



**EPA/Corps Listening Session on WOTUS – May 19, 2025
with the Small Business Administration**

Hello and thank you for this opportunity. 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.

The scope of federal control over waters determines whether our members can move forward in a timely manner with projects that improve communities across the nation.

In our written comments, we urged the administration to address the deficiencies in the 2023 rule. Today, I would like to highlight a few recommendations that would improve the ability for small firms to comply and compete. Construction firms are overwhelmingly small businesses. In 2022, there were 760,000 construction firms with employees, of which 80% (607,000) had fewer than 20 employees. More than 99.8% of construction firms had fewer than 500 employees.

First, fully implementing the Sackett decision will go a long way to improving regulatory certainty and reducing ambiguity that comes from case-by-case analysis. For example, it limits federal waters to those that are ordinarily understood as waters—meaning most ditches would not be jurisdictional. Ephemeral features would be off the table as they are not relatively permanent.

Another recommendation is to prioritize approved jurisdictional determinations over preliminary JDs. This means that only federal waters will be covered. Project proponents take on unnecessary compliance obligations under PJDs in order to move forward with their projects. Smaller businesses and firms may not be able to take advantage of this efficiency due to the cost and broader scope.

Additionally, several other federal programs recognize a role for professional engineers and experts (biological opinions, stormwater plans, etc.). The agencies' could lean on approved/trusted consultants to help with jurisdictional determinations and reduce bottlenecks at the agencies for needed approvals.

Lastly, right-sizing mitigation would go a long way to keeping small businesses competitive on projects. An AGC member shared that mitigation for an acreage with dry washes that had not seen water in decades cost about \$400,000 on one project in the arid West. Compounding the issue, mitigation banks are often insufficient to meet demand, and permittee-responsible mitigation is often much more costly. AGC members have shared last-minute requirements for mitigation that have delayed projects and required permittee-responsible mitigation. Smaller firms have less capacity to weather costly set backs and risks.

I'd like to put in a final request, time permitting, for keeping nationwide permits workable for the smaller projects and scopes of work that rely on them.

Thank you for this opportunity to provide feedback.