

The September 2023 Definition includes:

- 1) Waters which are:
  - a) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
  - b) The territorial seas; or
  - c) Interstate waters;
- 2) Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5) of this section;
- 3) Tributaries of waters identified in paragraph (a)(1) or (2) of this section that are relatively permanent, standing or continuously flowing bodies of water;
- 4) Wetlands adjacent to the following waters:
  - a) Waters identified in paragraph (a)(1) of this section; or
  - b) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) of this section and with a continuous surface connection to those waters;
- 5) Intrastate lakes and ponds not identified in paragraphs (a)(1) through (4) of this section that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of this section.

Adjacent is defined as having a continuous surface connection. The current definition expressly exempts certain waste treatment systems; prior converted cropland; ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water; certain artificially irrigated areas; certain artificial lakes or ponds; certain artificial reflecting or swimming pools or other small ornamental bodies of water; certain waterfilled depressions and fill, sand, and gravel pits excavated in dry land for the purpose of obtaining fill, sand, or gravel; and swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow.

#### **IV. The Impacts of Eliminating Protections in the WOTUS Regulatory Definition**

We understand and have seen first-hand how important a broad definition of “waters of the United States” is to the functioning and effectiveness of the Clean Water Act to protect and restore water quality across the country. While the Clean Water Act has been very effective in controlling pollution in many respects, many of our major waterways remain severely polluted, and by some indications, pollution appears to be increasing. Given the water quality challenges our nation