



AMERICAN PUBLIC WORKS ASSOCIATION

**Your Comprehensive
Public Works Resource**

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December 30, 2025

Stacey Jensen
Oceans, Wetlands and Communities Division
Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue NW, Washington DC 20460

Milton Boyd
Office of the Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon, Washington DC 20310

RE: EPA-HQ-OW-2025-0322: Updated Definition of "Waters of the United States"

Dear Ms. Jensen and Mr. Boyd,

Protecting the Nation's surface water and groundwater is essential to public health and the quality of life our citizens enjoy and expect. The American Public Works Association (APWA) represents 32,000 public works professionals across North America who serve in both the public and private sectors providing expertise at the local, state and federal government levels. Working in the public interest, our members plan, design, build, operate, and maintain, America's vast infrastructure network that is so fundamental to our economy, environment, public health, and safety. This includes large and small, urban and rural, water supply, wastewater treatment, stormwater management, drainage and flood control systems. We appreciate the opportunity to provide comments on the updated definition of Waters of the United States (WOTUS).

APWA members take their responsibilities under the Clean Water Act (CWA) seriously and strongly support the U.S. Environmental Protection Agency's (EPA) and U.S. Army Corps of Engineers' (Corps) intention to provide greater clarity and predictability for WOTUS jurisdictional determination. Public works departments need clear implementation processes to ensure their activities consistently meet both government standards and community needs.

PRESIDENT
Vic Bienes, P.E.

CHIEF EXECUTIVE OFFICER
Scott D. Grayson, CAE



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With this in mind, we offer the following comments.

Relatively Permanent

Measuring “wet season” to determine “relatively permanent”

APWA agrees with the agencies’ determination that the term “wet season” appropriately aligns with the decision in *Rapanos v. United States (Rapanos)* of using seasonality to determine continuous flow. However, we disagree with the agencies’ recommendation for how to measure it.

As the agencies acknowledge in the preamble, surface hydrology may not always exactly overlap with the wet season. Therefore, requiring surface hydrology to be continuous throughout the entirety of a wet season is not an accurate measurement of relatively permanent flow. Because of this, APWA supports the proposed alternate approach where “wet season” means “continuous surface flow except during dry months” and is measured when the average monthly precipitation exceeds average monthly evapotranspiration. Wet/dry season precipitation patterns must be predictable year after year. This would align the definition of “wet season” with the *Rapanos* plurality’s determination that “relatively permanent” includes seasonal waters, such as those that do not flow during dry months and would ensure the term “wet season” continues to be consistent with the *Rapanos* intention of including seasonal waters in the definition of WOTUS.

Defining “Relatively Permanent”

APWA supports the pre-2015 regulatory rule that defines a “relatively permanent” water body as typically having standing or flowing water year-round or has continuously flowing water at least seasonally rather than the agencies’ proposed interpretations.

The flexibility in the *Rapanos* test ensures that regional climatic differences do not impact jurisdictional determinations, including when hydrologic responses to precipitation occur, while maintaining a framework for relatively permanent continuous surface flow. However, APWA would like to stress that, while different regions should use the best tools available for that area when measuring relatively permanent flow, it is important that these tools are used consistently within that region to ensure parity in determinations.

APWA also supports the agencies’ decision not to propose a rule that requires establishing a baseline flow. While a bright line approach would create a level of certainty, more arid regions may have waterways that meet the criteria for relatively permanent flow, and have a bed and banks, but its base flow varies significantly throughout the year, making a baseline hard to establish.

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Tributary

Defining Tributaries

The court opinion in *Sackett v. U.S. Environmental Protection Agency (Sackett)* states that “temporary interruptions in surface connection may sometimes occur” due to natural system changes, but this does not preclude a water body from impacting the larger system. Scientific evidence supports this conclusion asserting that tributaries perform important functions that either individually or cumulatively affect similarly situated waters in the region. Therefore, despite their lack of continuous surface connection, nonperennial tributaries continue to significantly affect the chemical, physical, or biological integrity of traditionally navigable waters.

APWA supports the determination that a tributary is “relatively permanent” and therefore jurisdictional when it has the following characteristics:

- A natural or artificial channel that provides a regular conveyance of water;
- A surface or shallow subsurface hydrologic connection to jurisdictional waters; and
- Evidence of a chemical, physical, or biological influence on jurisdictional waters.

In all cases, local field guidance should be used to account for the unique hydrology, geomorphology, biology, and climate of a region.

As such, APWA does not agree with the agencies’ determination that breaks in continuous surface connection as a result of conveyance through natural or manmade features removes a tributary’s jurisdictional status so long as the tributary continues to significantly affect the integrity of the jurisdictional waters.

Defining “Continuous Surface Connection”

Clarify Abutting

APWA supports the agencies’ use of “touching” as an example of the term abutting, because it is consistent with the 2020 Navigable Waters Protection Rule. However, we recommend including a more explicit definition of the terms “abutting” to better plot jurisdictional water based on the proposed criteria for “continuous surface connection”.

Abutting can demonstrate interconnection with traditionally navigable waters, so long as there is relative permanence of the connection. While the proposed rule identifies ways to measure “connection”, APWA recommends the definition laid out in *Sackett* which determined that a body of water is considered “connected to”

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traditionally navigable waters if it is determined to have a material influence on the chemical, physical, or biological integrity of the water and a relatively permanent hydrologic connection. This link can be established by evaluating the:

- Contribution of flow to covered waters;
- Trapping, transformation, filtering, and transport of materials;
- Retention and attenuation of floodwaters and runoff;
- Modulation of temperature in traditionally navigable waters;
- Presence of shared biota;
- Hydrologic factors including the frequency, duration, magnitude, timing, and rate of surface and subsurface hydrologic connections, including subsurface flow;
- Landscape position and geomorphology, including distance from traditionally navigable waters, slope, soil and waterbody substrate composition; or
- Climatological variables such as temperature, rainfall, and snowpack.

If a majority of these factors prove true, then the water can be considered “connected to” the jurisdictional water and therefore abutting.

Clarify “adjacent”

The interpretation of “adjacency” in the proposed rule is a “continuous surface connection”. This is measured using two principals one of which includes the term “adjacent”. APWA recommends clarifying this term by using the agencies traditional definition of “adjacent” meaning “bordering, contiguous, or neighboring” a covered water.

Exclusions

APWA supports the new definitions of waste treatment system and ditch. The clear language in the proposed rule and additional detail in the preamble will ensure consistency in determining when a system is eligible and should receive an exclusion.

Conclusion

On behalf of public works professionals nationally, we thank you for the opportunity to provide additional comments on this important topic. We are committed to working with EPA and the Corps on our common goal of clean water. If

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you have any questions, please contact APWA's Government Affairs Manager, Leah Harnish at lharnish@apwa.org or 202-218-6727.

Sincerely,

A handwritten signature in blue ink that reads "Vic Bienes". The signature is written in a cursive style with a long, sweeping underline.

Vic Bienes, PE
APWA President

A handwritten signature in blue ink that reads "Scott D. Grayson". The signature is written in a cursive style with a long, sweeping underline.

Scott D. Grayson, CAE
Chief Executive Officer

PRESIDENT
Vic Bienes, P.E.

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Scott D. Grayson, CAE