



## Client Alert: Federal WOTUS Guidance Updated – Jurisdiction Over Ditches Still Unclear

by [Michelle Diffenderfer](#) and [Katherine L. Hupp](#)

Dear LLW Clients,

A significant federal development has just occurred that may have far-reaching implications for land use, water resources, and environmental permitting. While the full implications are being assessed, Lewis, Longman & Walker, P.A. is analyzing what this means for our clients and stakeholders across Florida and beyond.

Our team will be issuing a detailed client update shortly to help you understand how this change could affect your operations, projects, or compliance strategy.

If you have immediate questions about how this development may impact you, please don't hesitate to reach out to your LLW contact directly.

### Federal WOTUS Guidance Updated – Jurisdiction Over Ditches Still Unclear

On **March 12, 2025**, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers issued [new guidance](#) to regulatory staff regarding the definition of “**waters of the United States**” (**WOTUS**) under the **Clean Water Act (CWA)**. This guidance formally rescinds several portions of the Biden administration's earlier post-*Sackett* interpretation and signals a shift in how wetlands are evaluated for federal jurisdiction.

On **March 24, 2025**, the agencies also opened a public docket— “**WOTUS Notice: The Final Response to SCOTUS**”—seeking comment on the appropriate scope of WOTUS in light of the U.S. Supreme Court's *Sackett v. EPA* decision.

While the new guidance offers clarity on some issues—particularly related to “adjacent wetlands” and how a “continuous surface connection” is evaluated—it **leaves unresolved whether features such as roadside ditches, canals, and swales may still be considered jurisdictional “relatively permanent waters”** under the CWA. This is especially important in Florida, where these types of features frequently appear on land. In Florida, ditches and similar features often form connections between wetlands and other jurisdictional waters, which could trigger jurisdiction of such wetlands under past WOTUS interpretations. However, the recent agency guidance interprets *Sackett* narrowly, finding wetlands connected via such discrete features may no longer be considered “adjacent” or jurisdictional—yet the status of the features themselves remains unclear. In effect, the guidance may not remove many wetlands from jurisdiction depending on how expansively the agencies assume jurisdiction over ditches, canals, swales.



### **Public Comment Period Open**

EPA and the Corps are now accepting public comments through a federal docket and will hold at least six listening sessions throughout April and May. The agencies are specifically seeking input on:

- The scope of “relatively permanent” waters, and what features the phrase applies to;
- The scope of “continuous surface connection,” and what features the phrase applies to—i.e., what does it mean to “abut” a jurisdictional water, such as whether a berm or similar natural landform or a flood or tide gate, pump, or similar artificial feature removes a wetland from being considered an adjacent jurisdictional water; and
- The scope of jurisdictional ditches. Under both the Biden Rule and the pre-2015 regime, ditches carved out of uplands and that do not carry a relatively permanent flow are non-jurisdictional.

Registration and comment submission details are available on the EPA website: <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>.

LLW is closely tracking these developments and reviewing the legal and regulatory implications for our clients. We will update you with a detailed breakdown of the new guidance and relevant case law by attorneys [Michelle Diffenderfer](#) and [Katherine Hupp](#).

In the meantime, if you have questions about how this guidance or the open docket process may affect your permitting strategy, project timeline, or jurisdictional determinations, please don’t hesitate to contact us.