



### **EPA/Corps Listening Session on WOTUS – May 1, 2025**

Good morning. My name is Melinda Tomaino with the Associated General Contractors of America. AGC is a national commercial construction trade association and represents more than 28,000 firms.

Our members contribute to and build the infrastructure that we depend on every single day. The scope of federal control over waters determines whether we can move forward in a timely manner with projects that improve communities across the nation.

In our written comments, AGC urges the administration to address the deficiencies raised in litigation against the 2023 conforming rule and in turn provide the clear, predictable and enduring WOTUS definition that is sorely needed.

In following a strict reading of the statute and Supreme Court decisions, WOTUS encompasses three categories: 1) traditional interstate navigable waters and territorial seas; 2) rivers, streams, lakes and ponds that are relatively permanent, standing, or continuously flowing bodies of water and are connected to category (1) waters, and 3) wetlands with a continuous surface connection to category (1) or (2) waters. Most ditches, including roadside ditches, should be excluded unless they convey perennial flow to category (1) waters, were constructed in a WOTUS, or relocate/alter a WOTUS.

We also encourage the agencies to retain longstanding exclusions, I will briefly mention three here.

- First, exclude most ditches, including roadside ditches: If the ditch exclusion is too narrowly, it could hinder the construction industry's ability to maintain safe operations by preventing flooding and damage to roadways.
- Second, exclude other stormwater features: The construction industry relies on stormwater control features to fulfill permit obligations under the stormwater program. These features must be maintained to continue to perform effectively.
- Third, clearly exclude "water filled depressions": This will help ensure that vegetation growing in old tire tracks made from construction equipment are not considered federal waters.

We also urge the agencies to embrace opportunities to streamline the permitting process as well as look at some of the tools that for better or worse wind up underpinning permitting decisions: such as the ordinary high water mark manual and wetlands mappers to ensure they are updated and applicable post-Sackett and not used to illegitimately expand jurisdiction.

Thank you for this opportunity to provide feedback.