



January 5, 2026

U.S. Environmental Protection Agency  
EPA Docket Center, Water Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue, N.W  
Washington, D.C. 20460

[Submitted via regulation.gov](https://www.regulation.gov)

**Re: Updated Definition of “Waters of the United States,” 90 Fed. Reg. 52,498  
(November 20, 2025), Docket No. EPA-HQ-OW-2025-0322**

GPA Midstream Association (“GPA Midstream”) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”) (collectively, “the Agencies”) on the Updated Definition of “Waters of the United States” (“proposed rule”).

GPA Midstream is composed of approximately 50 corporate members that directly employ over 57,000 employees that are engaged in the gathering, transportation, processing, treating, storage and marketing of natural gas, natural gas liquids (NGLs), crude oil, and refined products, commonly referred to in the industry as “midstream activities.” In 2024, GPA Midstream members operated more than 500,000 miles of pipelines, gathered nearly 91 Bcf/d of natural gas, and operated more than 340 natural gas processing facilities. Our members are an invisible link between raw natural gas and crude oil produced at the wellhead and the distribution of products to consumers for heating, electricity production, transportation, steelmaking, fertilizer production, plastics, high-tech devices, cosmetics, pharmaceuticals, and much more.

### **Summary**

GPA Midstream appreciates the actions the Agencies have taken in the proposed rule to implement the definition of Waters of the United States (WOTUS) in light of the Supreme Court’s decision in *Sackett v. EPA*.

Midstream companies must keep pace with oil and gas producers by quickly building gathering lines, processing plants, and compressor stations. Lack of clarity about obtaining Clean Water Act permits — or even determining whether a permit is required — can frustrate the midstream industry’s ability to keep pace.

Delays through slow permitting timeframes, unexpected changes to engineering and design or the location of midstream assets, and regulatory uncertainty can add unnecessary costs to project development and even lead to postponed or cancelled infrastructure projects.

As outlined in prior comments<sup>1</sup> to the agencies during WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. 13,428 (Mar. 24, 2025), Docket No. EPA-HQ-OW-2025-0093, GPA Midstream recommended the following guiding principles in defining “Waters of the United States”:

- The Agencies should follow the *Rapanos* plurality opinion in defining “relatively permanent” waters due to its common sense and clear approach.
- The Agencies should re-instate the approach to a “continuous surface connection” found in the Navigable Waters Protection Rule.
- The Agencies should also follow the Navigable Waters Protection Rule with respect to defining jurisdictional ditches.

## Recommendations

### 1. The Agencies are correct to implement clarity and certainty to the definition of “relatively permanent” waters, founded on the plurality opinion in *Rapanos*.

As stated in our previous joint comments<sup>2</sup>, GPA Midstream understands the importance of accurately defining what are “relatively permanent” waters, as the Supreme Court has made clear that phrase is one of the defining limitations of “Waters of the United States.” See *Rapanos v. United States*, 547 U.S. 715, 734 (2006) (“the Act’s use of the traditional phrase ‘navigable waters’ (the defined term) further confirms that it confers jurisdiction only over relatively *permanent* bodies of water” and not waters with “ephemeral flow”); *Sackett*, 143 S. Ct. 1322, 1336 (2023) (“we conclude that the *Rapanos* plurality was correct: the CWA’s use of ‘waters’ encompasses ‘only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic[al] features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes.’” (quoting *Rapanos*, 547 U.S. at 739) (alteration in original).

As noted in the *Rapanos* plurality opinion, relative permanence is a key characteristic of the traditionally navigable waters that Congress intended to regulate. GPA Midstream believes that the *Rapanos* plurality adopted a workable and common sense definition of “relatively permanent”: “continuously present, fixed bodies of water” with “a continuous

---

<sup>1</sup> EPA-HQ-OW-2025-0093-0230

<sup>2</sup> *ibid*

flow of water in a permanent channel.” 547 U.S. at 733. These may include “streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought” and “seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months.” *Id.* at 732, n.5. Therefore, “relatively permanent” should generally have consistent, year-round flow.

What the definition should not involve is either the inclusion of ephemeral “waters” that merely convey runoff during or immediately after precipitation or the need for technical experts to assess the surrounding landscape and biota in order to render an opinion, such as in *United States v. Donovan*, 661 F.3d 174 (3d Cir. 2011). There, neither the court nor the defendant were capable of determining whether a channel was a “relatively permanent” jurisdictional tributary without expert reports discussing degrees of soil saturation, surface ponding during certain months, the “morphological conditions of the vegetation ... the presence and density of plant species adapted to saturated soil conditions,” and the presence of downstream culverts. *Id.* at 185 (internal quotations omitted). We believe that the characteristics of waters are rarely difficult to discern.

## **2. The Agencies should reinstate the approach taken in the Navigable Waters Protection Rule to define a “continuous surface connection” and the features to which this phrase would apply.**

As stated in our previous joint comments<sup>3</sup>, the necessity of the term “continuous surface connection,” and its application to wetlands, originates in *United States v. Riverside Bayview*, 474 U.S. 121 (1985). Although *Riverside Bayview* did not use the term itself, it examined when federal jurisdiction applies to wetlands, which would typically be excluded from the Clean Water Act.

In determining the limits of its power to regulate discharges under the Act, the Corps must necessarily choose some point at which water ends and land begins. Our common experience tells us that this is often no easy task: the transition from water to solid ground is not necessarily or even typically an abrupt one. Rather, between open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs – in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of “waters” is far from obvious.

*Id.* at 132; see also *id.* at 133 (rejecting the notion that Congress’ intended definition of “waters” could have included “wetlands”). Thus, the Court allowed Clean Water Act regulation of “adjacent wetlands” that “are inseparably bound up with ‘waters’ of the United States” due to “the inherent difficulties of defining precise bounds to regulable waters.” *Id.* at 134.

---

<sup>3</sup> EPA-HQ-OW-2025-0093-0230

GPA Midstream submits that the rule of *Riverside Bayview* is that wetlands are only subject to Clean Water Act jurisdiction where there are no clear means of separating a water from a wetland. Therefore, we support the approach used in the Navigable Waters Protection Rule where a continuous surface connection is required between a jurisdictional water and a wetland. Any physical separation between them, whether it be by a berm, flood gate, pump station, or any other feature, makes the wetland non-jurisdictional.<sup>4</sup> Where a person of ordinary prudence can see a physical separation between a jurisdictional water and a wetland, *Riverside Bayview* would no longer permit Clean Water Act jurisdiction over the wetland.

GPA Midstream understands that, in practical application, a jurisdictional water and wetland may lose an otherwise continuous surface connection during dry spells or droughts. We do not believe that an occasional drought should deprive a wetland of federal jurisdiction any more than unusual flood conditions can establish federal jurisdiction over otherwise dry land. GPA Midstream believes that, as with “relatively permanent” waters, the Agencies and land owners or right-of-way owners should look to what are the common or ordinary conditions of potentially jurisdictional wetlands.

### **3. The Agencies should likewise reinstate the approach taken in the Navigable Waters Protection Rule to define “jurisdictional ditches.”**

As stated in our previous joint comments<sup>5</sup>, GPA Midstream supports reinstating the Navigable Water Protection Rule’s definition of a “ditch” as a constructed or excavated channel used to convey water.

GPA Midstream strongly supports the Agencies’ goals of providing clarity as to when ditches are regulated under the Clean Water Act and to limit the complexity of ditch determinations. Therefore, the Agencies should reject an approach that uses an unstructured multi-factor approach where the Agencies and the regulated community must consider variables such as flow regime, various physical features, whether the ditch lies in uplands or lowlands, different usages, biological indicators, and others. Many such issues will require landowners or right-of-way owners to employ consultants to understand whether the Clean Water Act applies to their property and many factors are both subjective and likely to be conflicting in any particular case. Further, past practices have shown that treating typically dry ditches as “tributaries” leads to absurd results that Congress never

---

<sup>4</sup>The Agencies have taken the correct approach to explaining a “continuous surface connection” in the recent joint EPA and Corps Guidance Document, Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act (March 12, 2025) (“March 2025 Guidance”): a wetland is only jurisdictional when it is adjacent to a jurisdictional water and there is a “continuous surface connection to a requisite covered water making it difficult to determine where the water ends and wetland begins.”

<sup>5</sup> EPA-HQ-OW-2025-0093-0230

intended. See *Rapanos*, 547 U.S. at 725-29 (discussing several cases leading to such absurd results).

If ditches should be regulated as tributaries at all, then they should meet the ordinary dictionary definition of a “tributary:” “A river or stream flowing into a larger river or stream.” Webster’s II New Riverside University Dictionary (1984) at 1232. GPA Midstream does not believe that any special rules should be applied to ditches. Instead, they should be treated similarly to natural tributaries, requiring a “relatively permanent” flow to a traditionally navigable water. This will provide regulatory clarity and eliminate the absurd results discussed in *Rapanos*, where the occasional trickle of water makes a roadside ditch a “water of the United States” because it can theoretically be connected to a navigable water dozens of miles away. See *Rapanos*, 547 U.S. at 726-27 (criticizing *Treacy v. Newdunn Assoc.*, 344 F.3d 407 (4th Cir. 2003), *United States v. Deaton*, 332 F.3d 698 (4th Cir. 2003), and *Community Ass’n for Restoration of the Env’t v. Henry Bosma Dairy*, 305 F.3d 943 (9th Cir. 2002)).

Clear, common sense rules for when ditches are subject to federal jurisdiction avoids needless costs and delays for regulated parties and greatly reduces tying up regulators in lengthy and contentious jurisdictional determinations. Further, it significantly limits the prospect of subjecting landowners or right-of-way owners to civil or criminal penalties for routine land management activities.

#### **4. Changes to the Corps’ Approved Jurisdictional Determination should be made to accomplish the goals of the proposal**

In our prior joint comments, we stated our belief that “adopting procedures for speeding the jurisdictional determination process fits well within the spirit of Executive Order 14,156 and other orders emphasizing the need for reducing regulatory barriers to the orderly development of energy infrastructure.”<sup>6</sup>

GPA Midstream shares the goals of the agencies in the proposal to produce cost savings to project proponents from avoided permitting and mitigation activities, as well as potential indirect benefits from long-term reduction in regulatory burden.

Currently project proponents must receive an Approved Jurisdictional Determination (AJD) from the Corps in order to determine the presence or absence of WOTUS. This requires field work, documentation preparation, and involves regulatory approval timelines. Additionally, under recent guidance received from the Corps, standalone AJD requests (not submitted as part of a pre-construction notice for a permit) receive no priority status for review as they are not considered “permit approvals”.

---

<sup>6</sup> EPA-HQ-OW-2025-0093-0230

Therefore, the Agencies' expectation that the proposed rule will lead to project proponents avoiding permitting and/or that their regulatory burden will be reduced is not likely to be met unless changes are made to the AJD process.

#### **5. Clarifications and definitions to “Relatively Permanent Waters” and “Ditch” and Scope of the (b)(3) Ditch Exclusion**

The Corps is currently considering headwater ephemeral streams as WOTUS if the stream transitions to intermittent/seasonal flow (within the same stream reach), and that section that exhibits intermittent/seasonal flow comprises more than 50% of the total stream reach length (Strahler method used to determine stream reach). This is a controversial approach for many of the reasons explained in these comments.

To correct this, the final rule should clarify that ephemeral streams cannot be considered WOTUS because ephemeral streams do not constitute “relatively permanent waters”.

GPA Midstream encourages the Agencies to clarify the definition of “wet season” in the final rule and include in that definition what establishes the continuity of surface hydrology throughout the entirety of the wet season.

GPA Midstream also seeks clarity in the definition of a “relatively permanent water” that loses surface flow but regains flow further downstream, as there is ambiguity on WOTUS jurisdiction on the portions with a severed flow.

Under the proposed rule, ditches (including roadside ditches) that are constructed or excavated in a wetland are not excluded because they were not constructed or excavated entirely in dry land. This then creates the problem of the entirety of the length of a ditch potentially being considered jurisdictional because a small portion of the ditch was excavated through a wetland. An exception for a ditch that intersects with the wetland needs to be addressed. Only the portion that lies within the jurisdictional feature should be considered WOTUS, and if mitigating measures are taken to physically isolate the ditch, then it should remain an exception.

## Conclusion

GPA Midstream is thankful to the Agencies for moving forward with common sense definitions to WOTUS that conform to the intent of Congress and decisions made by the judicial branch. We believe the changes in the proposed rule will help the Agencies conform with the President's desire to see U.S. Energy Dominance. We stand ready to answer any questions the Agencies may have regarding our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM', is positioned below the word 'Sincerely,'.

Andrew Mooney  
Director of Federal Affairs  
GPA Midstream Association