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Transportation Makes America Work
TMAW

October 9, 2026

VIA ELECTRONIC SUBMISSION

Hon. Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Hon. Adam Telle
Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
441 G St. NW
Washington, D.C. 20314

Re: Updated Definition of "Waters of the United States" (Docket No. EPA-HQ-OW-2025-0322).

Dear Administrator Zeldin and Assistant Secretary Telle:

On behalf of the more than 8,000 members of the American Road & Transportation Builders Association (ARTBA), **we write in support** of the supplemental proposal issued by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (collectively, the Agencies) concerning the definition of "waters of the United States" (WOTUS).[1] We appreciate the Agencies' consideration of additional regulatory alternatives that would provide greater certainty to our membership. ARTBA urges the Agencies to incorporate the supplemental alternatives discussed below, retain the proposed roadside ditch exclusions, and promptly issue a final rule.

Background

ARTBA's membership spans the entirety of the nation's transportation construction industry, from contractors and materials suppliers to planning and design firms, public agencies, research institutions, and equipment manufacturers. These entities plan, design, build, and maintain the roads, bridges, airports, ports, transit systems, and other infrastructure essential to the nation's economy, public safety, and mobility. Together, ARTBA members account for more than $650 billion in annual U.S. economic activity, support more than 4.4 million American jobs, and help improve the safety and quality of life of

[1] Updated Definition of "Waters of the United States," 91 Fed. Reg. 57,284 (proposed Sept. 9, 2026).

the traveling public. ARTBA and our members do not view transportation improvements and effective environmental stewardship as mutually exclusive. We believe these projects can yield benefits in safety, economic growth and mobility, while also ensuring protection of related environmental assets and natural resources.

The Clean Water Act (CWA) establishes federal protections for the nation's waters. The Act applies to "navigable waters," which it defines as "the waters of the United States, including the territorial seas."[2] The definition of WOTUS determines which waters are subject to federal CWA requirements, which can directly affect the planning, permitting, and construction of transportation projects. While state departments of transportation often serve as the lead permitting authorities, contractors and planning and design firms may also be responsible for obtaining permits, complying with permit conditions, and managing environmental requirements, depending on the project delivery method. ARTBA members therefore have extensive experience with CWA requirements and a longstanding commitment to environmental stewardship and compliance.

In November 2025, the Agencies proposed revisions to the definition of WOTUS, including changes to the treatment of tributaries, roadside ditches, and wetlands.[3] The proposal defined "relatively permanent" waters as those with standing or continuously flowing water year-round, or at least during the "wet season," generally when precipitation exceeds evaporation. The proposal would also require wetlands to abut jurisdictional water and maintain a surface water connection to it at least during the wet season.[4]

In September 2026, the Agencies issued a supplemental proposal offering additional alternatives to both standards. The alternative definition of "relatively permanent" would require that water be perennial, defined as standing or continuously flowing water every day of the year during ordinary conditions. The supplemental proposal would allow exceptions to the perennial requirement for anomalous events, such as drought, and a single interruption of up to 30 consecutive days resulting from certain non-anomalous events. It would also require that a wetland maintain perennial surface water continuously connected to jurisdictional water, such that it is difficult to determine where one ends and the other begins. These alternatives would replace the previously proposed wet-season approach if adopted in the final rule.[5]

ARTBA submitted detailed comments on the Agencies' November 2025 proposal addressing the application of the WOTUS definition to transportation construction projects. Those comments addressed roadside ditches and transportation drainage features, the definition of "tributary," implementation of the proposed "relatively permanent" wet-season standard, stormwater control features, and the burden of establishing federal jurisdiction. Consistent with the Agencies' request that commenters not reprise

[2] 33 U.S.C. § 1362(7).
[3] Updated Definition of "Waters of the United States," 90 Fed. Reg. 52,498, 52,498–99 (proposed Nov. 20, 2025).
[4] *Id.* at 52,518, 52,545; *see also* 91 Fed. Reg. at 57,286, 57,292.
[5] 91 Fed. Reg. at 57,284, 57,288–89, 57,293–95, 57,301.

previous submissions, ARTBA incorporates its January 2026 comments by reference and limits the discussion below to issues relevant to the supplemental alternatives.[6]

ARTBA's Comments on the Supplemental Proposal

I. The proposed perennial standard will provide greater certainty for transportation construction projects.

ARTBA supports the Agencies' supplemental proposal to define "relatively permanent" waters using a perennial standard. Under the alternative, a waterbody must have standing or continuously flowing water every day of the year during ordinary conditions, subject to limited exceptions for drought and temporary dry periods.[7] Roadside ditches, swales, and other transportation drainage features are generally designed to collect and convey stormwater. Many carry water only following precipitation or during seasonal runoff, rather than throughout the year. These features serve an essential drainage function, but in most cases do not carry water perennially. They therefore should not be treated as jurisdictional streams solely because they periodically convey water.

The perennial standard would provide a more objective basis for determining whether such features qualify as relatively permanent waters. The Agencies explain, for example, that a waterbody lacking flow from June through August in a typical year would not meet the proposed standard.[8] This approach would help distinguish ordinary stormwater drainage features from perennial waters and allow transportation agencies and contractors to assess federal permitting requirements with greater confidence. It would also allow the Agencies to focus their regulatory resources and oversight on jurisdictional waters, while preserving appropriate environmental protections under the CWA.

ARTBA also asks the Agencies to clarify how variations in snowpack and snowmelt affect the application of the proposed perennial standard, particularly for ARTBA members working on transportation projects in mountainous and other snow-prone regions. Reduced snowmelt may temporarily interrupt flow in an ordinarily perennial waterbody, while unusually prolonged snowmelt may extend flow in a normally seasonal drainage feature. The final rule should explain how such conditions are evaluated under the definition of "ordinary conditions," including when a dry period qualifies as an anomalous event or counts toward the proposed 30-day allowance.

II. The proposed continuous surface connection standard will improve wetland jurisdictional determinations along transportation corridors.

ARTBA supports the Agencies' supplemental proposal to limit federal jurisdiction to wetlands that are connected to a jurisdictional water by perennial surface water. Under this approach, proximity or a subsurface connection alone would not establish jurisdiction, and a surface water connection would

[6] Am. Rd. & Transp. Builders Ass'n, Comments on the Proposed Updated Definition of "Waters of the United States," Docket No. EPA-HQ-OW-2025-0322 (Jan. 5, 2026), https://www.artba.org/wp-content/uploads/2026/01/ARTBA-WOTUS-Comments-FINAL-010526.pdf.
[7] 91 Fed. Reg. at 57,288, 57,301.
[8] *Id.* at 57,291.

have to satisfy the proposed perennial standard, subject to its specified exceptions. The proposal would also limit jurisdiction to the portion of a wetland that is indistinguishably part of the jurisdictional water.[9]

Transportation construction projects may encounter wetlands near roadside ditches, culverts, embankments, and other engineered drainage features. The Agencies should clarify that the presence of a culvert, pipe, ditch, or other constructed conveyance does not, by itself, establish the required perennial surface water connection. Similarly, groundwater or subsurface flow alone should not satisfy this requirement. These distinctions are particularly important for transportation projects in areas with perched wetlands or permafrost, where wetlands may remain saturated without having a continuous surface water connection to a jurisdictional water. In each case, jurisdiction should depend on whether the wetland satisfies the proposed standard, rather than merely on its proximity to drainage infrastructure or the presence of subsurface connections.

These clarifications would support consistent evaluations of federal jurisdiction over wetlands along transportation corridors while recognizing the continued importance of protecting wetlands under applicable federal, state, and local environmental requirements.

III. The final rule must preserve the proposed roadside ditch exclusions.

ARTBA urges the Agencies to retain the ditch exclusions proposed in November 2025 and preserve their application to roadside drainage infrastructure in the final rule. The September supplemental proposal does not revise those exclusions.[10] Roadside ditches and similar drainage infrastructure collect and convey stormwater to protect roadways, surrounding properties, and the traveling public from flooding and erosion.

The proposed perennial standard would provide an additional basis for evaluating drainage features that do not qualify for a ditch exclusion. At the same time, the ditch exclusions serve an independent purpose. A qualifying excluded ditch should not lose its exclusion solely because it conveys water throughout the year or connects to another waterbody. ARTBA urges the Agencies to retain this treatment in the final rule, consistent with the proposed exclusion's criteria.[11]

ARTBA members have also identified practical concerns about applying ditch exclusions to older transportation infrastructure. Roadside ditches may have been constructed decades ago, and records documenting the conditions at the time of construction may be incomplete or unavailable. ARTBA asks the Agencies to provide a reasonable basis for evaluating such features without imposing unnecessary burdens in historical documentation on transportation agencies and contractors.

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[9] *Id.* at 57,294–95, 57,297–98.
[10] 90 Fed. Reg. at 52,533–41; 91 Fed. Reg. at 57,286.
[11] 90 Fed. Reg. at 52,533–41.

Similarly, vegetation may become established in roadside ditches over time. The final rule should make clear that vegetation alone does not eliminate an otherwise applicable ditch exclusion. Jurisdictional determinations should be based on the regulatory criteria governing the feature, not the mere presence of vegetation resulting from ordinary conditions or maintenance practices.

The final rule should include clear, explicit ditch exclusions that recognize the function of transportation drainage infrastructure and can be applied consistently during construction and maintenance.

Conclusion

ARTBA appreciates the Agencies' continued efforts to establish a clear and workable definition of WOTUS. The final rule should adopt the perennial standard for "relatively permanent" waters, establish a clear continuous surface connection requirement for wetlands, and preserve the roadside ditch exclusions proposed in November 2025. These provisions would provide greater certainty for ARTBA members while still maintaining appropriate environmental protections under the CWA.

Thank you for considering the views of ARTBA's membership. Should you have any questions or require additional information, please do not hesitate to contact Prianka Sharma at psharma@artba.org.

Sincerely,

Prianka Sharma

Prianka P. Sharma
Deputy General Counsel and
Vice President for Regulatory Affairs