



U.S. Environmental Protection Agency
Office of Water
EPA WOTUS Public Hearing for Industry and Agriculture
May 1, 2025

Statement on Behalf of American Road & Transportation Builders Association

Thank you for the opportunity to provide comments today on behalf of the American Road & Transportation Builders Association (ARTBA) and our more than 8,000 members in the transportation construction industry. My name is Prianka Sharma, and I serve as Vice President and Counsel for Regulatory Affairs.

Our members in both the public and private sectors work to plan, design, construct, and maintain the infrastructure that moves America. They are committed to balancing reliable, safe transportation with responsible environmental stewardship.

For over 50 years, ARTBA members have struggled with the shifting definition of “Waters of the United States.” Regulatory uncertainty is not just a paperwork issue—it’s the death of innovation. In cold-weather states, permitting delays can mean missing an entire construction season, slowing down critical safety upgrades.

While the 2023 “conforming rule,” issued after the Supreme Court’s *Sackett* decision, attempted to respond by replacing “significant nexus” with “relatively permanent.” But that change alone isn’t enough. The rule still leaves too much room for confusion and fails to fully implement the Court’s clear direction in *Sackett*.

ARTBA supports a formal revision, not a repeal, to the 2023 Conforming Rule. The current rule should be used as a foundation for a stronger, clearer framework.

We also urge the agencies to categorically exclude roadside ditches and ephemeral drainage features from WOTUS jurisdiction. These are not streams, they are tools designed to direct stormwater away from roadways and protect drivers. This exclusion has been longstanding in both policy and practice. However, last year, actions were taken to bring ditches back under WOTUS jurisdiction. **A ditch that’s dry most of the year isn’t a navigable water—and shouldn’t be regulated like one.**

The term “relatively permanent” must also be clearly defined. Without objective standards, it invites inconsistent interpretations. Flow characteristics may be one such tool. And the definition of “adjacent” must reflect how infrastructure actually works. Roads, berms, and other structures are often built to block or divert water—not connect it. Yet under the current

rule, some features may be regulated simply because they're nearby—even when there's no surface connection at all. This amounts to regulation by proximity.

Finally, ARTBA has heard from members who have waited to receive an approved jurisdictional determination, only to have it reversed midway through a project. It is essential that the agencies preserve valid AJDs. Reversing course mid-project only compounds delays and undermines trust in the regulatory system.

In conclusion, **clean water and clear rules can coexist**. ARTBA urges the agencies to revise the rule to reflect the law and give our industry the certainty it needs to keep people and goods moving—**safely, reliably, and on time**. We appreciate the opportunity to share these comments today, and our written comments, and look forward to working with you on a durable, lasting solution.

Thank you.