

THE NAVIGABLE WATERS PROTECTION RULE: DEFINITION OF “WATERS OF THE UNITED STATES”

Regulatory Division - Wilmington District
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EPA'S NWPR WEBSITE

- The pre-publication version of the final rule and preamble, fact sheets, and the supporting analyses for the final rule can be found on EPA's NWPR website at: <https://www.epa.gov/nwpr>.
- The preamble in particular provides an extensive discussion of the rationale for the final rule and includes important information on how the agencies will implement it.



KEY CHANGES

- Key changes from the 2019 Rule (*i.e.*, pre-2015 Rule/ 1986 Regulation in light of SWANCC/Rapanos Guidance):
 - **Four categories of jurisdictional waters and twelve categories of excluded waters/features**
 - Combines the categories of traditional navigable waters and territorial seas into one category
 - No stand-alone interstate waters category
 - No case-specific significant nexus analysis
 - New category of lakes and ponds, and impoundments of jurisdictional waters



NWPR: FOUR CATEGORIES OF WOTUS

- Territorial seas and traditional navigable waters - (a)(1)
- Tributaries - (a)(2)
- Lakes and ponds, and impoundments of jurisdictional waters - (a)(3)
- Adjacent wetlands - (a)(4)



(A)(1) TERRITORIAL SEAS AND TRADITIONAL NAVIGABLE WATERS ¹¹ (TNW):

- The territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide.

Key changes from the 2019 (Step 1) Rule:

- Combines the categories of traditional navigable waters and territorial seas
- No stand-alone interstate waters category
- No substantive changes



Traditional navigable waters include those waters used for interstate commerce, like Lake Winnebago in Wisconsin.



(A)(2) TRIBUTARIES:

- “**Tributary**” means a naturally occurring surface water channel that contributes surface water flow to a paragraph (a)(1) water in a typical year either directly or through one or more paragraph (a)(2)-(4) waters. A tributary must be perennial or intermittent in a typical year.
- A tributary does not lose its jurisdictional status if it contributes surface water flow to a downstream TNW or territorial sea in a typical year through a channelized non-jurisdictional surface water feature, through a subterranean river, through a culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, or similar natural feature.
- The alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to satisfy the flow conditions of the definition.
- The term tributary includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of this definition.



NWPR - KEY DEFINITIONS

Perennial:

- The term *perennial* means surface water flowing continuously year-round.

Intermittent:

- The term *intermittent* means surface water flowing continuously during certain times of the year and more than in direct response to precipitation (e.g., seasonally when the groundwater table is elevated or when snowpack melts).

Ephemeral:

- The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (e.g., rain or snow fall).

Snowpack:

- The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions or at high elevation (e.g., in northern climes or mountainous regions).



METHODS FOR IMPLEMENTATION

Determining perennial or intermittent flow:

- May use a combination of the best available mapping sources, including the NHD* or local maps, as well as other remote tools and datasets such as aerial photographs, NRCS hydrologic tools and soil maps, NOAA snow maps, desktop tools that estimate the discharge sufficient to generate intermittent or perennial flow, or modeling tools.
 - * Keep in mind that NHD at High Resolution does not distinguish intermittent from ephemeral features in most parts of the country and may not accurately identify on-the-ground flow conditions.
- Site visits may be needed to perform on-site observations of hydrology or collect indicators of perennial or intermittent flow.
- Where available, streamflow duration assessment methods (SDAMs) that use physical and biological indicators to determine the flow duration class of a particular stream in a single site visit may be used.
 - Additional information on the agencies' efforts to develop regionally-specific SDAMs will be available on EPA's website in the near future.



METHODS FOR IMPLEMENTATION

Sources of information used to evaluate surface flows and surface water connections should be interpreted within the context of the “typical year” concept (*i.e.*, based on normal climatic conditions that are neither too wet nor too dry).

Determining surface flow and surface water connections that occur in a typical year:

- The Corps has developed an Antecedent Precipitation Tool (APT) that collects NOAA precipitation from nearby weather stations and compares precipitation from the time period of interest with precipitation data from the past 30 years, that may be used to determine whether precipitation conditions fall within the normal range.
- Other data sources and tools that may be used to inform whether hydrologic flows or surface water connections occur under normal climatic conditions include: drought indices, water-budget models, snow telemetry data, continuous flow monitor data, physical and biological indicators of typical flow conditions, or remote sensing data and hydrologic models.

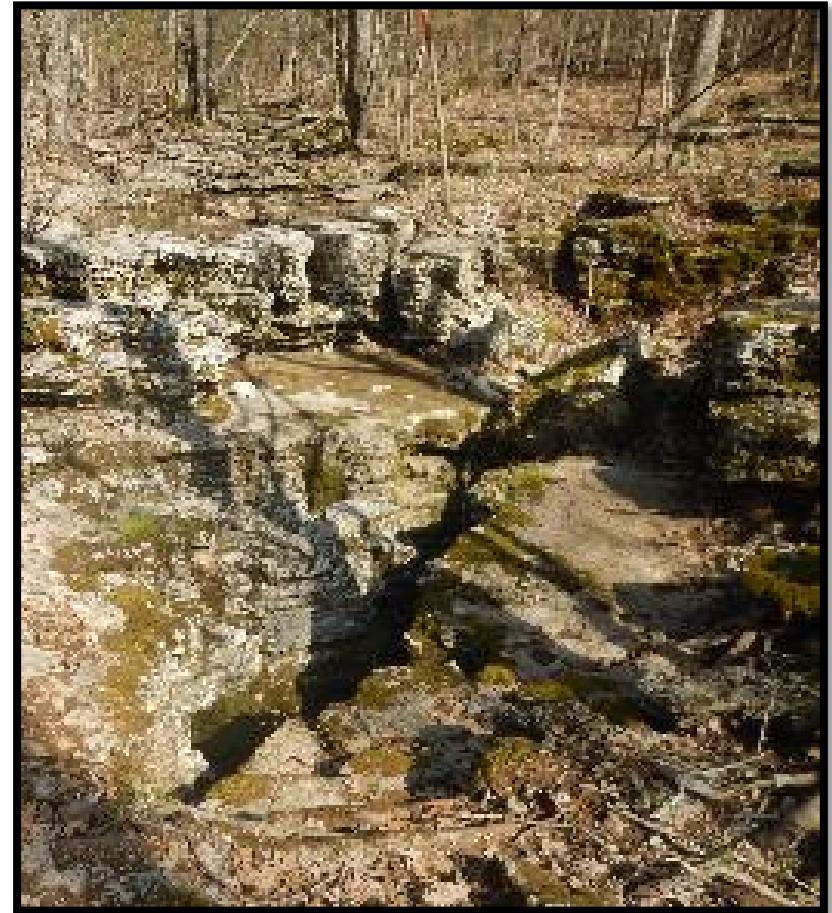


TRIBUTARIES – (a)(2) WATERS NATURAL AND ARTIFICIAL FEATURES

- A tributary does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through the following features:
 - A channelized non-jurisdictional surface water feature
 - A subterranean river
 - A culvert, dam, tunnel, or similar artificial feature
 - A debris pile, boulder field, or similar natural feature
 - An excluded feature under paragraph b of the Rule

SUBTERRANEAN RIVER

A subterranean river is a natural channel that temporarily flows underground as a channelized river or stream, maintaining the same or very nearly the same flow volume underground and at the downstream point where it returns to the surface. Similarly urban areas can have artificial buried underground tunnel systems that act in the same way.



FEATURES THAT SEVER JURISDICTION

- Surface stream channels that disappear underground and become part of the ground water aquifer.
 - They never reconnect with the downstream tributary system (other than possibly via groundwater) and as such are not jurisdictional.
- Stream channel breaks that do not contribute surface water flows to downstream jurisdictional waters in a typical year.
 - These stream breaks may only convey surface water flows during precipitation events that generally do not occur in a typical year (e.g., 10-, 25-, 50-, 100- or 500-year storms or floods).

(A)(2) TRIBUTARIES:

Key changes from the 2019 (Step 1) Rule:

- No significant nexus test
- Ephemeral streams are non-jurisdictional, whereas some may be found jurisdictional under the 2019 (Step 1) Rule.

The NWPR does not change existing regulations for establishing the lateral limits of federal jurisdiction for tributaries.

The Ordinary High Water Mark (OHWM) will continue to be used to establish the lateral limits of surface water features, such as tributaries.



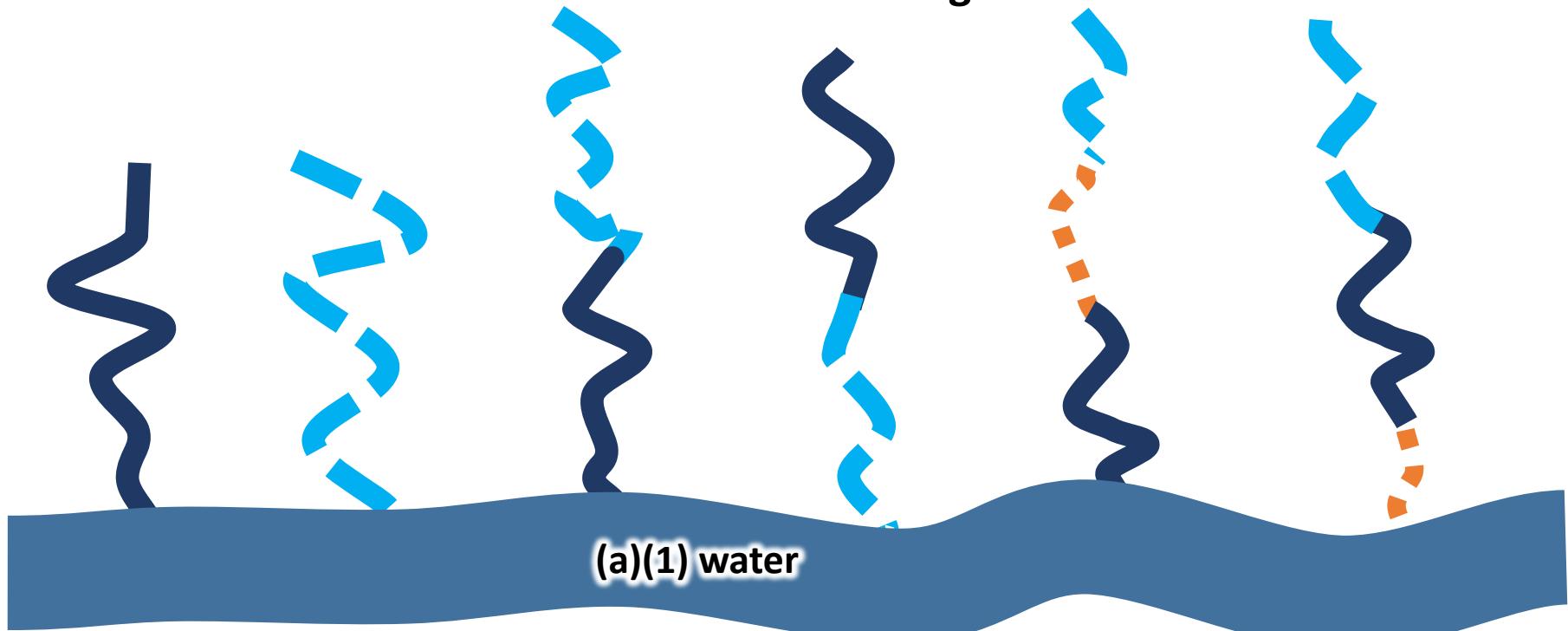
Tributaries include those perennial or intermittent streams that flow in response to snowpack melt, like Hayes Creek in Colorado that contributes surface flow to the Crystal River.



TRIBUTARIES – (a)(2) WATERS NATURALLY OCCURRING

- The alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to satisfy the flow conditions of this definition (i.e. perennial or intermittent in a typical year).
- The term *tributary* includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of this definition.

Tributaries – Flow Regime



Perennial Tributary¹ (jurisdictional)



Intermittent Tributary¹ (jurisdictional)

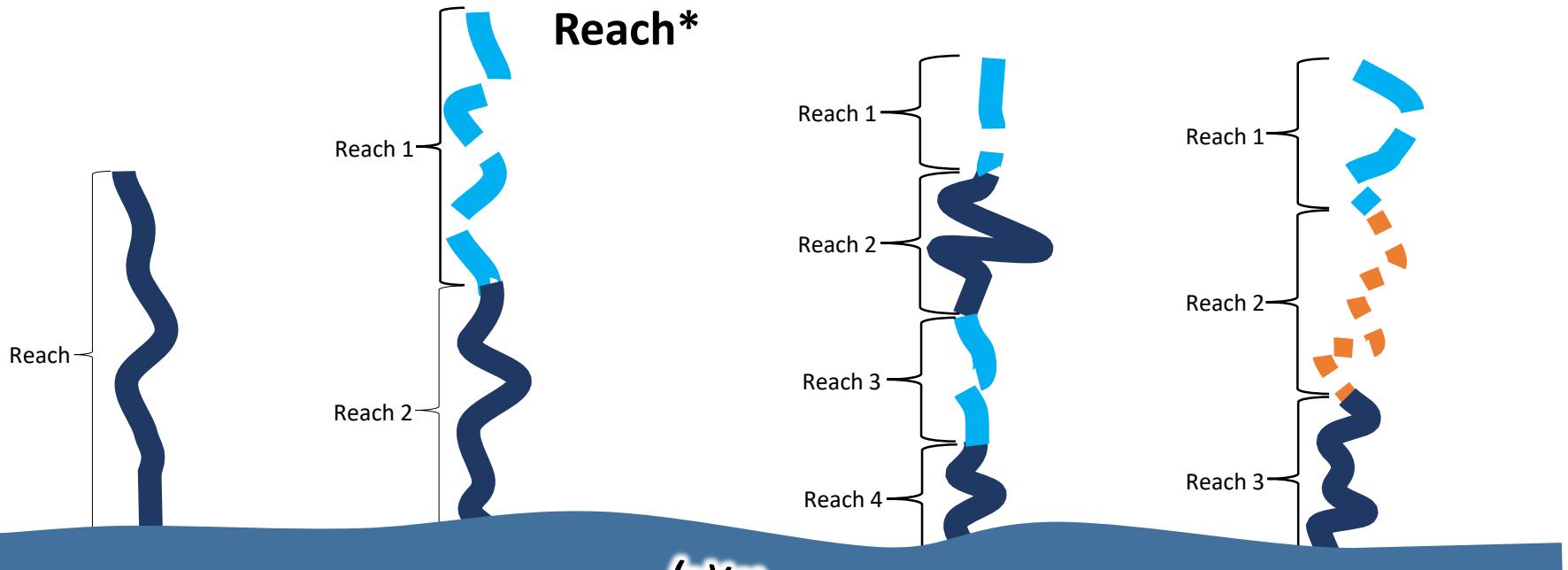


Ephemeral Channel² (not jurisdictional)

¹The “tributary” definition contains no flow volume requirement, but only a requirement of perennial or intermittent flow and a contribution of surface water flow to a paragraph (a)(1) water in a typical year.

²While the channelized ephemeral feature is not itself jurisdictional, tributaries upstream of it do not lose jurisdiction so long as the channelized ephemeral feature contributes surface water flow in a typical year to a downstream jurisdictional water.

Tributaries - Reach*



- Perennial Tributary (jurisdictional)
- Intermittent Tributary (jurisdictional)
- Ephemeral Channel (not jurisdictional)

*Tributary "reach" means a section of a stream or river along which similar hydrologic conditions exist, such as discharge, depth, area, and slope. If a perennial tributary becomes intermittent and then ephemeral and then perennial again, it may be viewed as four separate reaches (e.g., perennial reach, intermittent reach, ephemeral reach, perennial reach), especially if they also share other similarities with respect to depth, slope, or other factors. In general, a reach can be any length of a stream or river, but the length is bounded by similar flow characteristics.

DITCHES

The term *ditch* means a constructed or excavated channel used to convey water.

Ditches are not an independent category of WOTUS; ditches are jurisdictional only where they are:

- TNWs, including those subject to the ebb and flow of the tide (*i.e.*, are (a)(1) waters);
- Either constructed in or relocate a tributary, or are constructed in an adjacent wetland, and satisfy the flow conditions of the tributary definition (*i.e.*, are (a)(2) waters); or
- Constructed in an adjacent wetland and develop wetland characteristics (*i.e.*, are (a)(4) waters).

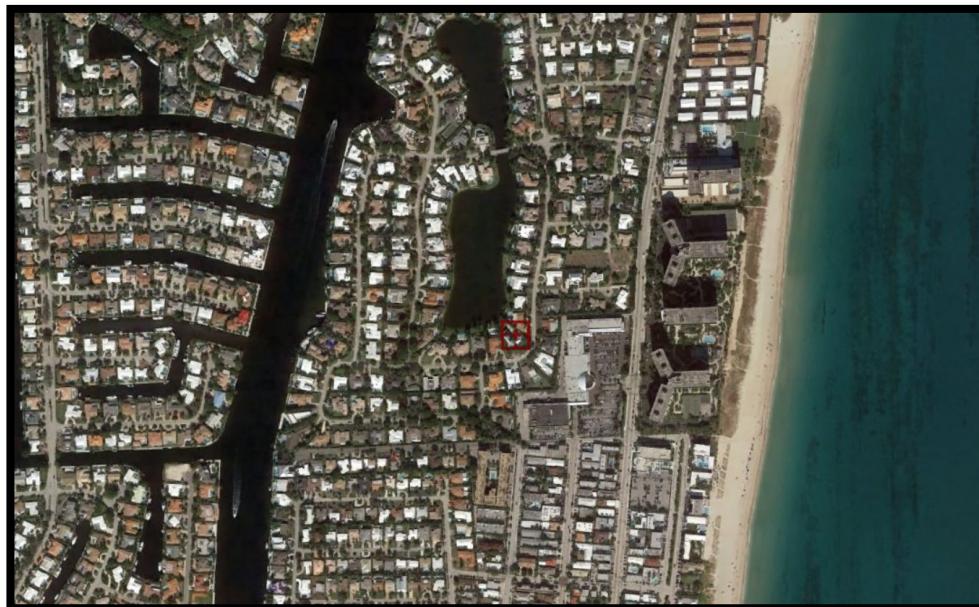
Key Changes from the 2019 (Step 1) Rule:

- The NWPR codifies that ditches constructed in upland (other than TNWs and rerouted tributaries), certain ditches constructed in wetlands, and ditches with ephemeral flow are not jurisdictional.



WHEN IS A DITCH A WATER OF THE US?

- When the ditch meets the conditions of an (a)(1) water
 - Territorial sea
 - Traditional Navigable Water (TNW)
 - Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide.



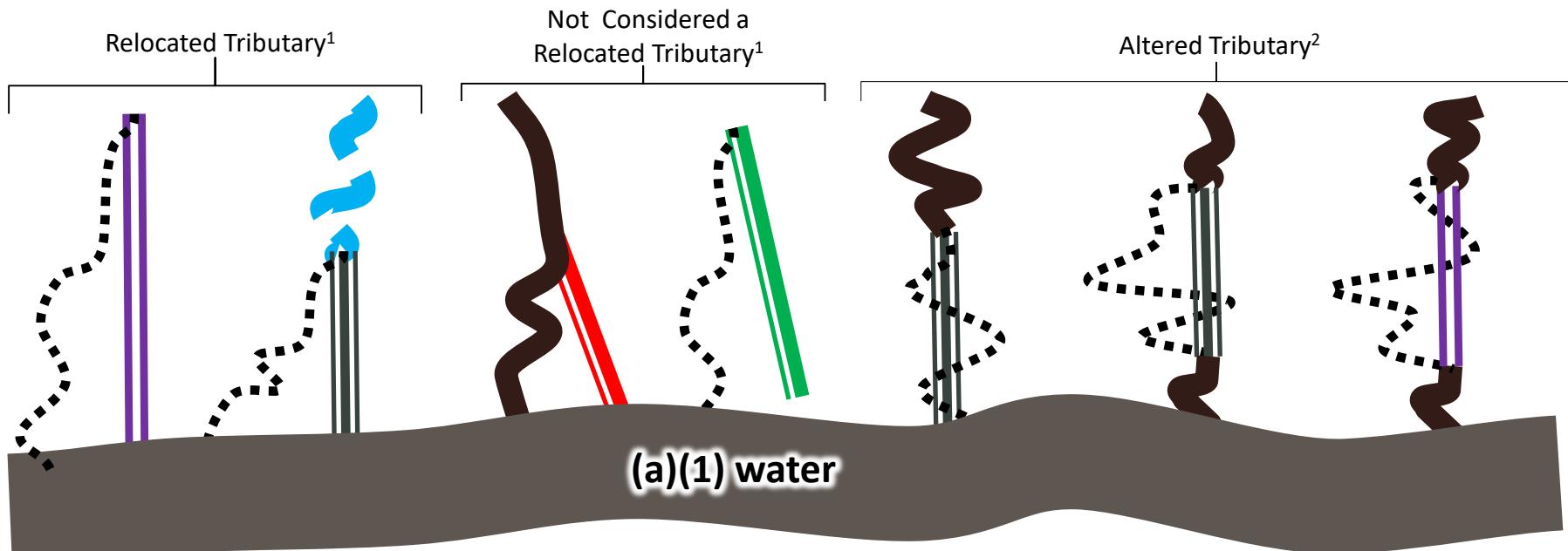
WHEN IS A DITCH A WATER OF THE US?

- When the ditch meets the flow conditions of an (a)(2) water - has perennial or intermittent surface water flow in a typical year **AND** contributes surface water flow to a jurisdictional water in a typical year, **AND**
 - Relocates a tributary,
 - Is constructed in a tributary, or
 - Is constructed in an adjacent wetland



Construction in progress.
Natural tributary on the left.
Relocated ditch on the right.
Natural tributary to be filled in
after construction.

Relocated¹ and Altered² Tributaries³



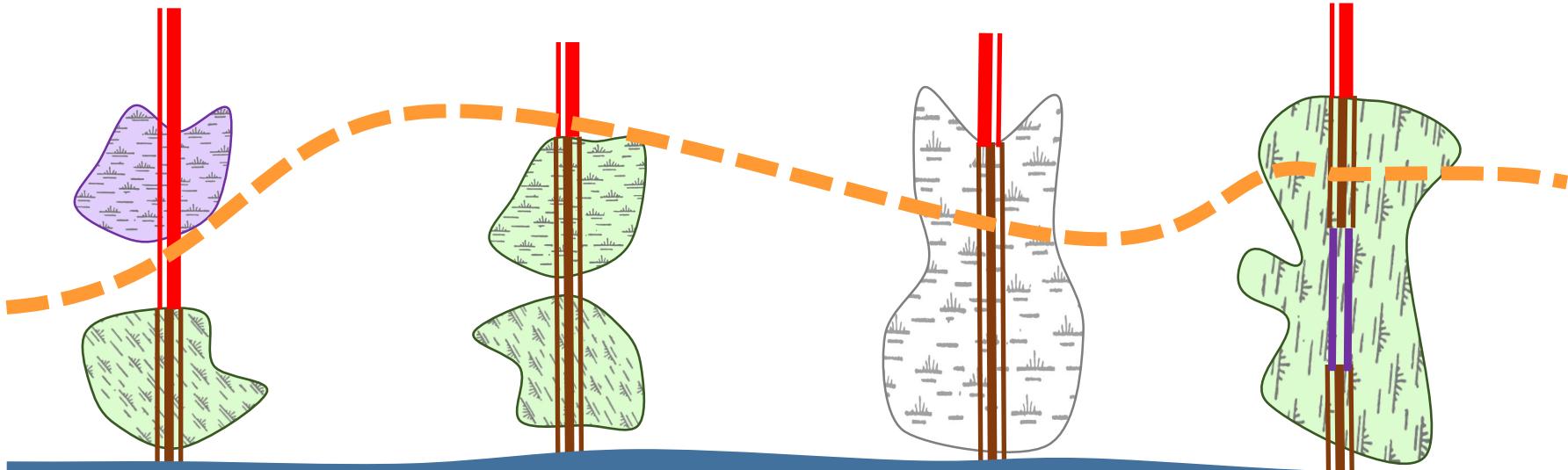
	Perennial Tributary (jurisdictional)
	Intermittent Tributary (jurisdictional)
	Perennial or Intermittent Ditch (jurisdictional)
	Intermittent Ditch (not jurisdictional- did not wholly relocate channel)
	Ephemeral Ditch ³ (not jurisdictional)
	Relict Tributary Channel (not jurisdictional currently; formerly jurisdictional)
	Intermittent Ditch (not jurisdictional- no longer contributes flow to (a)(1))

¹A ditch is considered to have “relocated” a tributary when it moves the tributary channel to a different location. A ditch that relocates a tributary must continue to meet the flow conditions of the “tributary” definition and contribute surface water flow to a paragraph (a)(1) water in a typical year to remain jurisdictional.

²An altered tributary is one in which the flow or geomorphic conditions have been modified in some way.

³The alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to be perennial or intermittent and contributes surface water flow to a traditional navigable water or territorial sea in a typical year.

Ditches Constructed in Wetlands



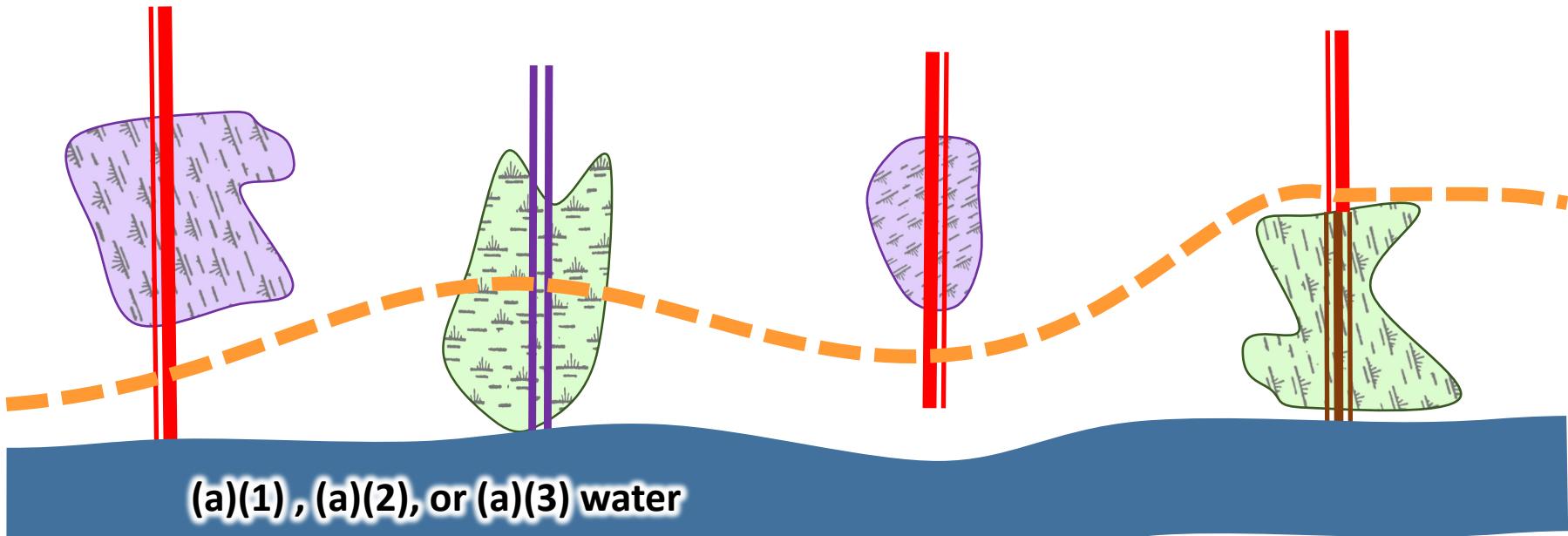
(a)(1) water

- Perennial or Intermittent Ditch- Not a Relocated Tributary (jurisdictional)
- Perennial or Intermittent Ditch- Not a Relocated Tributary (not jurisdictional)
- Ephemeral Ditch– does not contain wetland (not jurisdictional)
- (a)(4) Adjacent Wetland (jurisdictional)
- Non-adjacent Wetland (not jurisdictional)
- Extent inundation by flooding from (a)(1) in a typical year
- Former (a)(4) Adjacent Wetland that no Longer Exists (non-jurisdictional)

The phrase “constructed in an adjacent wetland” refers to ditches originating in or constructed entirely within an adjacent wetland. The phrase also includes ditches that are constructed through adjacent wetlands, but jurisdiction over those ditches only includes those portions in adjacent wetlands and downstream to other jurisdictional waters, as long as those portions satisfy the flow conditions of paragraph (c)(12). Jurisdiction does not extend to upland portions of the ditch prior to entry into an adjacent wetland.

A ditch cannot render an otherwise isolated wetland an “adjacent wetland” and thus jurisdictional on that basis, unless the ditch itself is a tributary.

Ditches Constructed in Wetlands



- Perennial or Intermittent Ditch— Not a Relocated Tributary (jurisdictional)
- Perennial or Intermittent Ditch— Not a Relocated Tributary (not jurisdictional)
- Ephemeral Ditch— does not contain wetland (not jurisdictional)
- (a)(4) Adjacent Wetland (jurisdictional)
- Non-adjacent Wetland (not jurisdictional)
- Extent inundation by flooding from (a)(1) in a typical year

The phrase “constructed in an adjacent wetland” refers to ditches originating in or constructed entirely within an adjacent wetland. The phrase also includes ditches that are constructed through adjacent wetlands, but jurisdiction over those ditches only includes those portions in adjacent wetlands and downstream to other jurisdictional waters, as long as those portions satisfy the flow conditions of paragraph (c)(12). Jurisdiction does not extend to upland portions of the ditch prior to entry into an adjacent wetland.

A ditch cannot render an otherwise isolated wetland an “adjacent wetland” and thus jurisdictional on that basis, unless the ditch itself is a tributary.

(A)(3) LAKES AND PONDS, AND IMPOUNDMENTS OF JURISDICTIONAL¹⁵ WATERS:

- Lakes and ponds, and impoundments of jurisdictional waters means standing bodies of open water that contribute surface water flow to a paragraph (a)(1) water in a typical year.
- A lake, pond, or impoundment does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature (e.g., an ephemeral stream, non-jurisdictional ditch), through a culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, or similar natural feature.
- A lake, pond, or impoundment is also jurisdictional if it is inundated by flooding from a paragraph (a)(1)-(3) water in a typical year.



WHAT ARE LAKES, PONDS, AND IMPOUNDMENTS OF JURISDICTIONAL WATERS?

- Defined in the NWPR in paragraph (c)(6)
 - Standing bodies of open water



(A)(3) LAKES AND PONDS, AND IMPOUNDMENTS OF JURISDICTIONAL WATERS:

Key changes from the 2019 (Step 1)

Rule:

- Similar to the 2019 Rule, the NWPR regulates lakes and ponds as part of the tributary network, but clarifies that other kinds of surface hydrologic connections (e.g., inundation by flooding from an (a)(1)-(3) water) in a typical year) can also render lakes, pond, and impoundments jurisdictional.
- Impoundments of jurisdictional waters are jurisdictional only if they contribute surface water flow to a downstream TNW or territorial sea in a typical year or are inundated by flooding from an (a)(1)-(a)(3) water in a typical year.



Lakes and ponds, and impoundments of jurisdictional waters include open bodies of surface water that contribute surface flow to a traditional navigable water, like Christian Pond in Wyoming.



ARTIFICIAL VS. NATURAL

- The Rule makes a distinction between artificial and natural lakes and ponds for the purposes of exclusion (b)(8).
 - Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in uplands or in non-jurisdictional waters, so long as those artificial lakes and ponds are not impoundments of jurisdictional waters that meet the conditions of paragraph (c)(6) are excluded.



WHEN IS IT A WATER OF THE US?

- LPIs of jurisdictional waters do not lose their jurisdictional status if they contribute surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature, through a culvert, dike, spillway, or similar artificial feature, or through a debris pile, boulder field, or similar natural feature.



WHEN IT ISN'T A WATER OF THE US

- LPIs upstream of certain excluded features are NOT jurisdictional if the feature isn't channelized (e.g., diffuse stormwater runoff/directional sheet flow) or if the non-jurisdictional channelized feature, natural feature, or artificial feature (e.g., dam) doesn't convey surface water flow in a typical year. LPIs are NOT jurisdictional if the connection is groundwater.



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(A)(4) ADJACENT WETLANDS:

The term “adjacent” means wetlands that:

- abut, meaning to touch at least at one point or side of, a paragraph (a)(1)-(3) water;
- are inundated by flooding from a paragraph (a)(1)-(3) water in a typical year;
- are physically separated from a paragraph (a)(1)-(3) water only by a natural berm, bank, dune, or similar natural feature; or
- are physically separated from a paragraph (a)(1)-(3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection in a typical year through a culvert, flood or tide gate, pump, or similar artificial feature.

An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.



(A)(4) ADJACENT WETLANDS:

The rule does not change the long-standing definition of “wetlands.”

Key changes from the 2019 (Step 1) Rule:

- Revises long-standing definition of “adjacent.”
- No wetlands are evaluated by a significant nexus test.
- Wetlands physically separated from an (a)(1) - (a)(3) water by an artificial berm, dike, or similar artificial feature must have a direct hydrologic surface connection to the jurisdictional water in a typical year to be considered adjacent.



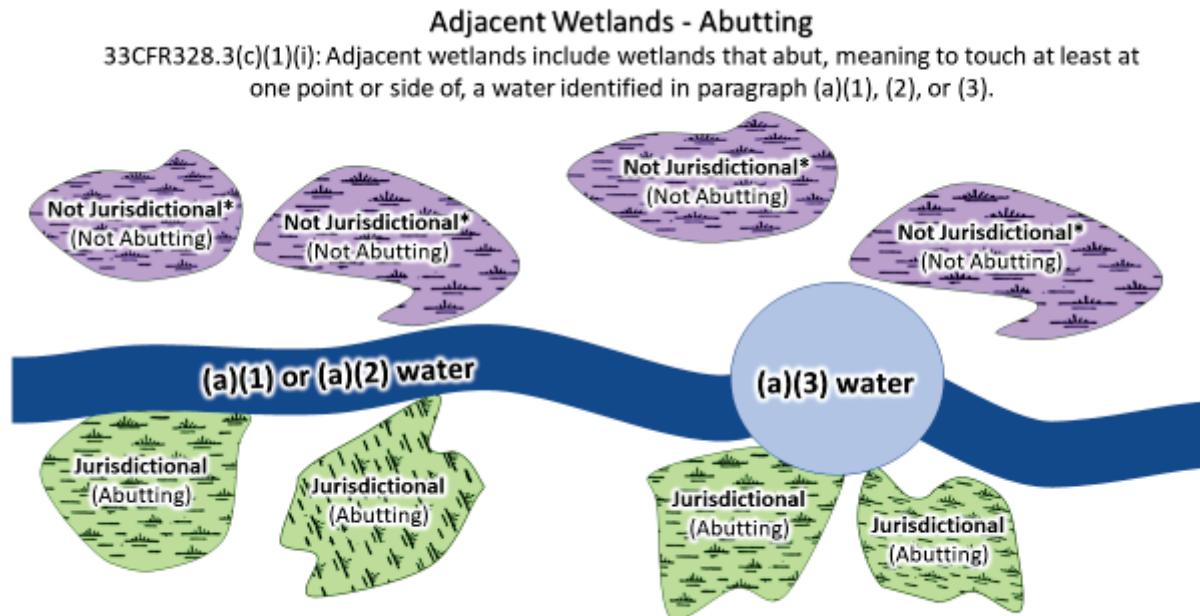
Adjacent wetlands include wetlands with manmade structures that allow for a direct hydrologic surface connection to an (a)(1)-(3) water in a typical year, like these wetlands in the Mississippi river Delta region of Louisiana.



ADJACENCY - JURISDICTIONAL

Wetlands that

- i) abut, meaning that they touch at least at one point or side of an (a)(1) – (a)(3) water



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.

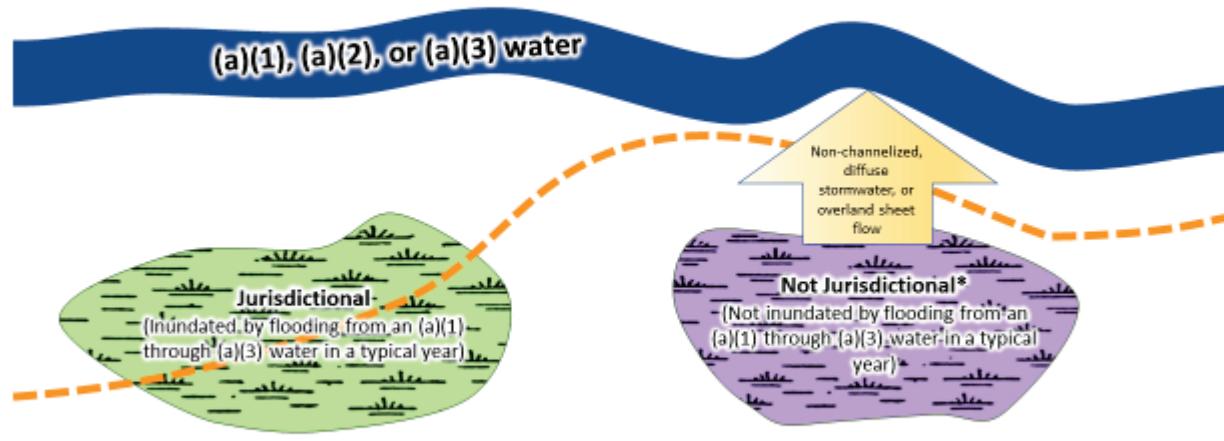
ADJACENCY - JURISDICTIONAL

Wetlands that

- ii) are inundated by flooding from an (a)(1) – (a)(3) water in a typical year

Adjacent Wetlands – Inundated by Flooding

33CFR328.3(c)(1)(ii): Adjacent wetlands include wetlands that are inundated by flooding from a paragraph (a)(1) through (3) water in a typical year.



— Extent inundation by flooding from (a)(1) in a typical year

*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.



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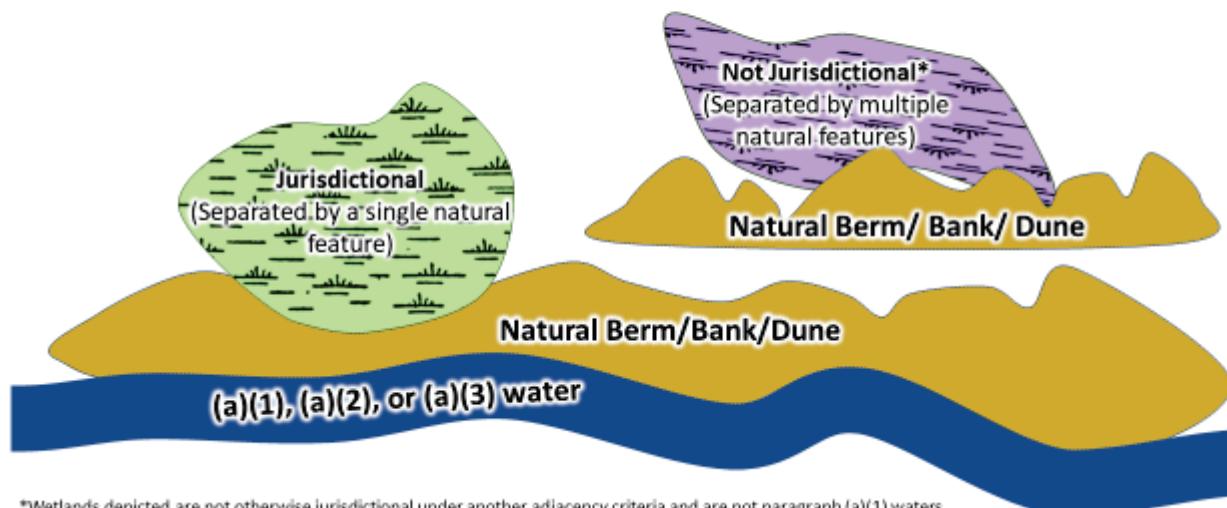
ADJACENCY - JURISDICTIONAL

Wetlands that

- iii) are physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature

Adjacent Wetlands – Separated by Natural Feature

33CFR328.3(c)(1)(iii): Adjacent wetlands include wetlands that are physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature.



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.

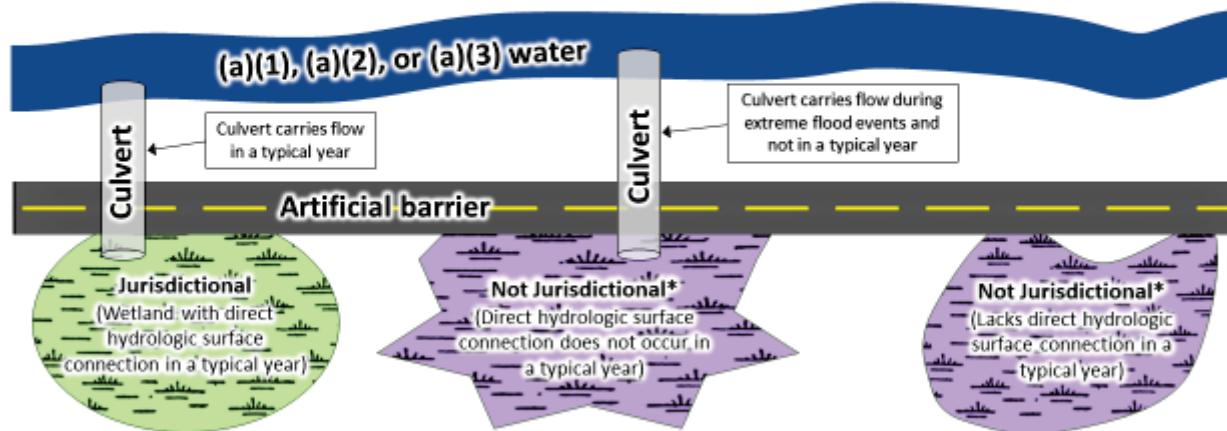
ADJACENCY - JURISDICTIONAL

Wetlands that

- iv) are physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the (a)(1) – (a)(3) water in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.

Adjacent Wetlands – Separated by Artificial Structure

33CFR328.3(c)(1)(iv): Adjacent wetlands include wetlands physically separated from a water identified in paragraph (a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the water identified in paragraph (a)(1), (2), or (3) in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.



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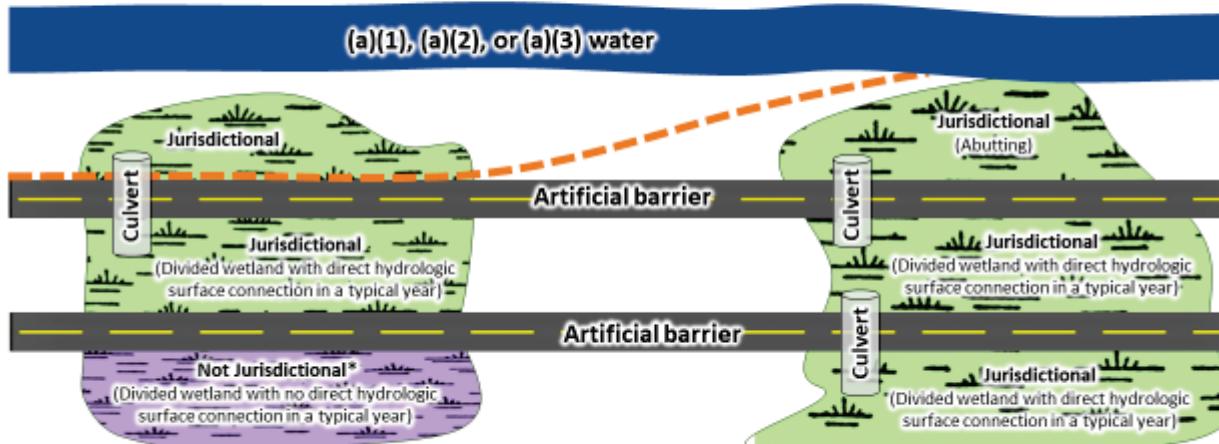
ADJACENCY - JURISDICTIONAL

Wetlands that:

Are separated by an artificial barrier or structure that allows for a direct hydrologic surface connection through or over the structure in a typical year.

Adjacent Wetlands – Separated by Artificial Structure

33CFR328.3(c)(1): An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.



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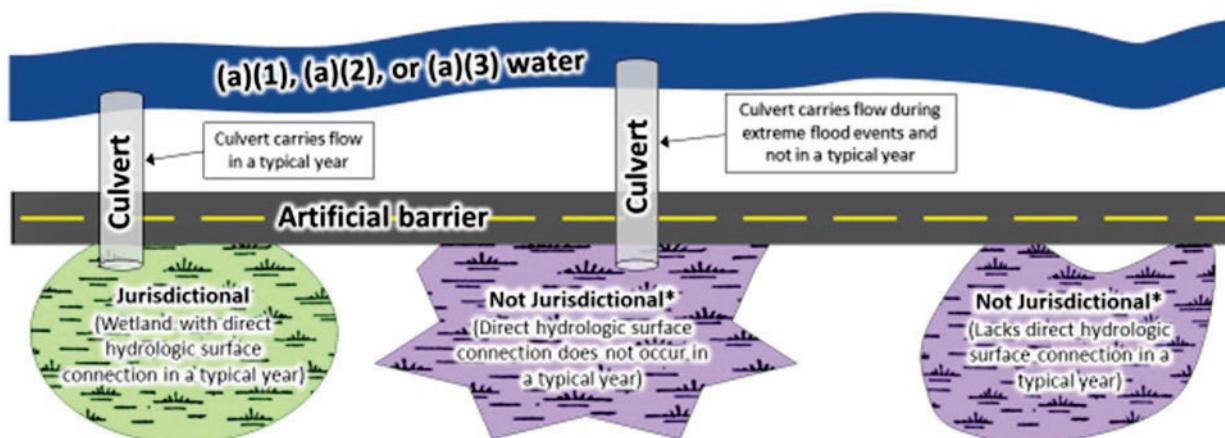


ADJACENCY - BREAKS

An adjacent wetland is not jurisdictional when a road or similar artificial structure divides the wetland, when the structure does not have or only allows for a direct hydrologic surface connection through or over that structure in extreme events.

Adjacent Wetlands – Separated by Artificial Structure

33CFR328.3(c)(1)(iv): Adjacent wetlands include wetlands physically separated from a water identified in paragraph (a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the water identified in paragraph (a)(1), (2), or (3) in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.



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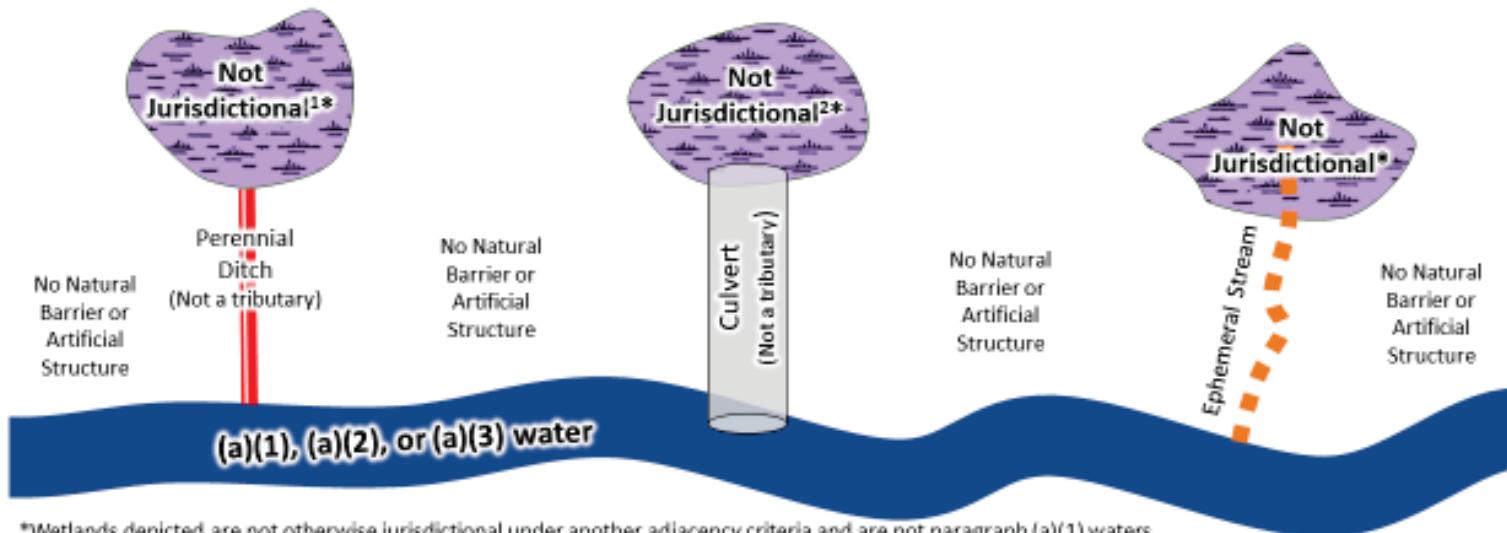


ADJACENCY - BREAKS

Adjacent Wetlands – Hydrologic Connections

¹A ditch cannot render an otherwise isolated wetland an “adjacent wetland” and thus jurisdictional on that basis, unless the ditch itself is a tributary.

² 33CFR328.3(c)(1): Adjacent wetlands include wetlands that are physically separated from a water identified in paragraph (a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the water identified in paragraph (a)(1), (2), or (3) in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.

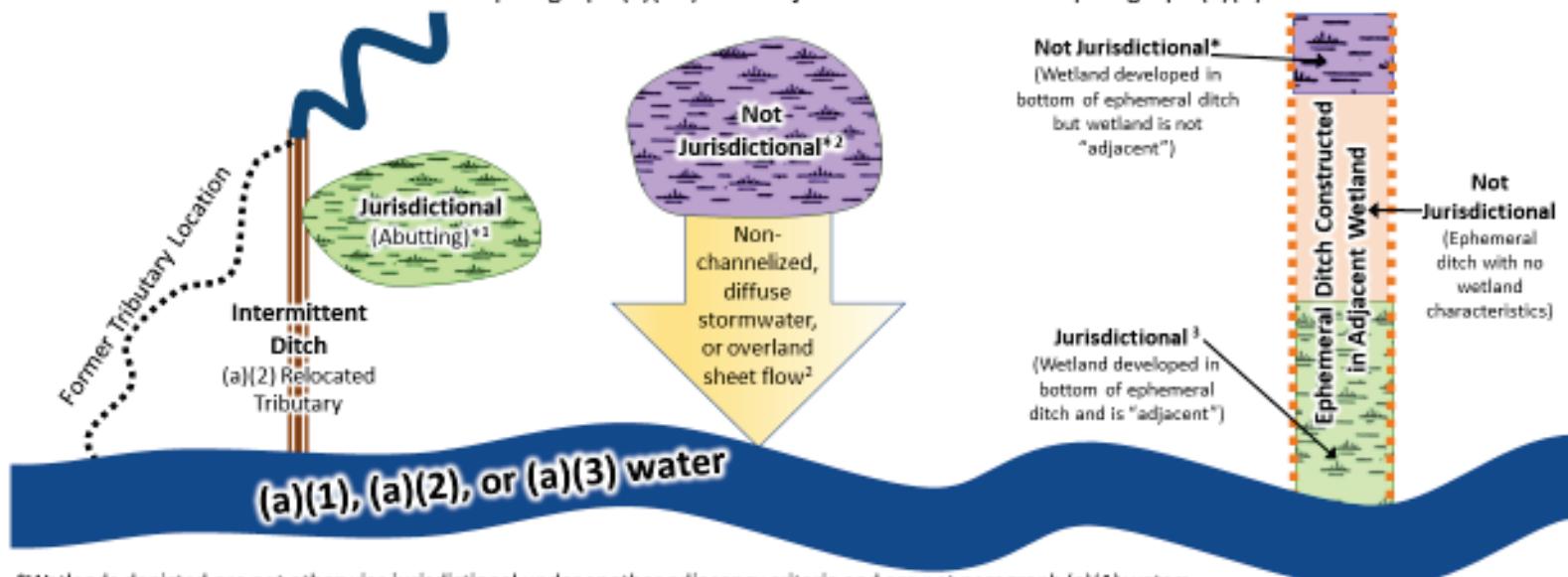
ADJACENCY - BREAKS

33CFR328.3(c)(1) Adjacent Wetlands

¹A ditch cannot render an otherwise isolated wetland an “adjacent wetland,” unless the ditch itself is a tributary.

²Non-channelized, diffuse stormwater and overland sheet flow cannot sustain a regular or predictable surface water connection between upstream and downstream waters and therefore cannot maintain jurisdiction between such waters.

³A ditch constructed in an adjacent wetland that contributes less than perennial or intermittent flow to a paragraph (a)(1) water in a typical year and that, due to lack of maintenance, gains wetland characteristics may be viewed as an adjacent wetland if it meets the definition of both “wetlands” under paragraph (c)(16) and “adjacent wetlands” under paragraph (c)(1).



*Wetlands depicted are not otherwise jurisdictional under another adjacency criteria and are not paragraph (a)(1) waters.



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PARAGRAPH B EXCLUSIONS: AQUATIC FEATURES EXCLUDED FROM NWPR WOTUS DEFINITION

- (b)(1) - Waters not listed as WOTUS
- (b)(2) - Groundwater
- (b)(3) - Ephemeral features
- (b)(4) - Diffuse stormwater run-off
- (b)(5) - Ditches not identified as WOTUS
- (b)(6) - Prior converted cropland (PCC)
- (b)(7) - Artificially irrigated areas
- (b)(8) - Artificial lakes and ponds
- (b)(9) - Water-filled depressions incidental to mining or construction activity
- (b)(10) - Stormwater control features
- (b)(11) - Groundwater recharge, water reuse, and wastewater recycling structures
- (b)(12) - Waste treatment systems



EXCLUSIONS OVERVIEW

- The (b)(1) exclusion includes all waters that are not enumerated in paragraph (a)(1) through (a)(4).
- However, paragraph (b) also identifies a list of specific waters that are non-jurisdictional in (b)(2) through (b)(12).
- For documentation purposes, a water should be evaluated as excluded from CWA jurisdiction by first using one of the (b)(2) through (b)(12) exclusions that best describes the water.
- A water that does not meet the conditions of one of the (b)(2) through (b)(12) exclusions and is not an (a)(1), (a)(2), (a)(3), or (a)(4) water will be an excluded water under paragraph (b)(1).

HOW TO IMPLEMENT AND CONSIDER EXCLUSIONS

- An excluded water that develops wetlands within the confines of the excluded water should be described as a single water that meets the exclusion, except for wetlands that develop in certain ditches.
- In order to conclude a water is non-jurisdictional, the Corps must complete an approved jurisdictional determination.
- Wetlands should be identified within an excluded water using the appropriate wetland delineation method.

HOW TO IMPLEMENT AND CONSIDER EXCLUSIONS

- Some excluded waters can provide a connection between upstream and downstream jurisdictional waters. Excluded waters remain non-jurisdictional even if they provide a connection between upstream and downstream jurisdictional waters.
- A typical year assessment may be necessary for some waters in order to conclude the water is excluded.

(b)(1) Waters or water features continued...

- (b)(1) Examples, where the requirements of the exclusion have been met:
 - Wetlands connected to a tributary by a non-jurisdictional feature
 - Physically remote isolated wetlands
 - Land areas that do not meet the definition of wetland
 - Intermittent and perennial losing streams that do not contribute flow directly or indirectly to (a)(1) waters in a typical year
 - Natural lakes and ponds that are not (a)(1) waters that lack a direct or indirect surface water connection to downstream (a)(1) waters in a typical year and are not inundated by flooding from an (a)(1), (a)(2) or (a)(3) water in a typical year
 - Impoundments originally constructed in jurisdictional waters but no longer contribute surface water flow in a typical year directly or indirectly to an (a)(1) water.
 - Underground or buried portions of a channel network (including culverts)

KEY ELEMENTS OF EXCLUSIONS

Upland:

- The term upland means any land area that under normal circumstances does not satisfy all three wetland factors (*i.e.*, hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (c)(16) and does not lie below the ordinary high water mark or the high tide line of a jurisdictional water.
- Features constructed or excavated in upland or in non-jurisdictional waters must be constructed/excavated wholly in upland or non-jurisdictional waters to meet applicable exclusions.
 - The mere interface between the excluded feature constructed or excavated wholly in upland and a jurisdictional water does not make that feature jurisdictional.

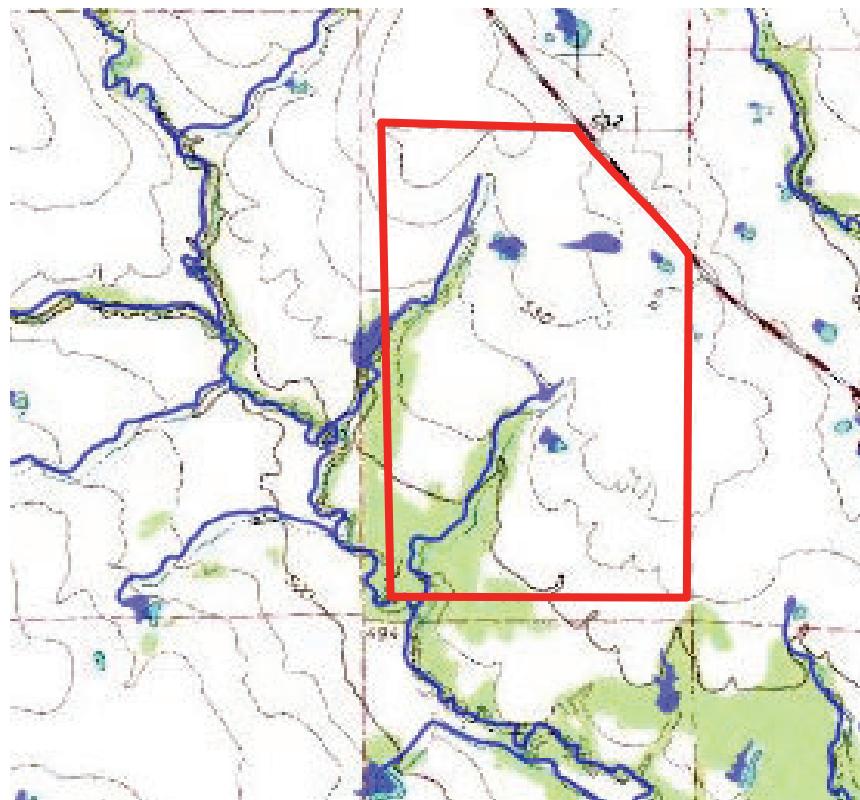
Exclusions as surface water connections:

- Certain excluded features may convey surface water flow to a downstream jurisdictional water in a typical year, thereby serving as a connection for upstream and downstream jurisdictional tributaries, lakes, ponds, and impoundments. This does not include groundwater or diffuse stormwater runoff/overland sheet flow.
- Excluded features that convey surface water flow between jurisdictional waters in a typical year do not become WOTUS themselves.



NWPR APPROVED JD FORM: INTRODUCTION

- The NWPR approved JD Form is designed to document the jurisdictional status of ALL waters within a review area on a single form.



Legend

- Overall JD Review Area

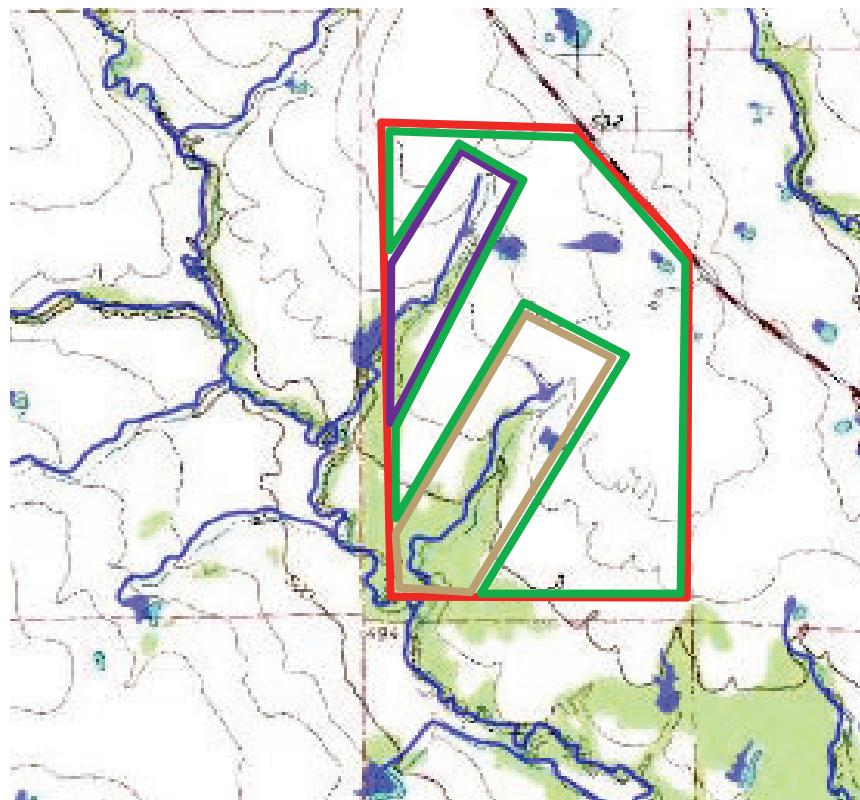


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NWPR APPROVED JD FORM: INTRODUCTION

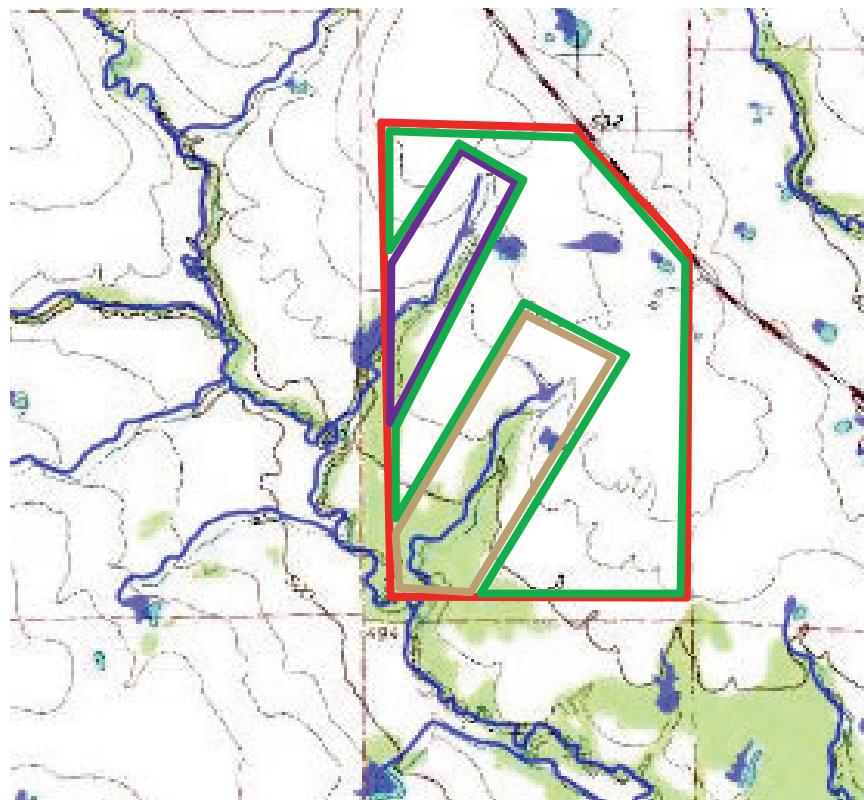
- There may be circumstances where waters in a review area are documented on multiple approved JD forms...



Legend	
• Overall JD Review Area	
• AJD 1 Review Area	
• AJD 2 Review Area	
• AJD 3 Review Area	

NWPR APPROVED JD FORM: INTRODUCTION

- ...or a combination of approved JD and preliminary JD forms.



Legend	
• Overall JD Review Area	<input type="checkbox"/>
• AJD 1 Review Area	<input type="checkbox"/>
• AJD 2 Review Area	<input type="checkbox"/>
• PJD 1 Review Area	<input type="checkbox"/>