



AMERICAN PUBLIC WORKS ASSOCIATION

**Your Comprehensive
Public Works Resource**

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June 2, 2025

Robyn S. Colosimo, P.E.
Senior Official Performing the Duties of the
Assistant Secretary of the Army (Civil Works)
Department of the Army

Peggy S. Browne
Acting Administrator for Water
U.S. Environmental Protection Agency

RE: E.O. 13132 (Federalism) Consultation to Revise the Definition of “Waters of the United States”

Dear Ms. Colosimo and Ms. Brown:

Protecting the Nation’s surface water and groundwater is essential to public health and the quality of life our citizens enjoy. 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 participate in the federalism consultation to revise the 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) desire 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.

With this in mind, we offer the below comments.

Defining the phrase “relatively permanent”

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

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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.

An evaluator should look for the presence of the following characteristics when determining if a tributary is “relatively permanent”:

- A natural or artificial channel that provides a regular¹ 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.

Other characteristics for identifying “relative permanence” may include:

- Defined channels;
- Evidence of scouring in the stream channel; or
- Evidence of fluctuating high-water marks or sediment transportation.

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

Defining the terms “connection to”, “adjacent”, and “abut” in regards to “continuous surface connections” as defined in the Supreme Court’s decision in *Sackett*.

APWA supports the 2023 Revised Definition of “Waters of the United States” criteria for identifying where continuous surface connections exist for adjacent wetlands and offer the following clarifications to better plot jurisdictional water based on the new criteria.

Scope of “connection to”

A body of water can be considered “connected to” traditionally navigable waters if it is determined that it has 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.

¹ “Regular” means seasonal flow under normal regional climatic conditions where “normal climatic conditions” are defined as the 30-year average for precipitation. ([NOAA/National Centers for Environmental Information](https://www.noaa.gov/data/monitoring-assessments/national-centers-for-environmental-information/)).

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- 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.
- 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. Performing this evaluation can be done on a case-by-case basis as part of the existing approved jurisdictional determination process.

Definition of “adjacent”

APWA supports the agencies using the traditional definition of the term “adjacent” meaning “bordering, contiguous, or neighboring” a covered water.

Definition of “abut”

APWA supports the 2020 Navigable Waters Protection Rule’s definition of abut, meaning to physically touch another jurisdictional water. Abutting can demonstrate interconnection with traditionally navigable water, so long as there is relative permanence of the connection.

Defining the scope of jurisdictional ditches

A ditch should only be considered jurisdictional waters if it:

- Complies with the definition of “connected to”;
- Is constructed with the intention of diverting in whole a tributary as defined in 40 CFR 120.2(a)(3); and
- Maintains a continuous or relatively permanent hydrologic connection to a traditionally navigable water.

All other ditches, including roadside ditches, ditches that do not carry relatively permanent flow, and ditches that exist for the purpose of conveying flood waters during storm events, should be exempt.

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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 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 black ink, reading "Dominick A. Longobardi". The signature is written in a cursive style with a large, stylized "D" and "L".

Dominick A. Longobardi
APWA President

A handwritten signature in black ink, reading "Scott D. Grayson". The signature is written in a cursive style with a large, stylized "S" and "G".

Scott D. Grayson, CAE
Chief Executive Officer

PRESIDENT
Dominick A. Longobardi

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