

The “Top 10” Ag Law and Tax Developments of 2025: Number 2

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In 2025, the long-running saga of the “Waters of the United States” (WOTUS) reached a decisive turning point, providing farmers and ranchers with the regulatory clarity that has been sought for decades. Following years of “ping-pong” rulemaking between administrations, the developments of 2025 centered on a final alignment with the Supreme Court’s landmark *Sackett v. EPA*[1] decision.

In late 2025, the EPA and the Army Corps of Engineers unveiled a new rule that finally aligns federal oversight with the Supreme Court’s *Sackett* decision, effectively replacing bureaucratic ambiguity with standards visible to the naked eye.

For farmers, the 2025 rule represents a victory for property rights. The most significant shift is the adoption of a strict “Relatively Permanent” standard. Federal jurisdiction is now limited to bodies of water that are standing or continuously flowing. This change explicitly excludes ephemeral features—those dry ditches and low spots that only carry water after rainfall. Previously, these features left producers vulnerable to heavy fines; today, they are firmly outside federal reach.

To account for regional differences, the rule introduces a “Wet Season” definition. While waters that flow predictably during wetter months may still be regulated, the rule requires a continuous surface connection to navigable waters. If a feature does not maintain water during the defined regional wet season, the federal government has no authority over it.

The 2025 reforms also strengthened essential exclusions. For the first time, groundwater and subsurface tile lines are explicitly excluded by rule, ensuring that vital drainage infrastructure remains a private management matter. Furthermore, Prior Converted Cropland status was simplified: land only loses its exclusion if it is abandoned for more than five years and reverts to a wetland state.

The public comment period on the proposed rule closed in early January of 2026. The agencies are reviewing the submitted comments and are working on the drafting of the final rule which is expected to be issued sometime in the Spring or Summer of 2026.



WOTUS Comparison: 2023 vs. 2025

Feature	Amended 2023 Rule	November 2025 Proposed Rule
Primary Standard	“Relatively Permanent” but undefined	Defined: Flowing/standing year-round or during a predictable “Wet Season.”
Ephemeral Streams	Case-by-case (often regulated)	Explicitly Excluded: Land that only flows after rain is non-jurisdictional.
Wetlands	Must have surface connection	Two-Prong Test: Must (1) touch a WOTUS and (2) have surface water during the wet season.
Groundwater	Generally excluded by practice	Explicitly Excluded by Rule: Includes tile drains and subsurface systems.
Interstate Waters	Regulated because they cross lines	Removed: Must independently meet the permanence standard to be regulated.

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