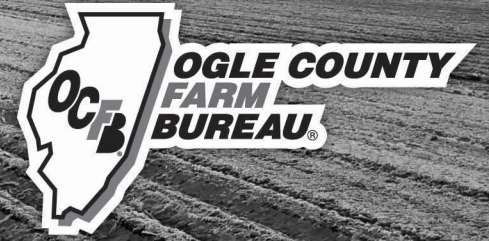


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Editor : Ron Kern



OFF THE CUFF

By: RON KERN

Ever since the Clean Water Act passed Congress in 1985 we have been dealing with Waters of the US (WOTUS). The intent forty years ago was to protect the navigable waters of the US. But as history has proven time and time again once the bureaucrats and the regulators get their hands on things it becomes a nightmare. Welcome to WOTUS 40 years later.

By consistently changing the definition of "navigable" no one knows what is and isn't a WOTUS anymore. The Army Corps will tell you the ditch along the highway is a navigable water and subject to regulation.

And so now here we sit and again the rule is being changed. So here's the latest skinny.

- For four decades, the definition of "waters of the United States" under the Clean Water Act has been unclear, leading to regulatory uncertainty. Five rule changes since 2015 and conflicting court decisions created a "ping-pong" effect, leaving farmers unsure which water features on their land fall under federal jurisdiction.
- In their ruling in Sackett v. EPA, the Supreme Court eliminated the "significant nexus" test, which broadened the federal government's jurisdictional reach. The ruling clarified that only relatively permanent waters and wetlands with a continuous surface connection to regulated waters fall under federal jurisdiction. This decision was widely praised for providing the clearest legal standard in decades.
- The Trump administration's proposed WOTUS rule adopts Sackett's framework, excluding isolated ponds, disconnected wetlands, and most ditches. It shifts the burden of proof from landowners to the federal government and allows states to regulate beyond federal standards. While the rule aims for clarity, challenges remain — such as proving sustained flow during wet seasons.

Over the past decade, frequent regulatory changes and court decisions have left many farmers questioning what WOTUS really means for their operations. Under the Clean Water Act (CWA), the term WOTUS serves as the threshold that determines which water bodies fall under federal jurisdiction. Unfortunately, the statute offers little clarity on where that jurisdictional line should be drawn. Over the years, the Environmental Protection Agency and the U.S. Army Corps of Engineers (the agencies) have exploited this ambiguity, expanding their authority far beyond what Congress intended when drafting the law.

From the mid-1980s onward, the agencies operated under a regulatory definition that broadly interpreted WOTUS to include many waters. This expansive interpretation repeatedly ran up against judicial scrutiny. The Supreme Court's decisions on the limits of the federal government's regulatory reach, in cases such as Riverside Bayview Homes, Solid Waste Agency of Northern Cook County, and Rapanos, often created more questions than answers.

For example, the Supreme Court's 4-1-4 split in Rapanos created conflicting standards for federal jurisdiction. Justice Scalia's plurality introduced the "relatively permanent waters" test, while Justice Kennedy's concurrence advanced the "significant nexus" test. With no majority opinion, this fractured guidance left regulators and courts without a clear rule.

Beginning in 2015, the regulatory uncertainty was exacerbated as different presidential administrations attempted to make sweeping changes, creating a swinging pendulum of regulations. Consequently, the definition of WOTUS became a legal and regulatory maze — one in which wetlands, ditches, seasonal streams, drainage features or even ephemeral streams (low spots in a farm field) could be regulated. Over the last decade, there have been five different rulemakings on WOTUS.

The 2023 Supreme Court decision in Sackett v. EPA marked one of the most consequential shifts in federal water regulations since the passage of the CWA. This decision greatly narrowed the types of water features and wetlands regulated as a WOTUS and simplified compliance for landowners. The Supreme Court accomplished this by unanimously eliminating the troubling "significant nexus" test, which allowed the federal government to set up a case-by-case regulatory regime that expanded their jurisdictional reach beyond legal boundaries.

Additionally, the ruling greatly restricted the types of wetlands that fall under federal authority by providing proper guardrails for "adjacent wetland." On Nov. 17, 2025, the Trump administration proposed a new WOTUS definition that

implements the Sackett decision and upholds congressional intent under the CWA. The rule represents the greatest narrowing of the federal government's jurisdictional reach over private property. As directed by the Supreme Court, the proposal only regulates water bodies that are "relatively permanent" — meaning surface waters that flow or stand year-round or those that flow throughout the wet season — and wetlands that are directly abutting a regulated tributary and have a continuous surface connection.

Most importantly, this rule shifts the burden of proof away from the landowner and places this responsibility squarely on the federal government, meaning a farmer no longer must prove that they do not have a WOTUS on their property to use their land. It is critical to recognize that this rule upholds the cooperative federalism objective of the CWA by allowing states to serve as the primary authority in regulating water. State governments can regulate far beyond the definition of WOTUS and impose their own, more stringent rules.

SCHOLARSHIP APPLICATIONS AVAILABLE

The Ogle County Farm Bureau is pleased to announce that applications for their 2026 Scholarship Program will be available beginning January 5th to graduating high school seniors, or those enrolled at an accredited university. Farm Bureau members may pick up or have applications mailed. Applications can also be downloaded from the Ogle County Farm Bureau website at www.oglefb.org. **This year the organization will award nine total scholarships each in the amount of \$2000.**

The Don Bybee Memorial Scholarship is jointly funded by the Bybee family and the Ogle County Farm Bureau. Mr. Bybee served for many years as a director on the Ogle County Farm Bureau Board and offering this scholarship recognizes his passion for offering opportunities for Ogle County youth to advance their education.

The Mark Detig Memorial Scholarship, funded jointly by the Ogle County Pork Producers Association and the Farm Bureau will be awarded annually. Mr. Detig served as past president and director on the pork producers association board of directors and was involved in 4-H youth activities in Ogle County.

Del Flessner Memorial Scholarship, honoring the former manager of the Ogle County Farm Bureau; and two \$1000 General Farm Bureau Scholarships.

George R LeFevre Memorial Scholarship, funded by the Jeff and Joyce Tremble Family and the Farm Bureau. It recognizes Mr. LeFevre for his lifetime of service to agriculture and youth education in Ogle County.

Mary R LeFevre Memorial Scholarship, funded by the Jeff and Joyce Tremble Family and the Farm Bureau. It recognizes Mrs. LeFevre for

her dedicated service in the healthcare profession and involvement with youth education. It will be awarded to a recipient studying in a healthcare related field.

The Susan Young Scholarship honors her for her years of dedication serving the agriculture community in Ogle County. It will be awarded to a recipient majoring in an agriculture related field of study.

Two general Farm Bureau scholarships will be awarded, along with an Ag Technology Scholarship. It will be awarded to students studying in an ag technology field similar to diesel mechanics or crop technician.

Eligible applicants must meet the following criteria: must be a high school graduate; must be an Ogle County Farm Bureau member or dependent of a member; must be accepted at an accredited university or college and pursue an agricultural or agricultural-related field of study; must be a resident of Illinois; and must demonstrate a financial need. Applicants can be graduating high school seniors or students currently enrolled in an accredited college or university.

Applicants will be judged on criteria including: academic performance, demonstrated interest in agriculture, financial need and character/personality.

Those interested in receiving a scholarship application should contact the Ogle County Farm Bureau at 732-2231; or stop by their office at 421 W Pines Rd, in Oregon, IL. Applications can also be downloaded by visiting www.oglefb.org.

All applications and accompanying materials must be received no later than April 1, 2026.