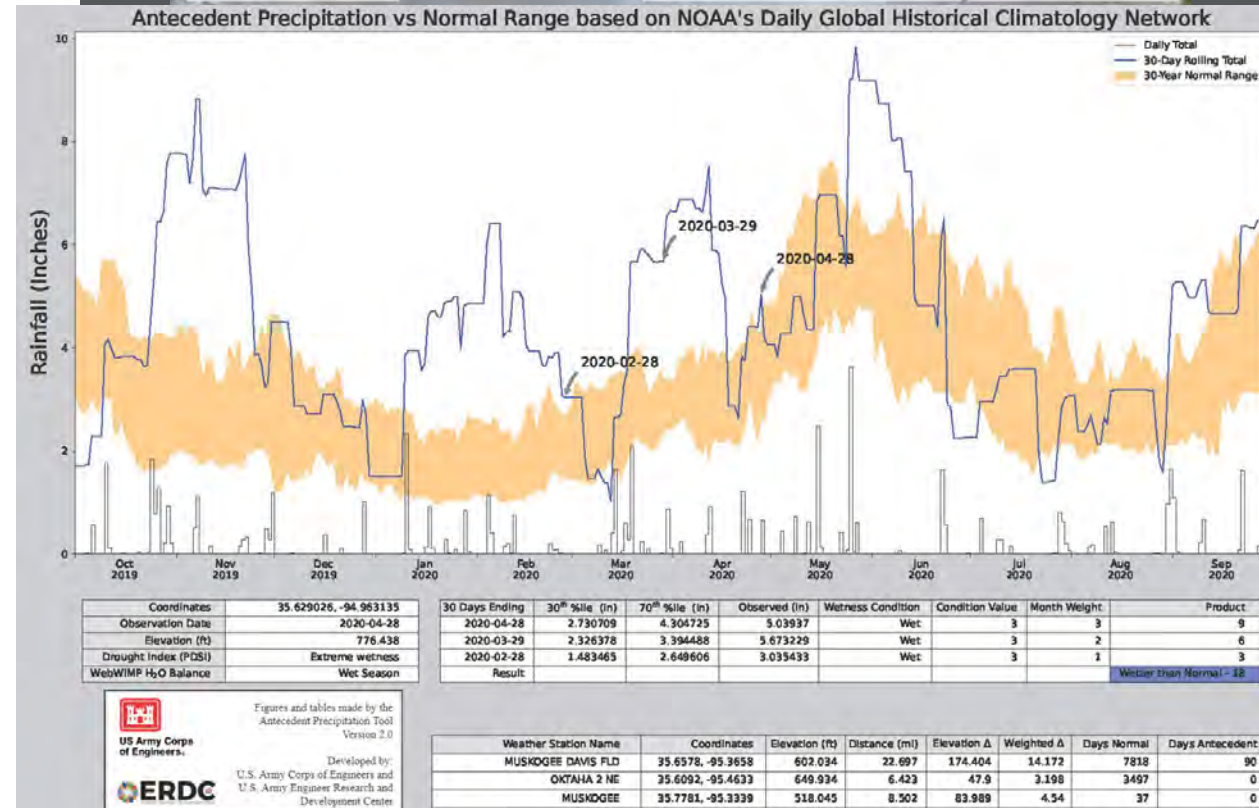
Latitude (DD): 32.544373 Longitude (-DD): -98.612990 Scope: HUC12

Get daily results between a Start Date and End Date

Start Date (YYYY-MM-DD): 2025 · 03 · 17

End Date (YYYY-MM-DD): 2025 · 03 · 21

Calculate Switch to CSV Input Quit



# Strategies

Web-Based, Water-Budget, Interactive, Modeling Program (WebWIMP)

- Used in Arid West Regional Supplement (USACE 2008) for wetland delineation and in APT
- Monthly Water Balance: Difference in Average Precipitation and Potential Evapotranspiration
- Determine Wet or Dry Season
- Check for Flow in Wet Season

[http://cyclops.deos.udel.edu/wimp/public\\_html/index.html](http://cyclops.deos.udel.edu/wimp/public_html/index.html)

Monthly and annual climatic water balance table

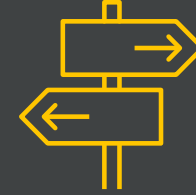
MON	TEMP	UPE	APE	PREC	DIFF
Jan	12.2	22	20	88	68
Feb	13.3	27	23	88	65
Mar	17.1	49	50	70	20
Apr	20.7	76	81	77	-4
May	24.1	108	127	110	-17
Jun	27.0	139	163	136	-27
Jul	28.3	150	179	95	-84
Aug	28.1	149	169	109	-60
Sep	25.8	127	129	153	24
Oct	21.5	83	81	100	19
Nov	16.9	47	42	94	52
Dec	13.4	27	24	88	64
Total			1088	1208	

Dry season: April to August  
Wet Season: September to March

# WOTUS – Future Predictions



- Mid-Late 2026 – Final revised definitions
- Rush for Approved Jurisdictional Determinations & Amendments
- Delay in USACE responses in 2026
- 2027 → foreseeable future
  - Fewer §404 permits
  - Decreased permit timelines for most projects



- Defining a “Relatively Permanent Water” remains challenging
- Data collection requires strategy
- Likely increased focus by agencies on projects in coastal areas and perennial stream impacts
- More complex Endangered Species Act negotiations (§10)

# Thank You

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