> " 'Rick [Humphrey Bogart]: "My health. I came to Casablanca for the waters."
>
> " 'Captain Renault: "The waters? What waters? We're in the desert."
>
> " 'Rick: "I was misinformed." ' 408 F.3d, at 1117.

These judicial constructions of "tributaries" are not outliers. Rather, they reflect the breadth of the Corps' determinations in the field. The Corps' enforcement practices vary somewhat from district to district because "the definitions used to make jurisdictional determinations" are deliberately left "vague." GAO Report 26; see also *id.,* at 22. But district offices of the Corps have treated, as "waters of the United States," such typically dry land features as "arroyos, coulees, and washes," as well as other "channels that might have little water flow in a given year." *Id.,* at 20-21. They have also applied that definition to such man-made, intermittently***728** flowing features as "drain tiles, storm drains systems, and culverts." *Id.,* at 24 (footnote omitted).

In addition to "tributaries," the Corps and the lower courts have also continued to define "adjacent" wetlands broadly after *SWANCC*. For example, some of the Corps' district offices have concluded that wetlands are "adjacent" to covered waters if they are hydrologically connected "through directional sheet flow during storm events," GAO Report 18, or if they lie within the "100-year floodplain" of a body of water-that is, they are connected to the navigable water by flooding, on average, once every 100 years, *id.,* at 17, and n. 16. Others have concluded that presence within 200 feet of a tributary automatically renders a wetland "adjacent" and jurisdictional. *Id.,* at 19. And the Corps has successfully defended such theories of "adjacency" in the courts, even after *SWANCC's* excision of "isolated" waters and wetlands from the Act's coverage. One court has held since *SWANCC* that wetlands separated from flood control channels by 70-foot-wide berms, atop which ran maintenance roads, had a "significant nexus" to covered waters because, *inter alia,* they lay "within the 100 year floodplain of tidal waters." *Baccarat Fremont Developers, LLC v. Army Corps of Engineers,* 425 F.3d 1150, 1152, 1157 (C.A.9 2005). In one of the cases before us today, the Sixth Circuit held, in agreement with "[t]he majority of courts," that "while a hydrological connection between the non-navigable and navigable waters is required, there is no 'direct abutment' requirement" under *SWANCC* for " 'adjacency.' " 376 F.3d 629, 639 (2004) *(Rapanos II)*. And even the most insubstantial hydrologic connection may be held to constitute a "significant nexus." One court distinguished *SWANCC* on the ground that ****2219** "a molecule of water residing in one of these pits or ponds [in *SWANCC*] could not mix with molecules from other bodies of water"-whereas, in the case before it, "water molecules currently present in the wetlands will inevitably flow towards and mix with water from connecting bodies,"***729** and "[a] drop of rainwater landing in the Site is certain to intermingle with water from the [nearby river]." *United States v. Rueth Development Co.,* 189 F.Supp.2d 874, 877-878 (N.D.Ind.2002).

II

In these consolidated cases, we consider whether four Michigan wetlands, which lie near ditches or man-made drains that eventually empty into traditional navigable waters, constitute "waters of the United States" within the meaning of the Act. Petitioners in No. 04-1034, the Rapanos and their affiliated businesses, deposited fill material without a permit into wetlands on three sites near Midland, Michigan: the "Salzburg site," the "Hines Road site," and the "Pine River site." The wetlands at the Salzburg site are connected to a man-made drain, which drains into Hoppler Creek, which flows into the Kawkawlin River, which empties into Saginaw Bay and Lake Huron. See Brief for United States in No. 04-1034, p. 11; 339 F.3d, at 449. The wetlands at the Hines Road site are connected to something called the "Rose Drain," which has a surface connection to the Tittabawassee River. App. to Pet. for Cert. in No. 04-1034, pp. A23, B20. And the wetlands at the Pine River site have a surface connection to the Pine River, which flows into Lake Huron. *Id.,* at A23-A24, B26. It is not clear whether the connections between these wetlands and the nearby drains and ditches are continuous or intermittent, or whether the nearby drains and ditches contain continuous or merely occasional flows of water.

The United States brought civil enforcement proceedings against the Rapanos petitioners. The District Court found that the three described wetlands were "within federal jurisdiction" because they were " 'ad-

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jacent to other waters of the United States,' " and held petitioners liable for violations of the CWA at those sites. *Id.,* at B32-B35. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed, holding that there was federal jurisdiction over the ***730** wetlands at all three sites because "there were hydrological connections between all three sites and corresponding adjacent tributaries of navigable waters." 376 F.3d, at 643.

Petitioners in No. 04-1384, the Carabells, were denied a permit to deposit fill material in a wetland located on a triangular parcel of land about one mile from Lake St. Clair. A man-made drainage ditch runs along one side of the wetland, separated from it by a 4-foot-wide man-made berm. The berm is largely or entirely impermeable to water and blocks drainage from the wetland, though it may permit occasional overflow to the ditch. The ditch empties into another ditch or a drain, which connects to Auvase Creek, which empties into Lake St. Clair. See App. to Pet. for Cert. in No. 04-1384, pp. 2a-3a.

After exhausting administrative appeals, the Carabell petitioners filed suit in the District Court, challenging the exercise of federal regulatory jurisdiction over their site. The District Court ruled that there was federal jurisdiction because the wetland "is adjacent to neighboring tributaries of navigable waters and has a significant nexus to 'waters of the United States.' " *Id.,* at 49a. Again the Sixth Circuit affirmed, holding that the Carabell wetland was "adjacent" to navigable waters. 391 F.3d 704, 708 (2004) *(Carabell).*

****2220** We granted certiorari and consolidated the cases, 546 U.S. 932, 126 S.Ct. 414, 163 L.Ed.2d 316 (2005), to decide whether these wetlands constitute "waters of the United States" under the Act, and if so, whether the Act is constitutional.

III

[1][2] The Rapanos petitioners contend that the terms "navigable waters" and "waters of the United States" in the Act must be limited to the traditional definition of *The Daniel Ball,* which required that the "waters" be navigable in fact, or susceptible of being rendered so. See 10 Wall., at 563, 19 L.Ed. 999. But this definition cannot be applied wholesale to the CWA. The Act uses the phrase "navigable waters" as a *defined* term, and the definition is simply "the waters of the United ***731** States." 33 U.S.C. § 1362(7). Moreover, the Act provides, in certain circumstances, for the substitution of state for federal jurisdiction over "navigable waters ... *other than* those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce ... including wetlands adjacent thereto." § 1344(g)(1) (emphasis added). This provision shows that the Act's term "navigable waters" includes something more than traditional navigable waters. We have twice stated that the meaning of "navigable waters" in the Act is broader than the traditional understanding of that term, *SWANCC,* 531 U.S., at 167, 121 S.Ct. 675; *Riverside Bayview,* 474 U.S., at 133, 106 S.Ct. 455. [FN3] We have also emphasized, however, that the qualifier "navigable" is not devoid of significance, *SWANCC, supra,* at 172, 121 S.Ct. 675.

FN3. One possibility, which we ultimately find unsatisfactory, is that the "other" waters covered by 33 U.S.C. § 1344(g)(1) are strictly *intrastate* waters that are traditionally navigable. But it would be unreasonable to interpret "the waters of the United States" to include all and only traditional navigable waters, both interstate and intrastate. This would preserve the traditional import of the qualifier "navigable" in the *defined* term "navigable waters," at the cost of depriving the qualifier "of the United States" *in the definition* of all meaning. As traditionally understood, the latter qualifier excludes intrastate waters, whether navigable or not. See *The Daniel Ball,* 10 Wall. 557, 563, 19 L.Ed. 999 (1871). In *SWANCC*, we held that "navigable" retained something of its traditional import. 531 U.S., at 172, 121 S.Ct. 675. *A fortiori,* the phrase "of the United States" in the definition retains some of its traditional meaning.

We need not decide the precise extent to which the qualifiers "navigable" and "of the United States" restrict the coverage of the Act. Whatever the scope of these qualifiers, the CWA authorizes federal jurisdiction only over "waters." 33 U.S.C. § 1362(7). The only natural definition of the term "waters," our prior and subsequent judicial constructions of it, clear evidence from other provisions of the statute, and this Court's canons of construction all confirm that "the

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waters***732** of the United States" in § 1362(7) cannot bear the expansive meaning that the Corps would give it.

[3][4][5] The Corps' expansive approach might be arguable if the CWA defined "navigable waters" as "water of the United States." But "the waters of the United States" is something else. The use of the definite article ("the") and the plural number ("waters") shows plainly that § 1362(7) does not refer to water in general. In this form, "the waters" refers more narrowly to water "[a]s found in streams and bodies forming geographical features such as oceans, rivers, [and] lakes," or "the flowing or moving masses, as of waves or floods, making up such streams or bodies." Webster's New International Dictionary 2882 ****2221** (2d ed.1954) (hereinafter Webster's Second).[FN4] On this definition, "the waters of the United States" include only relatively permanent, standing or flowing bodies of water. [FN5] The definition refers to water ***733** as found in "streams," "oceans," "rivers," "lakes," and "bodies" of water "forming geographical features." *Ibid.* All of these terms connote continuously present, fixed bodies of water, as opposed to ordinarily dry channels through which water occasionally or intermittently flows. Even the least substantial of the definition's terms, namely, "streams," connotes a continuous flow of water in a permanent channel-especially when used in company with other terms such as "rivers," "lakes," and "oceans." [FN6] None of these terms encompasses transitory puddles or ephemeral flows of water.

FN4. Justice KENNEDY observes, *post,* at 2242 (opinion concurring in judgment), that the dictionary approves an alternative, somewhat poetic usage of "waters" as connoting "[a] flood or inundation; as the *waters* have fallen. 'The peril of *waters,* wind, and rocks.' *Shak.*" Webster's Second 2882. It seems to us wholly unreasonable to interpret the statute as regulating only "floods" and "inundations" rather than traditional waterways-and strange to suppose that Congress had waxed Shakespearean in the definition section of an otherwise prosaic, indeed downright tedious, statute. The duller and more commonplace meaning is obviously intended.

FN5. By describing "waters" as "relatively permanent," we do not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought. We also do not necessarily exclude *seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months-such as the 290-day, continuously flowing stream postulated by Justice STEVENS' dissent (hereinafter the dissent), *post,* at 2259-2260. Common sense and common usage distinguish between a wash and seasonal river.

Though scientifically precise distinctions between "perennial" and "intermittent" flows are no doubt available, see, *e.g.,* Dept. of Interior, U.S. Geological Survey, E. Hedman & W. Osterkamp, Streamflow Characteristics Related to Channel Geometry of Streams in Western United States 15 (1982) (Water-Supply Paper 2193), we have no occasion in this litigation to decide exactly when the drying-up of a streambed is continuous and frequent enough to disqualify the channel as a "wate[r] of the United States." It suffices for present purposes that channels containing permanent flow are plainly within the definition, and that the dissent's "intermittent" and "ephemeral" streams, *post,* at 2260-that is, streams whose flow is "[c]oming and going at intervals ... [b]roken, fitful," Webster's Second 1296, or "existing only, or no longer than, a day; diurnal ... short-lived," *id.,* at 857-are not.

FN6. The principal definition of "stream" likewise includes reference to such permanent, geographically fixed bodies of water: "[a] current or course of water or other fluid, flowing on the earth, as a *river, brook, etc.*" *Id.,* at 2493 (emphasis added). The other definitions of "stream" repeatedly emphasize the requirement of *continuous* flow: "[a] *steady flow,* as of water, air, gas, or the like"; "[a]nything issuing or moving with *continued succession* of parts"; "[a] *continued current* or course; current; drift." *Ibid.* (emphasis added). The definition of the verb form of "stream" contains a similar emphasis on continuity: "[t]o issue or flow in a

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stream; to issue freely or move in a *continuous flow or course*." *Ibid.* (emphasis added). On these definitions, therefore, the Corps' phrases "intermittent streams," 33 CFR § 328.3(a)(3) (2004), and "ephemeral streams," 65 Fed.Reg. 12823 (2000), are-like Senator Bentsen's " 'flowing gullies,' " *post,* at 2260, n. 11 (opinion of STEVENS, J.)-useful oxymora. Properly speaking, such entities constitute extant "streams" only while they are "continuous[ly] flow[ing]"; and the usually dry channels that contain them are never "streams." Justice KENNEDY apparently concedes that "an intermittent flow can constitute a stream" only "*while it is flowing,*" *post,* at 2243 (emphasis added)-which would mean that the channel is a "water" covered by the Act only during those times when water flow actually occurs. But no one contends that federal jurisdiction appears and evaporates along with the water in such regularly dry channels.

****2222** The restriction of "the waters of the United States" to exclude channels containing merely intermittent or ephemeral***734** flow also accords with the commonsense understanding of the term. In applying the definition to "ephemeral streams," "wet meadows," storm sewers and culverts, "directional sheet flow during storm events," drain tiles, man-made drainage ditches, and dry arroyos in the middle of the desert, the Corps has stretched the term "waters of the United States" beyond parody. The plain language of the statute simply does not authorize this "Land Is Waters" approach to federal jurisdiction.

In addition, the Act's use of the traditional phrase "navigable waters" (the defined term) further confirms that it confers jurisdiction only over relatively *permanent* bodies of water. The Act adopted that traditional term from its predecessor statutes. See *SWANCC,* 531 U.S., at 180, 121 S.Ct. 675 (STEVENS, J., dissenting). On the traditional understanding, "navigable waters" included only discrete *bodies* of water. For example, in *The Daniel Ball,* we used the terms "waters" and "rivers" interchangeably. 10 Wall., at 563, 19 L.Ed. 999. And in *Appalachian Electric*, we consistently referred to the "navigable waters" as "waterways." 311 U.S., at 407-409, 61 S.Ct. 291. Plainly, because such "waters" had to be navigable in fact or susceptible of being rendered so, the term did not include ephemeral flows. As we noted in *SWANCC*, the traditional term "navigable waters"-even though defined as "the waters of the United States"-carries *some* of its original substance: "[I]t is one thing to give a word limited effect and quite another to give it no effect whatever." 531 U.S., at 172, 121 S.Ct. 675. That limited effect includes, at bare minimum, the ordinary presence of water.

Our subsequent interpretation of the phrase "the waters of the United States" in the CWA likewise confirms this limitation of its scope. In *Riverside Bayview,* we stated that the phrase in the Act referred primarily to "rivers, streams, and other *hydrographic features more conventionally identifiable as 'waters' "* than the wetlands adjacent to such features.***735** 474 U.S., at 131, 106 S.Ct. 455 (emphasis added). We thus echoed the dictionary definition of "waters" as referring to "streams and bodies *forming geographical features* such as oceans, rivers, [and] lakes." Webster's Second 2882 (emphasis added). Though we upheld in that case the inclusion of wetlands abutting such a "hydrographic featur[e]"-principally due to the difficulty of drawing any clear boundary between the two, see 474 U.S., at 132, 106 S.Ct. 455; Part IV, *infra*-nowhere did we suggest that "the waters of the United States" should be expanded to include, in their own right, entities other than "hydrographic features more conventionally identifiable as 'waters,' " *id.,* at 131, 106 S.Ct. 455. Likewise, in both *Riverside Bayview* and *SWANCC*, we repeatedly described the "navigable waters" covered by the Act as "open water" and "open waters." See *Riverside Bayview, supra,* at 132, and n. 8, 134, 106 S.Ct. 455; *SWANCC, supra,* at 167, 172, 121 S.Ct. 675. Under no rational interpretation are typically dry channels described as "*open* waters."

[6][7] Most significant of all, the CWA itself categorizes the channels and conduits that typically carry intermittent flows of water separately from "navigable waters," by including them in the definition of " 'point source.' " The Act defines " 'point source' " as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."****2223** 33 U.S.C. § 1362(14). It also defines " 'discharge of a pollutant' " as "any addition of any pollutant *to* navigable waters

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from any point source." § 1362(12)(A) (emphasis added). The definitions thus conceive of "point sources" and "navigable waters" as separate and distinct categories. The definition of "discharge" would make little sense if the two categories were significantly overlapping. The separate classification of "ditch[es], channel[s], and conduit[s]"***736** -which are terms ordinarily used to describe the watercourses through which *intermittent* waters typically flow-shows that these are, by and large, *not* "waters of the United States." [FN7]

FN7. It is of course true, as the dissent and Justice KENNEDY both observe, that ditches, channels, conduits and the like "can all hold water permanently as well as intermittently," *post,* at 2261 (opinion of STEVENS, J.); see also *post,* at 2243 (opinion of KENNEDY, J.). But when they do, we usually refer to them as "rivers," "creeks," or "streams." A permanently flooded ditch around a castle is technically a "ditch," but (because it is permanently filled with water) we normally describe it as a "moat." See Webster's Second 1575. And a permanently flooded man-made ditch used for navigation is normally described, not as a "ditch," but as a "canal." See *id.,* at 388. Likewise, an open channel through which water permanently flows is ordinarily described as a "stream," not as a "channel," because of the continuous presence of water. This distinction is particularly apt in the context of a statute regulating *water* quality, rather than (for example) the shape of streambeds. Cf. *Jennison v. Kirk,* 98 U.S. 453, 454-456, 25 L.Ed. 240 (1879) (referring to man-made channels as "ditches" when the alleged injury arose from physical damage to the *banks* of the ditch); *PUD No. 1 of Jefferson Cty. v. Washington Dept. of Ecology,* 511 U.S. 700, 709, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994) (referring to a water-filled tube as a "tunnel" in order to describe the *shape* of the conveyance, not the fact that it was water-filled), both cited *post,* at 2261, n. 12 (opinion of STEVENS, J.). On its only natural reading, such a statute that treats "waters" separately from "ditch[es], channel[s], tunnel[s], and conduit[s]," thereby distinguishes between continuously flowing "waters" and channels containing only an occasional or intermittent flow.

It is also true that highly artificial, manufactured, enclosed conveyance systems-such as "sewage treatment plants," *post,* at 2243 (opinion of KENNEDY, J.), and the "mains, pipes, hydrants, machinery, buildings, and other appurtenances and incidents" of the city of Knoxville's "system of waterworks," *Knoxville Water Co. v. Knoxville,* 200 U.S. 22, 27, 26 S.Ct. 224, 50 L.Ed. 353 (1906), cited *post,* at 2261, n. 12 (opinion of STEVENS, J.)-likely do not qualify as "waters of the United States," despite the fact that they may contain continuous flows of water. See *post,* at 2244 (opinion of KENNEDY, J.); *post,* at 2261, n. 12 (opinion of STEVENS, J.). But this does not contradict our interpretation, which asserts that relatively continuous flow is a *necessary* condition for qualification as a "water," not an *adequate* condition. Just as ordinary usage does not treat typically dry beds as "waters," so also it does not treat such elaborate, man-made, enclosed systems as "waters" on a par with "streams," "rivers," and "oceans."

***737** Moreover, only the foregoing definition of "waters" is consistent with the CWA's stated "policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the States to prevent, reduce, and eliminate pollution, [and] to plan the development and use (including restoration, preservation, and enhancement) of land and water resources ... ." § 1251(b). This statement of policy was included in the Act as enacted in 1972, see 86 Stat. 816, prior to the addition of the optional state administration program in the 1977 amendments, see 91 Stat. 1601. Thus the policy plainly referred to something beyond the subsequently added state administration program of 33 U.S.C. § 1344(g)-(*l*). But the expansive theory advanced by the Corps, rather than "preserv[ing] the primary rights and responsibilities of the States," would have brought ****2224** virtually all "plan[ning of] the development and use ... of land and water resources" by the States under federal control. It is therefore an unlikely reading of the phrase "the waters of the United States." [FN8]

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FN8. Justice KENNEDY contends that the Corps' preservation of the "responsibilities and rights" of the States is adequately demonstrated by the fact that "33 States plus the District of Columbia have filed an *amici* brief in this litigation" in favor of the Corps' interpretation, *post,* at 2246. But it makes no difference to the *statute 's* stated purpose of preserving States' "responsibilities and rights," § 1251(b), that some States wish to unburden themselves of them. Legislative and executive officers of the States may be content to leave "responsibilit[y]" with the Corps because it is attractive to shift to another entity controversial decisions disputed between politically powerful, rival interests. That, however, is not what the statute provides.

[8][9] Even if the phrase "the waters of the United States" were ambiguous as applied to intermittent flows, our own canons of construction would establish that the Corps' interpretation of the statute is impermissible. As we noted in ***738** *SWANCC*, the Government's expansive interpretation would "result in a significant impingement of the States' traditional and primary power over land and water use." 531 U.S., at 174, 121 S.Ct. 675. Regulation of land use, as through the issuance of the development permits sought by petitioners in both of these cases, is a quintessential state and local power. See *FERC v. Mississippi,* 456 U.S. 742, 767-768, n. 30, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982); *Hess v. Port Authority Trans-Hudson Corporation,* 513 U.S. 30, 44, 115 S.Ct. 394, 130 L.Ed.2d 245 (1994). The extensive federal jurisdiction urged by the Government would authorize the Corps to function as a *de facto* regulator of immense stretches of intrastate land-an authority the agency has shown its willingness to exercise with the scope of discretion that would befit a local zoning board. See 33 CFR § 320.4(a)(1) (2004). We ordinarily expect a "clear and manifest" statement from Congress to authorize an unprecedented intrusion into traditional state authority. See *BFP v. Resolution Trust Corporation,* 511 U.S. 531, 544, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994). The phrase "the waters of the United States" hardly qualifies.

Likewise, just as we noted in *SWANCC*, the Corps' interpretation stretches the outer limits of Congress's commerce power and raises difficult questions about the ultimate scope of that power. See 531 U.S., at 173, 121 S.Ct. 675. (In developing the current regulations, the Corps consciously sought to extend its authority to the farthest reaches of the commerce power. See 42 Fed.Reg. 37127 (1977).) Even if the term "the waters of the United States" were ambiguous as applied to channels that sometimes host ephemeral flows of water (which it is not), we would expect a clearer statement from Congress to authorize an agency theory of jurisdiction that presses the envelope of constitutional validity. See *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council,* 485 U.S. 568, 575, 108 S.Ct. 1392, 99 L.Ed.2d 645 (1988).[FN9]

FN9. Justice KENNEDY objects that our reliance on these two clear-statement rules is inappropriate because "the plurality's interpretation does not fit the avoidance concerns that it raises," *post,* at 2246-that is, because our resolution both eliminates some jurisdiction that is clearly constitutional and traditionally federal, and retains some that is questionably constitutional and traditionally local. But a clear-statement rule can carry one only so far as the statutory text permits. Our resolution, unlike Justice KENNEDY's, keeps both the overinclusion and the underinclusion to the minimum consistent with the statutory text. Justice KENNEDY's reading-despite disregarding the text-fares no better than ours as a precise "fit" for the "avoidance concerns" that he also acknowledges. He admits, *post,* at 2249, that "the significant-nexus requirement may not align perfectly with the traditional extent of federal authority" over navigable waters-an admission that "tests the limits of understatement," *Gonzales v. Oregon,* 546 U.S. 243, 286, 126 S.Ct. 904, 932, 163 L.Ed.2d 748 (2006) (SCALIA, J., dissenting)-and it aligns even worse with the preservation of traditional state land-use regulation.

****2225** [10] ***739** In sum, on its only plausible interpretation, the phrase "the waters of the United States" includes only those relatively permanent, standing or continuously flowing bodies of water "forming geographic features" that are described in ordinary parlance as "streams[,] ... oceans, rivers, [and] lakes." See Webster's Second 2882. The phrase does not

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include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. The Corps' expansive interpretation of the "the waters of the United States" is thus not "based on a permissible construction of the statute." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

IV

In *Carabell,* the Sixth Circuit held that the nearby ditch constituted a "tributary" and thus a "water of the United States" under 33 CFR § 328.3(a)(5). See 391 F.3d, at 708-709. Likewise in *Rapanos II,* the Sixth Circuit held that the nearby ditches were "tributaries" under § 328.3(a)(5). 376 F.3d, at 643. But *Rapanos II* also stated that, even if the ditches were not "waters of the United States," the wetlands were "adjacent" to *remote* traditional navigable waters in virtue of the wetlands' "hydrological connection" to them. See *id.,* at 639-640. This statement reflects the practice of ***740** the Corps' district offices, which may "assert jurisdiction over a wetland without regulating the ditch connecting it to a water of the United States." GAO Report 23. We therefore address in this Part whether a wetland may be considered "adjacent to" remote "waters of the United States," because of a mere hydrologic connection to them.

In *Riverside Bayview,* we noted the textual difficulty in including "wetlands" as a subset of "waters": "On a purely linguistic level, it may appear unreasonable to classify 'lands,' wet or otherwise, as 'waters.' " 474 U.S., at 132, 106 S.Ct. 455. We acknowledged, however, that there was an inherent ambiguity in drawing the boundaries of any "waters":

> "[T]he Corps must necessarily choose some point at which water ends and land begins. Our common experience tells us that this is often no easy task: the transition from water to solid ground is not necessarily or even typically an abrupt one. Rather, between open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs-in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of 'waters' is far from obvious." *Ibid.*

Because of this inherent ambiguity, we deferred to the agency's inclusion of wetlands "actually abut[ting]" traditional navigable waters: "Faced with such a problem of defining the bounds of its regulatory authority," we held, the agency could reasonably conclude that a wetland that "adjoin[ed]" waters of the United States is itself a part of those waters. *Id.,* at 132, 135, and n. 9, 106 S.Ct. 455. The difficulty of delineating the boundary between water and land was central to our reasoning in the case: "In view of the breadth of federal regulatory authority contemplated by the Act itself and *the inherent difficulties* *****2226*** *of defining precise bounds to regulable waters,* the Corps' ecological judgment about the relationship between waters and their adjacent wetlands provides ***741** an adequate basis for a legal judgment that adjacent wetlands may be defined as waters under the Act." *Id.,* at 134, 106 S.Ct. 455 (emphasis added).[FN10]

> FN10. Since the wetlands at issue in *Riverside Bayview* actually abutted waters of the United States, the case could not possibly have held that merely "neighboring" wetlands came within the Corps' jurisdiction. *Obiter* approval of that proposition might be inferred, however, from the opinion's quotation without comment of a statement by the Corps describing covered "adjacent" wetlands as those " 'that form the border of *or are in reasonable proximity to* other waters of the United States.' " 474 U.S., at 134, 106 S.Ct. 455 (quoting 42 Fed.Reg. 37128 (1977); emphasis added). The opinion immediately reiterated, however, that adjacent wetlands could be regarded as "the waters of the United States" in view of "the inherent difficulties of defining precise bounds to regulable waters," 474 U.S., at 134, 106 S.Ct. 455-a rationale that would have no application to physically separated "neighboring" wetlands. Given that the wetlands at issue in *Riverside Bayview* themselves "actually abut[ted] on a navigable waterway," *id.,* at 135, 106 S.Ct. 455; given that our opinion recognized that unconnected wetlands could not naturally be characterized as " 'waters' " at all, *id.,* at 132, 106 S.Ct. 455; and given the repeated reference to the difficulty of determining where waters end and wetlands begin; the most natural reading of the opinion is that a wetlands' mere "reasonable proximity" to waters of the United States is not enough to confer Corps jurisdiction. In

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any event, as discussed in our immediately following text, any possible ambiguity has been eliminated by *SWANCC,* 531 U.S. 159, 121 S.Ct. 675, 148 L.Ed.2d 576 (2001).

When we characterized the holding of *Riverside Bayview* in *SWANCC*, we referred to the close connection between waters and the wetlands that they gradually blend into: "It was the *significant nexus* between the wetlands and 'navigable waters' that informed our reading of the CWA in *Riverside Bayview Homes*." 531 U.S., at 167, 121 S.Ct. 675 (emphasis added). In particular, *SWANCC* rejected the notion that the ecological considerations upon which the Corps relied in *Riverside Bayview*-and upon which the dissent repeatedly relies today, see *post,* at 2256-2257, 2258, 2258-2259, 2259-2260, 2261-2262, 2263, 2263-2264, 2264-2265-provided an *independent* basis for including entities like "wetlands" (or "ephemeral streams") within the phrase "the waters of the United States." *SWANCC* found such ecological considerations irrelevant to the question ***742** whether physically isolated waters come within the Corps' jurisdiction. It thus confirmed that *Riverside Bayview* rested upon the inherent ambiguity in defining where water ends and abutting ("adjacent") wetlands begin, permitting the Corps' reliance on ecological considerations *only to resolve that ambiguity* in favor of treating all abutting wetlands as waters. Isolated ponds were not "waters of the United States" in their own right, see 531 U.S., at 167, 171, 121 S.Ct. 675, and presented no boundary-drawing problem that would have justified the invocation of ecological factors to treat them as such.

[11][12] Therefore, *only* those wetlands with a continuous surface connection to bodies that are "waters of the United States" in their own right, so that there is no clear demarcation between "waters" and wetlands, are "adjacent to" such waters and covered by the Act. Wetlands with only an intermittent, physically remote hydrologic connection to "waters of the United States" do not implicate the boundary-drawing problem of *Riverside Bayview,* and thus lack the necessary connection to covered waters that we described as a "significant nexus" in *SWANCC.* 531 U.S., at 167, 121 S.Ct. 675. ****2227** Thus, establishing that wetlands such as those at the Rapanos and Carabell sites are covered by the Act requires two findings: first, that the adjacent channel contains a "wate[r] of the United States," (*i.e.,* a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the "water" ends and the "wetland" begins.

V

Respondents and their *amici* urge that such restrictions on the scope of "navigable waters" will frustrate enforcement against traditional water polluters under 33 U.S.C. §§ 1311 and 1342. Because the same definition of "navigable waters" applies to the entire statute, respondents contend that water polluters will be able to evade the permitting requirement***743** of § 1342(a) simply by discharging their pollutants into noncovered intermittent watercourses that lie upstream of covered waters. See Tr. of Oral Arg. 74-75.

That is not so. Though we do not decide this issue, there is no reason to suppose that our construction today significantly affects the enforcement of § 1342, inasmuch as lower courts applying § 1342 have not characterized intermittent channels as "waters of the United States." The Act does not forbid the "addition of any pollutant *directly* to navigable waters from any point source," but rather the "addition of any pollutant *to* navigable waters." § 1362(12)(A) (emphasis added); § 1311(a). Thus, from the time of the CWA's enactment, lower courts have held that the discharge into intermittent channels of any pollutant *that naturally washes downstream* likely violates § 1311(a), even if the pollutants discharged from a point source do not emit "directly into" covered waters, but pass "through conveyances" in between. *United States v. Velsicol Chemical Corp.,* 438 F.Supp. 945, 946-947 (W.D.Tenn.1976) (a municipal sewer system separated the "point source" and covered navigable waters). See also *Sierra Club v. El Paso Gold Mines, Inc.,* 421 F.3d 1133, 1137, 1141 (C.A.10 2005) (2.5 miles of tunnel separated the "point source" and "navigable waters").

In fact, many courts have held that such upstream, intermittently flowing channels themselves constitute "point sources" under the Act. The definition of "point source" includes "any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants

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