To: Dennis, Allison[Dennis.Allison@epa.gov]; Duke, Nia[Duke.Nia@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Schollhamer, Mary[Schollhamer.Mary@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Farber, Kit[Farber.Kit@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Jones, Enesta[Jones.Enesta@epa.gov]; Lynn, Tricia[lynn.tricia@epa.gov]
From: Fuld, John
Sent: Mon 5/15/2017 11:46:02 AM
Subject: OW-Morning Insider

May 15, 2017

NEWS:

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

EPA Faces Legal, Scientific Barriers To Using Scalia CWA Jurisdiction Test

EPA faces significant legal and scientific barriers to its plan for using the late Supreme Court Justice Antonin Scalia's narrow test for determining Clean Water Act (CWA) jurisdiction in a new rulemaking on the law's reach, say observers who argue the test is based on flawed assumptions and lacks strong support in federal courts.

The claims underscore the difficulty the Trump administration faces in its accelerated

push to repeal and replace the Obama-era CWA jurisdiction rule that relied on Justice Anthony Kennedy's more expansive test for determining the scope of the water law. EPA Administrator Scott Pruitt, who criticizes the existing rule as unnecessarily broad, says he wants the agency to issue a final replacement rule either late this year or early in 2018.

President Donald Trump has directed EPA and the Army Corps of Engineers to craft a replacement rule using Scalia's test, and EPA has sent for White House review a proposal to rescind the Obama-era rule in the interim. The replacement rule will be done under a separate, future proposal.

At a May 11 District of Columbia Bar Association panel, Natural Resources Defense Council attorney Jon Devine and Georgetown Law School professor William Buzbee said EPA faces an uphill battle to craft and defend its replacement rule. For example, Buzbee argued that Scalia's standard includes a host of faulty assumptions that regulators will have to grapple with in order to codify it through the CWA rulemaking.

"Unless you think the entire western and southwestern United States should be eliminated from federal jurisdiction, that test written by a New Yorker, Justice Scalia, who maybe doesn't understand Western water scarcity," should not be adopted directly, because so many waterways in the region only flow intermittently thanks to dry seasons, he said.

Devine said that Scalia's test, which was included in his opinion in the fractured 2006 high court decision *Rapanos v. United States*, "is unapologetically anti-science. It relies significantly on a 1952 Webster's dictionary rather than science, and then Justice Scalia put his own spin on even that. . . . The opinion is full of discussions of the behavior of waterbodies, not backed by any evidence, and yet presumes to prescribe which waterbodies have a sufficiently close connection with navigable waters to warrant protection."

Scalia's opinion in *Rapanos*, which represents only a four-justice plurality of the court, says CWA jurisdiction should be limited to "relatively permanent" waters that share a "continuous surface connection" with navigable waters. Kennedy established his more expansive jurisdiction test in a separate opinion in the same case.

GREENWIRE **No new recommendations in CSB's revised W.Va. spill report**

U.S. Chemical Safety Board investigators did not find any new recommendations necessary in its report of the January 2014 chemical spill at West Virginia's Freedom Industries.

In a revised report issued yesterday, the board included new estimates of the spill size and duration for the incident that contaminated the drinking water of hundreds of thousands of people in Charleston and the surrounding area.

Homes and businesses were told to avoid their tap water entirely for up to a week.

The updated report does not offer any new insights into what caused the spill or whether West Virginia American Water was prepared for or properly responded to the spill.

"In the final analysis, our findings remain unchanged," said CSB Chairwoman Vanessa Allen Sutherland during a conference call with reporters.

The revised report changes the spill amount into the Elk River to 11,000 gallons of chemicals, about 1,000 more gallons than CSB previously reported. Additionally, the report changes the chemical leak time to a period of six to eight hours, instead of the previous 24-hour estimate.

During a public meeting in late September 2016, Kanawha Valley residents angrily criticized the board's findings and noted the agency gave little time for the public to review and prepare

Bay Journal **EPA letter to Bay states spells out cleanup expectations**

The U.S. Environmental Protection Agency has high expectations for Bay cleanup efforts in the coming years.

Earlier this year, it sent states a 10-page letter outlining what agency officials believe must happen to deliver on the decades-old promise of restoring clear Chesapeake Bay water where underwater plants thrive, fish and shellfish have plenty of oxygen, and waterfowl can graze on abundant food.

The “expectations letter,” as officials call it, outlines what assurances the District of Columbia and six watershed states need to provide in their next-generation cleanup

plans to demonstrate they have enough funding and adequate programs to reduce farm and stormwater runoff and do everything else that needs to be in place by 2025 to restore the Bay's health.

Chesapeake watershed residents have gotten a glimpse in recent years of what a restored Bay would look like, as some areas have seen the clearest water in decades, underwater grass beds have expanded and oxygen-starved "dead zones" have been nearly nonexistent. Those gains stemmed at least in part from drier-than-normal weather, which flushed fewer water-fouling nutrients and sediment off the land and into the Bay. Nonetheless, it was, officials say, real-world evidence that reaching nutrient reduction goals will produce the greatly improved water quality they've promised since cleanup work began in 1983.

To maintain those conditions over time, the EPA letter emphasizes the need for ramped-up efforts to engage local officials in the cleanup and to establish quantifiable "local area goals" that support nutrient and sediment control efforts.

It also says states will need to offset impacts of growth, as well as the potential negative impacts of climate change and the nutrient and sediment buildup behind Conowingo Dam, which could make cleanup efforts more difficult.

But the letter leaves the door open for states to adjust planned pollution reductions from various sources, and even watersheds, if it accomplishes local and Bay water quality goals more effectively — and potentially more rapidly as well.

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

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Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Lousberg, Macara
Sent: Mon 5/15/2017 10:21:09 AM
Subject: Fwd: Deliberative/pre-decisional - OA Weekly Agenda_Annotated_051217.docx
OA Weekly Agenda_Annotated_051217.docx
ATT00001.htm

Forwarding the notes from last Friday's general with Sarah.

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Gorke, Roger
Sent: Mon 5/15/2017 1:09:03 AM
Subject: RE: Quick Updates from the West
Quick Updates from the West_May12.docx

And this one with the attachment!

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

213-244-1853

gorke.roger@epa.gov

From: Gorke, Roger
Sent: Sunday, May 14, 2017 6:08 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Quick Updates from the West

Mike and Benita,

Here is my update for May 12th. (Yes, I know it is the 14th, the "Big fix" cut off my VPN and my email got hung up in the outbox….fortunately it gave me a chance to fix a typo…). Anyway, let me know if you have any questions or comments.

Thanks,

Roger

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

213-244-1853

gorke.roger@epa.gov

Quick Updates from the West - May 12, 2017

Roger Gorke

Western State (WSWC and WGA) WOTUS Outreach

Earlier this week, I met with OWOW related to the planned federalism outreach, recent feedback from WGA and the WSWC, and how I could help. Understanding that the federalism efforts need to be wrapped up by June 19, they proposed to begin engagement the week of May 29th.

I spoke with Tony Willardson (WSWC) and Ward Scott (WGA) again to propose how to move forward based upon our internal discussion. Tony articulated that he thought that a day between May 31 and June 2 would work. They also asked about a follow up discussion the week of June 12, and potentially having an opportunity for discussion during their WSWC meetings on June 28. Ward has not received much input from the staff council reps for the Governors. He should know more early next week and would follow up with me as soon as he was able.

Finally, in discussing with them 1) that the EPA was working very hard to engage the states more effectively, and 2) that the EPA was under tremendous pressure to get the rule process completed, they appreciate our outreach and view and hope that, while this process may not be perfect in their eyes, we are using this rulemaking as a first set toward a more collaborative co-regulator relationship.

Review of Finance Center Western SRF Drought Resilience Work

Deliberative Process / Ex. 5

Dept of Homeland Security: Connections within OW

Deliberative Process / Ex. 5

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 5/12/2017 1:08:00 PM
Subject: RE: From Politico - WOTUS

I read the whole transcript. Unfortunate about timing. Based on our current trajectory we can have a final step 1 and proposed step 2 by Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Shapiro, Mike
Sent: Friday, May 12, 2017 8:09 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: From Politico - WOTUS

PRUITT TALKS WOTUS TIMELINE:

Continuing his tour of friendly conservative outlets, EPA Administrator Scott Pruitt told radio host Hugh Hewitt he hopes by "sometime late this year or early next" to have issued a final new Waters of the U.S. regulation. "Folks across the country, citizens and

industry and states and the federal government deserve a clarity on what a Water of the United States equals," he said. "If you are going to determine on a case by case basis what a Water of the United States is, then that doesn't provide advance notice on how to regulate, how to take care of it, and how to invest. So it's a situation we need to get right."

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Shapiro, Mike
Sent: Fri 5/12/2017 12:08:49 PM
Subject: From Politico - WOTUS

PRUITT TALKS WOTUS TIMELINE:

Continuing his tour of friendly conservative outlets, EPA Administrator Scott Pruitt told radio host Hugh Hewitt he hopes by "sometime late this year or early next" to have issued a final new Waters of the U.S. regulation. "Folks across the country, citizens and industry and states and the federal government deserve a clarity on what a Water of the United States equals," he said. "If you are going to determine on a case by case basis what a Water of the United States is, then that doesn't provide advance notice on how to regulate, how to take care of it, and how to invest. So it's a situation we need to get right."

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Duke, Nia[Duke.Nia@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Schollhamer, Mary[Schollhamer.Mary@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Farber, Kit[Farber.Kit@epa.gov]; Jones, Enesta[Jones.Enesta@epa.gov]; Lynn, Tricia[lynn.tricia@epa.gov]
From: Fuld, John
Sent: Fri 5/12/2017 11:58:01 AM
Subject: OW-Morning Inside

May 12, 2017

NEWS:

Maine Tribes Slam EPA's Bid To Stay Water Quality Suit

New York -- Two tribes in Maine urged a federal judge to reject the U.S. Environmental Protection Agency's bid for a 90-day stay in the state's suit challenging the EPA's tightening of its water quality standards for tribal waters so it can review the policy, saying pausing the case will harm the tribes for no reason.

E&E NEWS PM

EPA fights court order on W.Va. water pollution

U.S. EPA is fighting a district court order requiring it to address coal mining-linked water pollution in West Virginia. The agency this week asked a federal appeals court to stay the order, arguing it could be forced to spend up to $6 million to develop plans to clean up West Virginia water bodies with high conductivity levels.

"None of this is necessary or justified," EPA argued in a Monday court motion seeking a stay. "The district court's order will force EPA to head down the wrong path, wasting federal funds and the agency's limited resources."

EPA is also appealing the order itself in the 4th U.S. Circuit Court of Appeals.

In February, Chief Judge Robert Chambers of the U.S. District Court for the Southern District of West Virginia found that EPA violated the Clean Water Act by not acting on West Virginia's failure to submit required total maximum daily loads, or TMDLs, for 573 water bodies in the state.

Under the Clean Water Act, states are required to develop TMDLs for impaired water bodies, placing daily limits on the sources of pollution discharges. EPA is required to approve the TMDLs.

As early as 2006, West Virginia recognized that ionic pollution, which is measured by electric conductivity, was a "significant stressor" to numerous water bodies around the state. Since at least 2008, the state has said coal mining is the source of the impairment in streams with increased conductivity levels.

But the state has not developed TMDLs for ionic toxicity, despite 2011 EPA guidance on addressing the pollutant. And the West Virginia Department of Environmental Protection has not yet developed a new methodology for assessing impairment as required by a 2012 state law.

In his opinion, Chambers faulted both the state and EPA for failing to comply with the Clean Water Act.

"All of WVDEP's plodding and EPA's appeasement have resulted in an abjuration of WVDEP's and EPA's duties committed to each by the [Clean Water Act]," he wrote

POLITICOPRO

PRUITT TALKS WOTUS TIMELINE:

Continuing his tour of friendly conservative outlets, EPA Administrator Scott Pruitt told radio host Hugh Hewitt he hopes by "sometime late this year or early next" to have issued a final new Waters of the U.S. regulation. "Folks across the country, citizens and industry and states and the federal government deserve a clarity on what a Water of the United States equals," he said. "If you are going to determine on a case by case basis what a Water of the United States is, then that doesn't provide advance notice on how to regulate, how to take care of it, and how to invest. So it's a situation we need to get right."

John W. Fuld, Ph.D.

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Environmental Protection Agency

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Fuld.john@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Ruf, Christine[Ruf.Christine@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Lousberg, Macara
Sent: Fri 5/12/2017 12:15:15 AM
Subject: Re: draft OW response for May 15 EO 13777

Thanks Mike. We included the Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 We should have some other examples from the program offices tomorrow.

Sent from my iPhone

On May 11, 2017, at 6:40 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

Macara,

Here are some thoughts,

I think it's good to say OW is still reviewing but give a few specific examples for credibility.

Not clear why the paragraphs on Deliberative Process / Ex. 5 are there, since they just repeat what we are already doing. Worth noting if there were some specific comments in support of these actions.

Include the additional meetings

Mike

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

On May 11, 2017, at 2:37 PM, Ruf, Christine <Ruf.Christine@epa.gov> wrote:

Hi Mike and Benita, attached is a draft of OW's response to meet the May 15 deadline that Macara and I developed. As you recall, we were asked to send some initial information to the Administrator's office on common themes from our outreach meeting and possibly some suggestions about specific regs/guidance that could be considered for further evaluation to reduce regulatory burden. There are some placeholders and questions in red.

We should have all 4 program office brief suggestions by this afternoon. I will include them in the spreadsheet that we summarized Regional suggestions and send out to the OD's this afternoon and bring printed copies to the meeting. Thanks! Christine

<OW response May 15 EO 13777 draft may 11.docx>

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Best-Wong, Benita
Sent: Thur 5/11/2017 11:52:47 PM
Subject: OW Weekly Report
OW Weekly Report_051117.docx

Attached is OW's Weekly Report.

Regards,

Benita

Benita Best-Wong

Acting Principal Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

To: Ruf, Christine[Ruf.Christine@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Shapiro, Mike
Sent: Thur 5/11/2017 10:40:03 PM
Subject: Re: draft OW response for May 15 EO 13777

Macara,

Here are some thoughts,

I think it's good to say OW is still reviewing but give a few specific examples for credibility.

Not clear why the paragraphs on **Deliberative Process / Ex. 5** are there, since they just repeat what we are already doing. Worth noting if there were some specific comments in support of these actions.

Include the additional meetings

Mike

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

On May 11, 2017, at 2:37 PM, Ruf, Christine <Ruf.Christine@epa.gov> wrote:

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We should have all 4 program office brief suggestions by this afternoon. I will include them in the spreadsheet that we summarized Regional suggestions and send out to the OD's this afternoon and bring printed copies to the meeting. Thanks! Christine

<OW response May 15 EO 13777 draft may 11.docx>

To: OWOW Managers Group[OWOW_Managers_Group@epa.gov]
From: Nandi, Romell
Sent: Thur 5/11/2017 7:39:55 PM
Subject: last week's Administrator Report
OW Weekly Report_050417.docx

I believe I forgot to distribute last week's Administrator Report.

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Campbell, Ann
Sent: Thur 5/11/2017 6:45:02 PM
Subject: FOR YOUR REVIEW: OW Weekly Report
OW Weekly Report_051117.docx

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Wed 5/10/2017 7:32:53 PM
Subject: FOR YOUR REVIEW: Agenda for General w/ Sarah
OA Weekly Agenda_Annotated_051217.docx

Your next general with Sarah is scheduled for Friday morning. Attached is the draft agenda. I've sent a note to Sarah seeking any additional topics but haven't received any feedback yet. Will update as needed but wanted to get this to you given your travel schedule Mike.

Let me know if you have any edits.

Ann

To: Duke, Nia[Duke.Nia@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Schollhamer, Mary[Schollhamer.Mary@epa.gov]; Farber, Kit[Farber.Kit@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Lynn, Tricia[lynn.tricia@epa.gov]; Jones, Enesta[Jones.Enesta@epa.gov]
From: Fuld, John
Sent: Wed 5/10/2017 11:41:12 AM
Subject: OW- Morning Insider

May 10, 2017

NEWS:

Washington Examiner **EPA reaches out to states on rolling back water rule**

The Trump administration on Tuesday began the process of revamping a controversial water regulation pushed through during the Obama administration by reaching out to state governors.

"EPA is restoring states' important role in the regulation of water," said Environmental Protection Agency Administrator Scott Pruitt in a statement after he and the Army Corps of Engineers sent a letter to state leaders.

"Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat," Pruitt said.

The Waters of the U.S. Rule expanded the EPA's jurisdiction over waterways by including small drainage ditches and livestock watering holes as navigable bodies of water subject to EPA enforcement actions.

The action begins the process of changing that definition and rolling back federal overreach, according to the administration. On Tuesday, Pruitt and the Army Corps began sending letters to state agencies asking for their feedback on changing a key definition for waterways under the rule.

"The Army, together with the Corps of Engineers, is committed to working closely with and supporting the EPA on these rulemakings," according to Douglas Lamont, a senior official acting as the assistant secretary of the Army for Civil Works. "As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public."

The process to rewrite the water rule follows President Trump's executive order from February directing the agencies to reconsider the regulation in line with the opinion of late Supreme Court Justice Antonin Scalia in 2006. Scalia had laid out a framework in the case *Rapanos v. United States* that said the EPA's Clean Water Act authority should extend only to waterways that are permanent.

The letter by Pruitt and Lamont to the governors said that they are moving in line with Scalia's opinion in redefining the extent of federal authority over waterways.

KOCO NEWS 5 **EPA awards Oklahoma with $855,000 grant to protect water quality**

EPA awards Oklahoma with $855,000 grant to protect water quality

The Environmental Protection Agency has awarded $855,000 to the Oklahoma Office of the Secretary of Energy to support management of nonpoint-source water pollution, officials said in a news release.

Nonpoint-source pollution is caused by rainfall or snowmelt moving over the ground,

and runoff picks up natural and man-made pollutant as it flows. The pollution can be hard to manage because it cannot be traced to an official source, officials said.

“Improving the Nation's water is one of EPA's highest priorities under the Trump administration,” said EPA Administrator Scott Pruitt, who was Oklahoma's attorney general before taking a position in President Donald Trump's administration. “This grant funds state-led programs that are working for communities throughout my home state of Oklahoma."

The EPA's grant will help Oklahoma fund nonpoint source pollution management projects, including controlling animal wastes, sediment, pesticides and fertilizers, officials said.

“Oklahoma has shown great success in improving water quality by working directly with landowners to reduce nonpoint-source pollution,” said Michael J. Teague, Oklahoma‘s secretary of Energy and Environment. “This award will continue to assist the Oklahoma Conservation Commission and partners to improve our state’s waters.”

EPA Hosts ‘Listening Session' On Clean Water, Gets Earful

As the U.S. EPA seeks feedback on what it should prioritize under the new administration, a clear message is coming from the public: Clean water must be a major focus.

The Associated Press described a recent public meeting held by the regulatory agency:

The U.S. EPA led a three-hour "virtual listening session" to collect public comments by phone about which clean water regulations should be targeted for repeal, replacement or modification. The call was part of the agency's response to President Donald Trump's order to get rid of regulations that are burdensome to business and industry.

As one participant put it: "I actually enjoy breathing clean air and drinking clean water and would find it quite burdensome not to.”

The feedback correlates with the findings of a recent Gallup poll released in April showing that Americans are more fearful about contaminated drinking water than they

have been in 16 years, according to The Huffington Post. Sixty-three percent of respondents said they worried "a great deal" about drinking water pollution.

"The pollsters say respondents' water pollution concerns are likely linked to the high-profile drinking water crisis in Flint, MI, which has elevated an issue that is often out of sight and out of mind," The Huffington Post reported.

The poll found that low-income and minority respondents were the most concerned about drinking water pollution. Citing the same poll, UPI reported:

•□□□□□□□□ *In the 2017 poll, about four in five nonwhites said they were concerned about pollution in drinking water, compared to 56 percent of whites.*

•□□□□□□□□ *In income groups, 75 percent of Americans who earn less than $30,000 a year are concerned about pollution in drinking water, compared to 64 percent of those who earn between $30,000 to $74,999 and 56 percent of those who earn $75,000 and more.*

Many water utility officials have noticed an uptick in public engagement in the aftermath of the Flint crisis, according to an analysis released last year by the engineering firm Black & Veatch.

"Public engagement with water utility service providers can ebb and flow with local events such as water main breaks and treatment issues serving as catalysts for community interest. However, the water crisis in Flint, Michigan, appears to represent an inflection point in what has historically been the limited geographic reach of service performance issues," the report said.

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

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Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
Cc: Chancey, Barbara[Chancey.Barbara@epa.gov]
From: Bravo, Antonio
Sent: Tue 5/9/2017 7:06:37 PM
Subject: FW: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

FYI.

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 3:01 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm
Importance: High

FYI.

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

"EPA is restoring states' important role in the regulation of water" – Administrator Pruitt

WASHINGTON – U.S. Environmental Protection Agency and the U.S. Army sent a letter to governors today soliciting input from states on a new definition of protected waters that is in-line with a Supreme Court Justice Antonin Scalia's opinion in the 2006

Rapanos v. United States case. Scalia's definition explains that federal oversight should extend to "relatively permanent" waters and wetlands with a "continuous surface connection" to large rivers and streams.

"EPA is restoring states' important role in the regulation of water," **said EPA Administrator Scott Pruitt**. "Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat."

"The Army, together with the Corps of Engineers, is committed to working closely with and supporting the EPA on these rulemakings. As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public, " **said Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works.**

The Clean Water Act asserts federal control over "traditionally navigable waters" without providing clarity or details about the law's scope. President Donald Trump signed an executive order on February 28, 2017 to direct federal agencies to roll back and replace the Obama Administration's Clean Water Rule – also known as the "Waters of the U.S." or WOTUS – to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution.

To meet the objectives of the executive order, federal agencies are following a two-step process that will provide as much certainty as possible, as quickly as possible, to the regulated community and the public during the development of the replacement rule.

The first step is to revise the Code of Federal Regulations to re-codify the definition of "Waters of the United States" which currently governs administration of the Clean Water Act, in light of a decision by the U.S. Court of Appeals for the Sixth Circuit staying a definition of "Waters of the United States" promulgated by the agencies in 2015. This action will simply make the text of the Code of Federal Regulations reflect the definition currently in effect under the Sixth Circuit stay. This action, when final, will not change current practice with respect to the how the definition applies, which is consistent with Supreme Court decisions, agency guidance documents, and longstanding practice.

The second step will be a public notice-and-comment rulemaking involving a substantive reevaluation and revision of the definition of "Waters of the U.S." in accordance with the executive order. The letter sent to governors today is seeking input on the second step of the process.

R079

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Just forwarded the press release – it went live at 11am today.

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 2:54 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

I have not seen a press release, either.

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 2:53 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:50 PM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

We are currently in the process of emailing the letters to each governors' office (all states and territories), and the hard copies will go in the mail soon.

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 2:37 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

I was in the process of writing an email very similar to Rose's.

I'm copying Becky Cook-Shyovitz in OCIR, because she could weigh in on when the letters were actually mailed and the specific addressees. Becky, see the media request below –

Damaris

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 2:35 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Hi Antonio,

1. It's my understanding that the governor's letters went out to the governors of all 50 states plus the U.S. territories.

2. The letters were signed yesterday, I believe, but I'm not sure when they were mailed – Mindy or Damaris, do you know?

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:26 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

2. Were all letters sent today, or on May 8, the date on the Branstad letter?

From: Fuld, John
Sent: Tuesday, May 09, 2017 2:16 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: May 9, 2017

OUTLET: CQ Roll Call

REPORTER: Jackie Toth

TOPIC: RE: WOTUS News Release

DEADLINE: 3 pm

OW PROGRAM OFFICE: OWOW

PERTINENT INFORMATION:

Two questions on the WOTUS state input news release.

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

2. Were all letters sent today, or on May 8, the date on the Branstad letter?

****

For Context – Internal Only {*to be included in addendum***}**

BACKGROUNDER: *(background on the issue. What is it? The objective? Is it bipartisan? Is it publicly avail? Are we making news with discussing this for the first time? Have we discussed it publicly before? Where? Listserv? Meeting? Webinar? Press Release? Speech?)*

INFORMATION PUBLICLY AVAILABLE: (*LIST SOURCE WITH EACH ANSWER)*

****

PROGRAM MESSAGE AND ANSWERS:

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water

Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: POLITICO Pro
Sent: Tue 5/9/2017 4:08:17 PM
Subject: EPA, Army Corps ask states to weigh in on WOTUS rewrite

By Alex Guillén

05/09/2017 11:42 AM EDT

EPA and the Army Corps of Engineers want the states to provide comments on their rewrite of the Waters of the U.S. rule, according to letters sent this week.

"Cooperative federalism is a guiding principle for us. We want to clearly understand what definition will work best for your state as we develop a new federal definition of 'waters of the United States' consistent with the Scalia opinion," the agencies wrote, referencing a framework previously laid out by the late Justice Antonin Scalia that has historically been disregarded in favor of a system described by Justice Anthony Kennedy.

"In addition, we are interested in understanding how your state might respond to a reduced scope of federal jurisdiction under the Clean Water Act," they wrote.

State and local governments have until June 19 to comment.

In February, President Donald Trump issued an executive order directing EPA and the Army Corps to revise the rule. The first step toward repealing the Obama administration's 2015 rule is currently under review at the White House Office of Management and Budget.

To view online:
https://www.politicopro.com/agriculture/whiteboard/2017/05/epa-army-corps-ask-states-to-weigh-in-on-wotus-rewrite-087449

Was this Pro content helpful? Tell us what you think in one click.				
Yes, very	Somewhat	Neutral	Not really	Not at all

. You received this POLITICO Pro content because your customized settings include: tags: Energy: Waters Of The United States, Energy: EPA, Energy: Clean Water Act, Energy: Water. To change your alert settings, please go to https://www.politicopro.com/settings
This email was sent by: **POLITICO, LLC**
1000 Wilson Blvd. Arlington, VA, 22209, USA

To: Penman, Crystal[Penman.Crystal@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Mon 5/8/2017 1:40:45 PM
Subject: 050817: TPs for Senior Staff
OW Weekly Report_050417.docx

As discussed,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

•□□□□□□□□ Lastly, I expect the Service to America Awards for 2017 (or "the Sammies') will be announced tomorrow. I am proud to announce that OW's Surabhi Shaw and the Urban Waters team were selected as finalists for this prestigious award.

From: Shapiro, Mike
Sent: Thursday, May 04, 2017 10:31 PM
To: Weekly Report Group <Weekly_Report_Group@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; OW Office Directors <OWOfficeDirectors@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Mccabe, Catherine <McCabe.Catherine@epa.gov>
Subject: OW Weekly Report

Attached is OW's Weekly Report

Mike Shapiro

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Mccabe, Catherine[McCabe.Catherine@epa.gov]
From: Shapiro, Mike
Sent: Fri 5/5/2017 2:31:19 AM
Subject: OW Weekly Report
OW Weekly Report_050417.docx

Attached is OW's Weekly Report

Mike Shapiro

To: OWOW Contractors[OWOW_Contractors@epa.gov]; OWOW Grantees[OWOW_Grantees@epa.gov]; OWOW Interns[OWOW_Interns@epa.gov]; OWOW ORISE[OWOW_ORISE@epa.gov]; OWOW SEE[OWOW_SEE@epa.gov]; OW-OWOW-AWPD[OWOWOWAWPD@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Bonanno, Gale[Bonanno.Gale@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Klos, Caroline[Klos.caroline@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Reid, Darren[Reid.Darren@epa.gov]; Skane, Elizabeth[Skane.Elizabeth@epa.gov]; Smith, Bernicel[Smith.Bernicel@epa.gov]; OW-OWOW-OCPD[OWOWOWOCPD@epa.gov]; OW-OWOW-PCRMS[OWOWOWPCRMS@epa.gov]; OW-OWOW-URBANWATERS[OW-OWOW-URBANWATERS@epa.gov]; OW-OWOW-WD[OWOWOWWD@epa.gov]
From: Goodin, John
Sent: Thur 5/4/2017 9:57:59 PM
Subject: Happy Thursday, OWOW!

Happy Thursday, OWOW!

Just a brief note to provide you with a few updates on some items of potential interest to you.

First, thanks to all of you that attended our All-Hands meeting last week where we had a chance to introduce Sandra in person, to review the latest news on the budget and Executive Orders, and to present the status of our reorganization activities as we count down the final weeks to OWOW 2.0. According to press accounts this afternoon, it appears we are on track for a budget for the remainder of this fiscal year with no shutdown and with funding approaching what we had last year. Many thanks to Bob, Kristie, and others for readying us to efficiently move forward with our contract and grant actions in the coming days and weeks. Thanks also to Mike for circulating yesterday the first of several products for staff input that were identified as important to being successful in our OWOW 2.0 efforts. Please check out the draft white paper on a proposed way of institutionalizing Communities of Practice across OWOW on the reorganization SharePoint site here and provide suggested edits and/or comments by May 17th via our new centralized feedback mailbox at Nonresponsive Internal URL/ Ex. 6

Second, please join me in welcoming back Surabhi Shah, Director of OWOW's Urban Waters Program, who recently completed an SES detail in ORD. This rotation was part of EPA's SES candidate development program. While on detail as the deputy director of the Office of Administration and Research Support, Surabhi served on the ORD management council and oversaw four divisions: budget execution, extramural management, human resources, and travel. I'm excited about having Surabhi back on our team here, where she will continue her work with future Program Partnership Branch members and stakeholders, while also completing a number of SES CDP requirements. Post reorganization, she will assume her role as chief of PPB. Roy Simon will continue to serve as acting director for the Urban Waters Program until the program becomes part of PPB under the reorganization. Many thanks to Roy for providing leadership

during this important time.

Third, it's time for some recognition…We have made some significant strides in moving some big issues forward that are in OWOW's purview. In the realm of Urban Waters, EPA chaired a very successful interagency meeting with our Federal partners that garnered support from EPA and DOI political reps in attendance. Thanks to Roy and Emily in particular for their good work. In the Wetlands world, a number of our colleagues spearheaded the delivery of the first draft proposed rulemaking on the Waters of the US revised definition to OMB. A big thank you to Donna, Damaris, Rose, and Brittany, and to others of you across OWOW including Carol and Delores, who have also begun to pitch in on this effort. In the Oceans world, we've had several notable briefings and meetings highlighting the successes of our National Estuary Programs and bringing our political team up to speed on some challenging issues related to our regulations. Thanks to Bernice, Nancy, Katherine, and Grace, among others. Our Watersheds Division has been engaged in a string of briefings for senior management in OW on complex and novel litigation. Kudos to Jim, Eric, Chris, Lynda, and Don. In addition, we had the opportunity to recognize our Administrative Professionals last week with a breakfast (Tom needs to add his cheese grits to the items for OWOW's holiday auction, by the way) and a small token—many thanks to Darren, Peggy, BJ, Lynda, Wanda, Diane, Virginia, Darlene, and Inez!

Lastly, OW took time out yesterday to treat everyone to ice cream to mark public service recognition week. It's a high calling to serve the public in the role of a government employee, where smart, motivated, and inspired people frequently forego the salaries and opportunities of other fields. Take pride in your choice of career and remember the words of Booker T. Washington who said, "The happiest people are those who do the most for others."

Thanks,

John

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Campbell, Ann
Sent: Thur 5/4/2017 9:07:59 PM
Subject: FOR YOUR REVIEW: OW Weekly Report to the Administrator
OW Weekly Report_050417.docx

Thanks to Macara for her considerable work pulling this together in my absence. Much appreciated!

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Fontaine, Tim
Sent: Wed 5/3/2017 2:00:37 PM
Subject: FY 17 op plan priorities

Mike and Benita,

Wanted to run by you the short list of potential cross office priorities that might come into play in the FY 17 Op Plan process. Once we get your feedback on this list, we will work with internal stakeholders on each of them to determine: 1) if the projects could be accelerated or improved with more funding, 2) could the funds be used within the OARM deadlines for contracts and grant actions, and 3) how would the investment benefit the national water program.

Here is our short list.

Deliberative Process / Ex. 5

Your feedback on this list would be appreciated.

By the way, we already have a robust set of tools in hand to evaluate what offices may not perform in FY 17. This includes the Stoner Charts and the material prepared for the 3rd floor on what work with continue or be eliminated in the FY 2018 budget.

Tim Fontaine

EPA Office of Water

(202) 564-0318

To: Thomas, Latosha[Thomas.Latosha@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Spraul, Greg[Spraul.Greg@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Havard, James[Havard.James@epa.gov]
Cc: Penman, Crystal[Penman.Crystal@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Lousberg, Macara
Sent: Wed 5/3/2017 12:03:23 PM
Subject: RE: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)
Revised Agricultural Stakeholders Meeting Agenda (ANNOTATED).docx

Forwarding a slightly revised version of the annotated agenda to reflect that our EO 13777 public listening session already occurred.

From: Thomas, Latosha
Sent: Tuesday, May 02, 2017 4:35 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Havard, James <Havard.James@epa.gov>
Subject: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)

Hi All,

Here are the two versions of tomorrow's agenda for the agricultural stakeholders meeting. Jim Havard will talk about EPA's plans to approve Ohio's integrated report. Since he has to leave the meeting early, I moved that up as the first topic. Thanks!

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Spraul, Greg[Spraul.Greg@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Havard, James[Havard.James@epa.gov]
From: Thomas, Latosha
Sent: Tue 5/2/2017 8:34:41 PM
Subject: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)
Agricultural Stakeholders Meeting Agenda (5.3.17).docx
Agricultural Stakeholders Meeting Agenda (ANNOTATED).docx

Hi All,

Here are the two versions of tomorrow's agenda for the agricultural stakeholders meeting. Jim Havard will talk about EPA's plans to approve Ohio's integrated report. Since he has to leave the meeting early, I moved that up as the first topic. Thanks!

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

Agricultural Stakeholders Meeting Sign-In Sheet

May 3, 2017

9-10AM

Nonresponsive Conference Code/ Ex. 6

- EPA's Plans to Approve Ohio's Integrated Report
- Budget
- EO 13777
- WOTUS/CWR

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Nandi, Romell[Nandi.Romell@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Goodin, John
Sent: Tue 5/2/2017 3:24:47 PM
Subject: Items for OWOW Meeting this afternoon

Ann—here are a few items for this afternoon:

Gold King Mine

Ag Meeting coverage

WOTUS updates, incl. ORD

OWOW Re-org events

My Scheduler and SA are both soldiering on after some sick leave yesterday so I'm forwarding these along…

John

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Shapiro, Mike
Sent: Mon 5/1/2017 1:14:31 PM
Subject: FW: Weekly Report 4/28/17
Weekly Report 4 28 2017.docx

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Reeder, John
Sent: Monday, May 01, 2017 9:12 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>; Anderson, Denise <anderson.denise@epa.gov>; Burley, Veronica <Burley.Veronica@epa.gov>; Burton, Tamika <burton.tamika@epa.gov>
Subject: Weekly Report 4/28/17

Good morning,

Here are the weeklies from last week. Sorry for the delayed distribution.

Have a great week.

JReeder

202 564 6082

To: OW-Resource Management Staff[OWResource_Management_Staff@epa.gov]; OW Budget Officers[OW_Budget_Officers@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Orvin, Chris[Orvin.Chris@epa.gov]; Kaiser, Sven-Erik[Kaiser.Sven-Erik@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Spraul, Greg
Sent: Mon 5/1/2017 11:49:07 AM
Subject: Budget update
05.01.17_fy_2017_omnibus_epa_sections.pdf

Perhaps the drama is over? While you were having fun this weekend, Congress came together to reach an agreement on an omnibus for FY17 that includes funding for EPA. While you were sleeping last night, the text of the bill was posted on the web just after 2 a.m. The EPA portions of the bill, including the Committee summary are attached (54 pages). All 1,600 pages for every department is also available here. A more detailed summary and analysis of EPA's title will be sent once completed.

The omnibus could see House floor action as early as Wednesday followed by Senate consideration before the end of the week when the latest CR expires.

Below are a few bullets from the House approps summary of EPA's title:

-Water Infrastructure – To help address the ongoing problem of lead in drinking water across the U.S., which can cause dangerous health risks, the bill provides additional legal authority allowing states to provide debt relief in areas with elevated levels of lead in drinking water.

- $2.3 billion for the Clean Water and Drinking Water State Revolving Funds (SRFs), equal to the fiscal year 2016 enacted levels. These funds help improve the safety of drinking water and create jobs in every state;

-An additional $10 million for the new Water Infrastructure Finance and Innovation (WIFIA) program, which when combined with funds from the previous CR, will leverage more than $3 billion in new infrastructure projects.

-The bill also includes a "Buy America" provision for drinking water infrastructure projects.

- The bill funds the EPA at $8.06 billion, a reduction of $81.4 million below the fiscal year 2016 enacted level and $209 million below President Obama's budget request. Within this total, the EPA's research and regulatory programs are reduced by $52 million below the current level and over $300 million below the previous administration's request. The bill provides an additional $7.5 million to accelerate the cleanup of Superfund sites.

-The legislation holds EPA to the current capacity of 15,000 positions

-It supports recent Executive Orders to encourage economic growth by providing flexibility for the Administration to review and rewrite the “Waters of the United States” rule, the “Clean Power Plan,” and other environmental regulations.

The bill contains a number of other legislative provisions. Some of these include:

-A prohibition on the EPA from making changes to certain agricultural exemptions under the Clean Water Act;

-A directive to EPA, USDA and DOE to establish clear policies that reflect the carbon neutrality of biomass;

-A reporting requirement on the backlog of mining permits awaiting approval; and

-A prohibition on the regulation of the lead content of ammunition and fishing tackle.

If you are interested, the broader omnibus package for other agencies and departments includes the following:

- a $15 billion boost in supplemental defense spending, about half the amount sought by Trump for a military buildup. The funding is designated as Overseas Contingency Operations spending, which does not count against statutory budget caps.

-No funding was included for Trump’s proposed wall on the Southern border or a so-called deportation force, but the package would provide another $1.5 billion for border security efforts including new technology and repairing existing infrastructure.

-The bill also contains $295.9 million to help shore up Puerto Rico’s Medicaid fund.

-The legislation also provides $1 billion to shore up a health care and pension benefits fund for retired coal miners

-More than $8 billion in emergency and disaster relief funding to fight wildfires, flooding and other extreme weather events in states like North Carolina, California, Louisiana, West Virginia and more;

-$34 billion for the National Institutes of Health, a $2 billion or 6.2 percent increase from current levels;

-Restored year-round Pell Grants for low-income college students;

-$990 million in emergency famine relief, including $300 million for Food For Peace in war-torn South Sudan, Somalia, Yemen and Nigeria;

-$103 million to combat opioid abuse;

-$68 million to reimburse local law enforcement agencies for the costs of protecting Trump and his family, predominantly in Manhattan.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Stacey.M.Jensen@usace.army.mil[Stacey.M.Jensen@usace.army.mil]; Jennifer.A.Moyer@usace.army.mil[Jennifer.A.Moyer@usace.army.mil]; Kwok, Rose[Kwok.Rose@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Wehling, Carrie
Sent: Sat 4/29/2017 12:57:04 AM
Subject: Re: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

Nice job, Mindy. Awesome leadership on this.

Sent from my iPhone

On Apr 28, 2017, at 6:45 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

> Great news!
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> **From:** "Jutras, Nathaniel" <Jutras.Nathaniel@epa.gov>
> **Date:** April 28, 2017 at 6:07:13 PM EDT
> **To:** "Evalenko, Sandy" <Evalenko.Sandy@epa.gov>, "Muellerleile, Caryn" <Muellerleile.Caryn@epa.gov>, "Nurse, Leanne" <Nurse.Leanne@epa.gov>
> **Cc:** "Campbell, Ann" <Campbell.Ann@epa.gov>, "Lousberg, Macara" <Lousberg.Macara@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Owens, Nicole" <Owens.Nicole@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>
> **Subject: RE: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)**
>
> Hi Sandy, This action has been uploaded to ROCIS.
>
> **Nathaniel Jutras | U.S. Environmental Protection Agency | Regulatory Management Division | 202.564.0301**

From: Evalenko, Sandy
Sent: Friday, April 28, 2017 3:26 PM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Jutras, Nathaniel <Jutras.Nathaniel@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

All: Attached is the Definition of "Waters of the U.S." – Recodification of Preexisting Rules SAN: 6027 | RIN: 2040-AF74 (Tier 1 Rule). Mike Shapiro's transmittal memo is attached and OGC concurrence is below. Please send an email to all on the cc list when this is sent to OMB. OWOW will send notice to the Army Corps of Engineers when the rule is sent to OMB.

Sandy

Sandy Evalenko
Water Policy Staff
Office of Water (4101M)
3226K WJC East
(202) 564-0264 telephone

From: Wehling, Carrie
Sent: Friday, April 28, 2017 2:50 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

OGC concurs in the publication of this proposal.

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Friday, April 28, 2017 2:21 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>;

Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

Hi Carrie (with a cc to other OGC and OW members of the interagency team) –

Attached is the Step 1 package that I just sent to OW's rulemaking process specialist, Sandy Evalenko. Sandy indicated it would be very good to have an email from OGC indicating that you concur in the package, although it is not essential to keep the package moving today since we've developed the package jointly. Could you please send Sandy a short email regarding OGC's concurrence, with a cc to Mindy, Rose, and me? Thanks in advance!

I've asked Sandy to email Mindy, Rose, and me when the package has been uploaded to OMB, so that we can let our whole interagency team know. In addition, Mindy plans to forward the package to our Army and Corps colleagues this afternoon as soon as she's out of a meeting.

Thanks, all! This is a good milestone.

All the best,

Donna

From: Downing, Donna
Sent: Friday, April 28, 2017 1:55 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>

Subject: For review & processing: draft proposed step 1 WOTUS rule for OMB review

Hi Sandy:

Attached please find the package "Proposed Request for Public Comments on the Definition of Waters of the United States – Recodification of Preexisting Rules," ready for OMB interagency review The attachments include:

•□□□□□□□□ The draft proposal (preamble and rule text)

•□□□□□□□□ A .pdf of John Goodin's signed transmittal of the package to Mike Shapiro

•□□□□□□□□ A Word transmittal memo for Mike's transmitting the package to OP's Samantha Davis.

Based on our conversation, I understand these three documents are sufficient for you to oversee OW's review and transmission of the package to OP for subsequent uploading to OMB. In addition, I am bringing a hardcopy of the three documents over as soon as I push "send" on this email. Please let me know if there's anything additional you need.

Thanks, as always, for your help!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Lousberg, Macara[Lousberg.Macara@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Gorke, Roger
Sent: Fri 4/28/2017 8:47:55 PM
Subject: Quick Updates from the West
Quick Updates from the West_April 28.docx

Mike and Benita,

Macara and I discussed sending you a brief update bi-weekly on some of the issues that I am involved in that may not be on your radar. Please let me know if this is helpful/useful, if you have any questions, and/or if you have any suggestions or would want more detail or anything more.

Thanks and have a great weekend,

Roger

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

213-244-1853

gorke.roger@epa.gov

To: Clark, Becki[Clark.Becki@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Cheatham, Reggie[cheatham.reggie@epa.gov]; Principe, Vanessa[Principe.Vanessa@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]
From: Shapiro, Mike
Sent: Fri 4/28/2017 11:32:46 AM
Subject: RE: Brief summary of discussion on the Clean Water Rule with the National Response Team

Becki,

Thanks for that summary, we look forward to continued engagement.

Mike

Michael Shapiro
Acting Assistant Administrator, Office of Water
US EPA, 4101M
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-5700

-----Original Message-----
From: Clark, Becki
Sent: Friday, April 28, 2017 7:26 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>
Subject: Brief summary of discussion on the Clean Water Rule with the National Response Team

OLEM/OEM led a discussion with our federal partners at yesterday's National Response Team (NRT) meeting. Troy Swackhammer gave a presentation using the materials from last week's Federalism meeting.
We got multiple comments and suggestions, similar to topics raised during EPA and Army COE's workgroup discussions. USDA, DOC, USCG and DOI had multiple comments and questions. Despite Troy's careful overview presentation, reps from the other agencies quickly jumped over Step 1 to issues that will be addressed in Step 2. It was an active discussion.
We asked the participants to inform others at their agencies that who are interested.
The participants were very grateful that EPA brought this issue to the table for the NRT.
We will share more details. Just wanted to give you a quick heads up.

Sent from my iPhone

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Cheatham, Reggie[cheatham.reggie@epa.gov]; Principe, Vanessa[Principe.Vanessa@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]
From: Clark, Becki
Sent: Fri 4/28/2017 11:25:47 AM
Subject: Brief summary of discussion on the Clean Water Rule with the National Response Team

OLEM/OEM led a discussion with our federal partners at yesterday's National Response Team (NRT) meeting. Troy Swackhammer gave a presentation using the materials from last week's Federalism meeting.
We got multiple comments and suggestions, similar to topics raised during EPA and Army COE's workgroup discussions. USDA, DOC, USCG and DOI had multiple comments and questions. Despite Troy's careful overview presentation, reps from the other agencies quickly jumped over Step 1 to issues that will be addressed in Step 2. It was an active discussion.
We asked the participants to inform others at their agencies that who are interested.
The participants were very grateful that EPA brought this issue to the table for the NRT.
We will share more details. Just wanted to give you a quick heads up.

Sent from my iPhone

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]; Mccabe, Catherine[McCabe.Catherine@epa.gov]
From: Shapiro, Mike
Sent: Fri 4/28/2017 3:26:58 AM
Subject: OW Weekly Report
OW Weekly Report_042717.docx

OW's Weekly Report is attached.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Wehling, Carrie
Sent: Thur 4/27/2017 8:22:03 PM
Subject: RE: draft desk statement for submission to OMB
Step 1 initiating OMB review_desk statement_DRAFT.cw.docx

Deliberative Process / Ex. 5

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Eisenberg, Mindy
Sent: Thursday, April 27, 2017 3:37 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Downing, Donna <Downing.Donna@epa.gov>

Subject: draft desk statement for submission to OMB

Hi All,

Here is a draft desk statement in anticipation of OMB submittal. Please send any edits by COB if possible so we can forward to OPA.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Thur 4/27/2017 7:41:14 PM
Subject: FOR YOUR REVIEW: Draft OW Weekly Report
OW Weekly Report_042717.docx

Deliberative Process / Ex. 5

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 4/27/2017 7:37:04 PM
Subject: draft desk statement for submission to OMB
Step 1 initiating OMB review_desk statement_DRAFT.docx

Hi All,

Here is a draft desk statement in anticipation of OMB submittal. Please send any edits by COB if possible so we can forward to OPA.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

No. 16-299

In the Supreme Court of the United States

NATIONAL ASSOCIATION OF MANUFACTURERS,
Petitioner,

v.

U.S. DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE ARMY CORPS OF ENGINEERS, AND
U.S. ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF STATE RESPONDENTS OHIO, ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, FLORIDA, GEORGIA, IDAHO, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, THE NEW MEXICO STATE ENGINEER, THE NEW MEXICO ENVIRONMENT DEPARTMENT, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, WEST VIRGINIA, WISCONSIN, AND WYOMING IN SUPPORT OF PETITIONER

MICHAEL DEWINE
Attorney General of Ohio

ERIC E. MURPHY*
State Solicitor
**Counsel of Record*
PETER T. REED
Deputy Solicitor
30 East Broad St., 17th Floor
Columbus, Ohio 43215
614-466-8980
eric.murphy@
ohioattorneygeneral.gov

Counsel for Respondent State of Ohio

QUESTION PRESENTED

Does the federal rule redefining the "waters of the United States" that are subject to the Clean Water Act fall within the ex clusive, original jurisdiction of the circuit courts of appeals under 33 U.S.C. § 1369(b)(1)?

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Other Authorities

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 1, 19

Black's Law Dictionary (5th ed. 1979) 22

Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054 (June 29, 2015) ..... *passim*

H.R. Rep. No. 92-911 (1972) 3, 10, 40

The Random House Dictionary of the English Language (2d ed. 1987) 30

S. Rep. 92-414 (1971) 7

Webster's New World Dictionary (2d college ed. 1972) 20, 30, 32

Zecheriah Chafee, The Thomas M. Cooley Lectures, *Some Problems of Equity* (1950) 39

INTRODUCTION

The federal government seeks to resuscitate the long-repudiated style of interpretation under which "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers." *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892). The Environmental Protection Agency ("EPA") and the Army Corps of Engineers ("Corps") (collectively, "the Agencies") make arguments that are the flipside of *Holy Trinity*. In June 2015, they issued a rule purporting to establish an expansive new definition of "waters of the United States" for the Clean Water Act. *See* Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054 (June 29, 2015) ("the Rule"). They argue that 33 U.S.C. § 1369(b)(1) grants circuit jurisdiction over challenges to this Rule because—while the Rule does not fall "within the letter" of § 1369(b)(1)—it falls within that provision's efficiency-based animating "spirit." *See Holy Trinity*, 143 U.S. at 459.

The Agencies' purpose-over-text approach to statutory interpretation suffers from two main problems. *First*, "*Holy Trinity* is a decision that the Supreme Court stopped relying on more than two decades ago." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 12 (2012). Nowadays, this Court follows a rule quite different from the one propounded by *Holy Trinity* in 1892 and suggested by the Agencies today—namely, that courts generally "presume Congress says what it means and means what it says." *Simmons v. Himmelreich*, 136 S. Ct. 1843, 1848 (2016). "When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"

Conn. Nat'l Bank v. Germain, 503 U.S. 249, 254 (1992) (citation omitted). The Court's plain-text approach resolves this case.

The Agencies argue that Subsections (E) and (F) of § 1369(b)(1) are broad enough to reach the Rule. Subsection (E) covers EPA action "approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345"; Subsection (F) covers EPA action "issuing or denying any permit under section 1342." (Unless otherwise indicated, section citations are to Title 33 of the U.S. Code.) The Agencies are wrong. As a matter of pure text, the controlling concurrence below called their interpretation "illogical and unreasonable," Pet. App. 29a (Griffin, J., concurring in judgment), and even the lead opinion described their interpretation as "not compelling," *id.* at 9a (McKeague, J., op.).

Starting with Subsection (E), the Rule does not "promulgat[e]" an "effluent limitation or other limitation under section 1311, 1312, 1316, or 1345." Those four sections direct the EPA to issue distinct types of pollution restrictions: technology-based restrictions (§ 1311), water-quality restrictions (§ 1312), new-source restrictions (§ 1316), or sewage-sludge restrictions (§ 1345). The Rule, by contrast, promulgates a *definition*, not a *limitation*. It even notes that it "does not establish any regulatory requirements." 80 Fed. Reg. at 37,054. Further, the Rule was not issued *under* the four listed sections. It instead defines statutory text ("waters of the United States") found only in a definitional section (§ 1362(7)) under, if anything, the Agencies' general rulemaking authority (*e.g.*, § 1361(a)).

Turning to Subsection (F), the Rule does not issue or deny a pollution -discharging permit under the permitting program established by § 1342. The Agencies instead interpret Subsection (F) far more broadly to cover anything *affecting* § 1342's permitting process. Their interpretation reads the "issuing or denying" verbs right out of th e statute. As this Court has already explained to the EPA, "[a]n agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting una mbiguous statutory terms." *Util. Air Regulatory Grp. v. EPA* , 134 S. Ct. 2427, 2445 (2014).

Second, even under a purpose -based approach, the Agencies ' argument—that circuit jurisdiction here promotes § 1369(b)(1)'s alleged efficiency pu r-pose—overlooks that "no legislation pur sues its pu r-poses at all costs." *Rodriguez v. United States* , 480 U.S. 522, 525 -26 (1987). "[A]nd i t frustrates rather than effectuates legislative intent si mplistically to assume that *whatever* furthers the statute 's primary objective must be the law." *Id.* at 526. This case proves that point. Other important purposes could have motivated Congress to draft the specific language in § 1369(b)(1) that excludes the Rule.

For one thing, the Agencies' reading muddies a relatively stra ightforward jurisdictional statute , d e-spite Congress's desire for a "clear and orderly pr o-cess for judicial review." *See* H.R. Rep. No. 92-911, at 136 (1972). This Court has long presumed that Congress intends for j urisdictional statutes to yield "simple" rules. *Hertz Corp. v. Friend* , 559 U.S. 77, 80, 94 (2010). Vague rules ensure that "'an eno r-mous amount of expensive legal ability will be used up on jurisdictional issues when it could be much

better spent upon elucidating the merits of cases.'" *Sisson v. Ruby*, 497 U.S. 358, 375 (1990) (Scalia, J., concurring in judgment) (citation omitted). This litigation spotlights those hazards. "[C]areful counsel" have had to sue simultaneously at two levels of the judiciary "to protect their rights," *Inv. Co. Inst. v. Bd. of Governors of Fed. Reserve Sys.*, 551 F.2d 1270, 1280 (D.C. Cir. 1977), and many courts have spent significant resources to "assure themselves of their power to hear" these suits, *Hertz*, 559 U.S. at 94. The Agencies' amorphous reading of Subsections (E) and (F) would cement this wasteful double litigation. Parties and courts would routinely find it difficult to determine whether a particular regulation has an "indirect consequence" of initiating limitations found elsewhere in the Act (so as to trigger Subsection (E)), or whether the regulation sufficiently "impact [s] permitting requirements" (so as to trigger Subsection (F)). Pet. App. 10a, 18a (McKeague, J., op.). Far better that courts stick to the comparatively simpler rules flowing out of § 1369(b)(1)'s text.

For another thing, the Agencies' interpretation could restrict the judicial review available in as-applied challenges. This Court has long presumed that Congress intends for final agency action to be judicially reviewable under the Administrative Procedure Act. *See U.S. Army Corps of Eng'rs v. Hawkes Co.*, 136 S. Ct. 1807, 1816 (2016). But § 1369(b)(2) bars judicial review over actions that fall within § 1369(b)(1)'s purview in any later "civil or criminal proceeding for enforcement." Given this restriction, other courts have refused to "read[] § [1369](b)(1) broadly." *Am. Paper Inst., Inc. v. EPA*, 882 F.2d 287, 289 (7th Cir. 1989) (Easterbrook, J.). They instead have presumed that Congress did not intend for

§ 1369(b)(2)'s "peculiar sting" to apply to actions not plainly covered by § 1369(b)(1)'s terms. *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1313 (9th Cir. 1992).

At day's end, § 1369(b)(1)'s text resolves this case, and the Court should reject the Agencies' policy-driven reasons for departing from that text.

STATEMENT OF THE CASE

A. The Act's Regulatory Scheme

The Clean Water Act prohibits any unauthorized "discharge of any pollutant by any person." 33 U.S.C. § 1311(a). The Act defines "pollutant" to include many ordinary substances, including dirt and fill materials. *Id.* § 1362(6). It defines "discharge of a pollutant" to cover "any addition of any pollutant to navigable waters from any point source," such as a pipe or ditch. *Id.* § 1362(12), (14). And it defines "person" to include individuals, corporations, and States. *Id.* § 1362(5).

As an exception to § 1311(a)'s ban on discharges, the Act establishes two permitting programs that implicate the jurisdictional question before the Court. Under § 1342(a), the EPA administers the "National Pollutant Discharge Elimination System" ("NPDES"), and issues permits allowing persons to discharge pollutants that can wash downstream. Under § 1344, the Corps issues permits allowing persons to discharge "dredged or fill material," "which, unlike traditional water pollutants, are solids that do not readily wash downstream." *Rapanos v. United States*, 547 U.S. 715, 723 (2006) (plurality op.). Both § 1342 and § 1344 authorize States to operate their own permitting programs for waters within their

borders. 33 U.S.C. §§ 1342(b), 1344(g). Most States have done so under the NPDES program in § 1342; two States have done so under the program for dredged or fill material in § 1344.

A permit holder seeking to discharge pollutants must abide by the limitations that are established under other statutory sections. *Id.* § 1342(a). Many of these specific sections (and a few others) also implicate the jurisdictional question presented here.

Technology Limits (§ 1311). "[C]aptioned 'effluent limitations,'" *E.I. du Pont de Nemours and Co. v. Train*, 430 U.S. 112, 118 (1977), § 1311 directs the EPA to establish technology-based "effluent limitations" for *existing* point sources. These limitations were established in "two stages." *Id.* at 121. Early limits were tied to the "best practicable control technology" for point sources or to more stringent state or federal water-quality standards. 33 U.S.C. § 1311(b)(1)(A), (C). Later effluent limitations were tied to the "best available technology economically achievable" (for toxic pollutants) or the "best conventional pollutant control technology" (for conventional pollutants). *Id.* § 1311(b)(2)(A), (E); *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 220-21 (2009). These limits are incorporated into specific permits under § 1342(a), which "serve 'to transform generally applicable effluent limitations . . . into the obligations . . . of the individual discharger(s).'" *E.I. du Pont*, 430 U.S. at 119-20 (citation omitted). For some effluent limitations, however, § 1311(c) allows a point source to seek a variance based on individual need.

Water-Quality Limits (§ 1312). Section 1312 directs the EPA to set more stringent "[w]ater quality related effluent limitations" for specific water bodies.

The EPA may do so if it determines that § 1311(b)(2)'s technology-based limitations would be inadequate to protect public health, water supplies, and certain uses. *See* 33 U.S.C. § 1312(a).

New-Source Limits (§ 1316). Section 1316 directs the EPA to set "[n]ational standards of performance" for "new sources." These new sources must follow a distinct technology-based standard—the "best available demonstrated control technology" at the time that construction begins on the new source. *Id.* § 1316(a)(1)-(2). A State also may enforce new-source standards within its borders if approved to do so by the EPA. *Id.* § 1316(c).

Limits on Toxic Pollutants (§ 1317) & Sewage Sludge (§ 1345). Outside this overarching structure, some pollutants receive specific treatment. Section 1317 directs the EPA to establish a list of, and potentially set more restrictive "effluent standards" for, certain "toxic pollutants." *Id.* § 1317(a). In addition, Section 1345, as amended in 1987, directs the EPA to set either "numerical limitations" on certain toxic pollutants found in "sewage sludge," or "[a]lternative standards" for publicly owned treatment works if those numerical limits are infeasible. *Id.* § 1345(d)(2)-(3); *see* Pub. L. No. 100-4, § 406, 101 Stat. 71-72.

State Water-Quality Standards (§ 1313). Before the Clean Water Act, federal law directed each State to set "water quality standards" for interstate waters "flowing through" the State's borders. *E.g.*, S. Rep. 92-414, at 2 (1971). Section 1313 continues that practice. It directs States to issue and periodically update water-quality standards, and to adopt "total maximum daily loads" for water bodies that cannot

meet th ose standards through § 1311's technology-based limitations alone. 33 U.S.C. § 1313 (a), (c)-(d). "These state water quality standards provide 'a su p-plementary basis . . . so that numerous point sources, despite individual compliance with effluent limit a-tions, may be further regulated to prevent water quality from fal ling below acceptable levels.'" *PUD No. 1 of Jefferson Cty. v. Wash. Dep't of Ecology* , 511 U.S. 700, 704 (1994) (c itation omitted). As part of these standards, States must adopt "individual co n-trol strateg[ies]" for "toxic pollutants." 33 U.S.C. § 1314(l)(1)(D). If the EPA rejects a State's individu-al control strat egy, the EPA may promulgate its own for the relevant waters. *Id.* § 1314(l)(3).

B. The "Waters Of The United States" Rule

The phrase "navigable waters" identifies the w a-ters that are co vered by "the entire statute," and so its meaning delineates the reach of the Act's sections. *Rapanos*, 547 U.S. at 742 (plurality op.). The Act 's definitional section defines "navigable waters" to "mean[] the waters of the United States, i ncluding the territorial seas." 33 U.S.C. § 1362(7).

The Co rps originally interpreted the phrase "w a-ters of the United States" under the "traditional jud i-cial definition," which covered only "interstate waters that are 'navigable in fact' or readily susce ptible of being rendered so." *Rapanos*, 547 U.S. at 723 (pl u-rality op.). Environmental groups cha llenged that definition, however, and a district court invalidated it as too narrow . *Nat. Res. Defense Council, Inc. v. Callaway*, 392 F. Supp. 685, 686 (D.D.C. 1975). Since then, the Agencies have "adopted a far broa der definition." *Rapanos*, 547 U.S. at 724 (plurality op.). This Court has rejected their overly broad definition

as applied to certain wetlands, *see id.* at 786-87 (Kennedy, J., concurring in judgment), and to an "abandoned sand and gravel pit . . . which provide[d] habitat for migratory birds," *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 162 (2001) ("*SWANCC*").

The Rule is another attempt by the Agencies to define "waters of the United States" too broadly; if implemented, it would "invariably result[] in expansion of [their] regulatory authority." Pet. App. 15a (McKeague, J., op.). The Rule is unlawful in many respects, including because it extends the Agencies' regulatory authority to many lands that the Act does not cover under this Court's teachings, and because it adopts specific distance-based standards without any record support or public notice. The States have thus obtained a nationwide stay and a preliminary injunction against its implementation. *See In re EPA*, 803 F.3d 804, 807-09 (6th Cir. 2015); *North Dakota v. EPA*, 127 F. Supp. 3d 1047, 1056-58, 1060 (D.N.D. 2015).

More important for present purposes, the Rule purports *only* to define the waters that are subject to federal regulation under the Act. "In this joint rulemaking," the Rule indicates, "the agencies establish a definitional rule that clarifies the scope of the Clean Water Act." 80 Fed. Reg. at 37,104. The Rule does not change any of the Act's mechanisms, set any standards or limitations, exempt or include any sources or pollutants, or issue or deny any permits. The Rule notes that it "does not establish any regulatory requirements," *id.* at 37,054, and "imposes no enforceable duty on any state, local, or tribal governments, or the private sector, and does not contain

regulatory requirements that might significantly or uniquely affect small governments," *id.* at 37,102.

C. Judicial Review Under The Act

Seeking to "establish a clear and orderly process for judicial review," H.R. Rep. No. 92-911, at 136 (1972), the Clean Water Act divides jurisdiction between the circuit courts and the district courts based on the type of EPA action that is at issue. For most final EPA or Corps actions, challengers may sue in the district court under the Administrative Procedure Act (APA). *See* 5 U.S.C. § 704. In this Court's recent cases, for example, the plaintiffs who asserted that their lands were not "waters of the United States" sued in district court under the APA. *E.g.*, *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 136 S. Ct. 1807, 1813 (2016); *Sackett v. EPA*, 566 U.S. 120, 125 (2012); *Rapanos*, 547 U.S. at 765 (Kennedy, J., concurring in judgment); *SWANCC*, 531 U.S. at 165.

The Act also identifies seven specific actions by the EPA's Administrator that are subject to immediate circuit review. 33 U.S.C. § 1369(b)(1). In particular, it requires circuit review for EPA action:

> (A) in promulgating any standard of performance under section 1316 of this title,
> (B) in making any determination pursuant to section 1316(b)(1)(C) of this title,
> (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title,
> (D) in making any determination as to a State permit program submitted under section 1342(b) of this title,

> (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of this title,
> (F) in issuing or denying any permit under section 1342 of this title, and
> (G) in promulgating any individual control strategy under section 1314(l) of this title[.]

Id. These petitions for review must be filed "within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such 120th day." *Id.* If a party could have sought review under § 1369(b)(1), that party cannot later assert the challenge in enforcement proceedings. *Id.* § 1369(b)(2).

D. State Challenges To The Rule

The State Respondents believe that circuit courts lack jurisdiction over the Rule under § 1369(b)(1) because the Rule does not fall within one of the seven listed actions. So they filed district-court suits challenging the Rule. *North Dakota v. EPA*, No. 3:15-cv-59 (D.N.D.); *Ohio v. U.S. Army Corps of Eng'rs*, 2:15-cv-2467 (S.D. Ohio); *Texas v. EPA*, No. 3:15-cv-162 (S.D. Tex.); *Georgia v. McCarthy*, No. 2:15-cv-79 (S.D. Ga.); *Oklahoma ex rel. Pruitt v. EPA*, No. 4:15-cv-381 (N.D. Okla.).

Yet, given the Agencies' suggestion that the Rule fell within § 1369(b)(1)'s *exclusive* jurisdictional grant, *see* 80 Fed. Reg. at 37,104, the State Respondents filed protective petitions for review in the circuit courts. *E.g.*, *Inv. Co. Inst. v. Bd. of Governors of Fed. Reserve Sys.*, 551 F.2d 1270, 1280 (D.C. Cir. 1977); *see Ohio v. U.S. Army Corps of Eng'rs*, No. 15-3799

(6th Cir.); *Oklahoma ex rel. Pruitt v. EPA*, No. 15-9551 (10th Cir.); *North Dakota v. EPA*, No. 15-2552 (8th Cir.); *Texas v. EPA*, No. 15-60492 (5th Cir.); *Georgia v. McCarthy*, No. 15-13252 (11th Cir.). Those petitions were consolidated in the Sixth Circuit with the petitions from many other groups. 28 U.S.C. § 2112(a).

After consolidation, the States filed motions to dismiss the petitions for lack of jurisdiction. The Sixth Circuit denied the motions in a fractured 1-1-1 decision. Pet. App. 4a (McKeague, J., op.); *id.* at 27a (Griffin, J., concurring in judgment).

The lead opinion, written by Judge McKeague, concluded that the circuit courts had jurisdiction under Subsections (E) and (F) of § 1369(b)(1). Pet. App. 3a-26a. Relying primarily on cases interpreting § 1369(b)(1) rather than the statute's text, Judge McKeague noted that the section had been "construed not in a strict literal sense, but in a manner designed to further Congress's evident purposes." Pet. App. 26a. Under this pragmatic approach, the lead opinion agreed with the Agencies that Subsection (E) could extend to regulations, like the Rule, that had an "indirect consequence" of triggering limitations found elsewhere in the Act. *Id.* at 10a. And the lead opinion agreed that Subsection (F) could cover regulations, like the Rule, that "impact permitting requirements." *Id.* at 18a.

Judge Griffin concurred in the judgment. Pet. App. 27a-45a. The concurrence disagreed that the Sixth Circuit had jurisdiction under the text of Subsections (E) and (F), finding the Agencies' reading to be "illogical and unreasonable." *Id.* at 29a. Nevertheless, the concurrence believed that the panel was

compelled to follow "incorrect" circuit precedent applying Subsection (F). *Id.* at 44a (discussing *Nat'l Cotton Council of Am. v. EPA*, 553 F.3d 927 (6th Cir. 2009)). "Absent *National Cotton*," the concurrence would have "dismiss[ed] the petitions for lack of jurisdiction." *Id.* at 45a.

Judge Keith dissented. Pet. App. 45a-47a. The dissent agreed with the concurrence's reading of Subsections (E) and (F). *Id.* at 45a. But the dissent did not read *National Cotton* as compelling a finding of jurisdiction under Subsection (F). *Id.* at 45a-47a.

The Sixth Circuit denied en banc review. *Id.* at 52a. It has since stayed briefing on the merits.

SUMMARY OF ARGUMENT

A. The plain text of Subsections (E) and (F) shows that circuit courts lack jurisdiction over the Rule under § 1369(b)(1).

Subsection (E). Subsection (E) covers EPA action "approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345." This text has three elements. Its verb choices extend to EPA actions that "approv[e]" something adopted by another or that "promulgat[e]" something adopted by the EPA itself. In addition, the thing being approved or promulgated must be an "effluent limitation or other limitation." The Act defines "effluent limitation" to cover certain restrictions on discharges into navigable waters. The Act does not define "other limitation." That phrase is best read as covering restrictions that are similar to an effluent limitation, but that fall outside its technical definition. Finally, the EPA must issue the limitation

"under"—i.e., according to the authority of—four specific sections, § 1311, 1312, 1316, or 1345.

For two reasons, this text does not reach the Rule. *First*, the Rule does not "promulgate" an "effluent limitation or other limitation." It does not issue any restrictions on regulated parties, and instead defines the scope of the phrase "waters of the United States." *Second*, the Agencies did not issue the Rule pursuant to congressional instructions found within the four listed sections; instead, they defined a phrase used only in the definitional section (§ 1362) under, if anything, their general rulemaking authority.

In response, the Agencies argue that Subsection (E)'s text is broad enough to cover regulations, like the Rule, that have a "practical effect" of triggering limitations found *elsewhere* in the Act, such as § 1311(a)'s general ban on discharges into navigable waters. Both text and precedent disprove this interpretation.

As for text, Subsection (E)'s *entire* clause shows that the thing that the EPA "promulgates" itself must be the limitation. Other sections confirm this reading because they treat "effluent limitations or other limitations" as things that *themselves* can be *violated*. *E.g.*, 33 U.S.C. § 1341(a)(4). And the Agencies' argument lacks a logical stopping point. For example, *Sackett v. EPA*, 566 U.S. 120 (2012), considered an EPA action finding specific lands to be "waters of the United States." *Sackett* started in the district court under the APA—even though the agency action had a "practical effect" of triggering the Act's limits. Finally, the Agencies mistakenly argue that the Rule issued "under section 1311" within the meaning of Subsection (E) merely because they ref-

erenced that section in the portion of the Rule that identifies the "legal authority" to adopt it. Yet that portion of the Rule identifies the *entire* Act as providing the Agencies with such authority, and they should not be able to manufacture jurisdiction merely by mentioning a section listed in Subsection (E).

As for precedent, the Agencies argue that *E.I. du Pont de Nemours and Co. v. Train*, 430 U.S. 112 (1977), supports their "practical" construction of Subsection (E). But *E.I. du Pont* does not, as the lead opinion below asserted, justify "eschew[ing]" a "literal reading" of Subsection (E). *E.I. du Pont*, in fact, *adopted* a literal reading by rejecting an atextually narrow view that would have limited "under section 1311" to EPA variances issued under § 1311(c). While *E.I. du Pont* also relied on practical concerns, it did so only to reinforce the plain text.

Subsection (F). Subsection (F) covers EPA action "issuing or denying any permit under section 1342." This section has two elements. The EPA must "issue" (grant) or "deny" (refuse access to) "any permit." The issuance or denial must also be "under" (i.e., according to the authority of) § 1342. In this way, the Act splits judicial review for permitting decisions: It authorizes circuit review for EPA permits under the NPDES program in § 1342, and district review for Corps permits for dredged or fill material in § 1344.

Here, the Rule neither issues a permit nor denies one under § 1342. That fact ends the analysis under Subsection (F)'s unambiguous text.

In response, the Agencies argue that Subsection (F) covers all EPA actions that "impact" or "affect" permitting. But the Agencies offer *no* textual hook

for this interpretation, which reads "issuing or denying" out of the subsection. And the holding of *Crown Simpson Pulp Co. v. Costle*, 445 U.S. 193 (1980) — that an EPA veto of a state-issued permit qualifies as a denial of that permit — comports with the plain text. Under the word's ordinary meaning, "deny" means "to refuse the use of or access to." That is precisely what the EPA veto accomplished. And while *Crown Simpson* also referenced practical concerns, the Court again did so merely to reinforce, not repudiate, the text.

B. The plain language of Subsections (E) and (F) alone decides this case. Nonetheless, reading § 1369(b)(1) as a whole confirms that the Rule is not subject to immediate circuit review. Section 1369(b)(1) establishes circuit review for seven *specific* EPA actions, down to the subsection under which some actions are authorized. This precision should make the Court wary of adopting a loose "practical" construction of § 1369(b)(1). A comparison of that provision to its counterpart in the Clean Air Act illustrates why. The Clean Air Act grants circuit jurisdiction over "any" final EPA action, showing that Congress knows how to provide for broad circuit review when it wants to.

Yet the Agencies' broad reading of Subsections (E) and (F) would permit circuit review over actions that Congress excluded from § 1369(b)(1). Take their reading that "under section 1311" in Subsection (E) covers regulations implicating anything mentioned in that section (such as "navigable waters"). Section 1311 cross-references many provisions, including, for example, state water-quality standards in § 1313. But the Agencies agree that this reference does *not*

allow review over those state standards. Similarly, the Agencies' " affect-permitting" test for Subse ction (F) could sweep in Corps permitting rules under § 1344 (as it has in this case), even though § 1369(b)(1) references only § 1342 permits.

In addition, the Agencies' broad reading of § 1369(b)(1) creates superfluous text. A broad view of "under section 1311" in Subsection (E) would re n-der that subsection's reference to other sections (such as § 1312) s uperfluous. After all, § 1311 cross - references § 1312 too. And the Agencies' "affects-permitting" test for Subsection (F) would sweep in regulations issued under §§ 1311, 1312, 1316, 1317, 1318, and 1343 into that s ubsection—because § 1342(a) requires permits to adhere to those other sections. That result would conflict with Congress's decision to grant jurisdiction over some, but not all, of those sections in § 1369(b)(1).

C. Lastly, a plain -text reading comports with well-established interpretative presumptions.

1. This Court has held that j urisdictional st atutes should set clear rules. The plain-text reading advances this goal; the Agencies' pragmatic view does not. Subsection (E)'s text covers specific EPA-sanctioned restrictions referenced in (and issued a c-cording to) four sections. But the Agencies' "indirect-effects" test requires a n amorphous inquiry into a regulation's impact. Likewise, Subsection (F)'s text establishes a clear rule—the EPA must issue or deny a permit. But the Agencies' "affects-permitting" test creates an unworkable one.

2. This Court interprets statutes against a bac k-ground presumption favoring judicial review of age n-

cy action. Both *U.S. Army Corps of Engineers v. Hawkes Co.*, 136 S. Ct. 1807 (2016), and *Sackett* relied on that presumption to reject the Agencies' argument that challenges to particular actions were premature. The presumption applies here, too, because of § 1369(b)(2)'s limits on judicial review. Indeed, other courts have read § 1369(b)(1) narrowly because, where it applies, § 1369(b)(2) restricts subsequent challenges in later enforcement proceedings. Related constitutional concerns with § 1369(b)(2)'s restrictions reinforce this interpretation.

3. The Agencies' competing presumption, by contrast, has little basis in this Court's precedent. They argue that *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985), created a broad preference favoring immediate circuit review over agency action. Yet *Florida Power* nowhere suggests it establishes such a universal efficiency-based rule. It simply resolved the ambiguous text of one law. Section 1369(b)(1), by contrast, *unambiguously* bars appellate jurisdiction here. Besides, this Court's presumption in favor of judicial review of agency action "repudiates" such efficiency concerns—as *Sackett* made clear.

ARGUMENT

CIRCUIT COURTS LACK SUBJECT-MATTER JURISDICTION OVER THE RULE UNDER § 1369(b)(1)

The Agencies assert that the Rule falls within Subsections (E) and (F) of § 1369(b)(1). Basic principles of statutory interpretation, however, show that neither subsection covers the Rule. Most notably, the Rule falls outside the text of those subsections. When read as a whole, moreover, § 1369(b)(1) reiterates that Subsections (E) and (F) cannot be given the

breadth needed to cover the Rule. Finally, two of this Court's working presumptions—those presuming that Congress intends for bright-line jurisdictional rules and for judicial review over agency actions—confirm the plain-text reading.

A. The Plain Text Of Subsections (E) And (F) Does Not Reach The Rule

As the Court has said time and again, a statutory-interpretation question "begins 'with the language of the statute itself,' and that 'is also where the inquiry should end'" when that language is unambiguous. *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (citation omitted). The Court, in other words, "presume[s] Congress says what it means and means what it says." *Simmons v. Himmelreich*, 136 S. Ct. 1843, 1848 (2016).

This "Supremacy-Of-Text Principle" decides this case. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). Under no reasonable reading could the language in Subsections (E) and (F) extend to the Rule. Indeed, a majority of the Sixth Circuit panel has already concluded that the Agencies' reading of these subsections is both "illogical and unreasonable." Pet. App. 29a (Griffin, J., concurring in judgment); *see id.* at 45a (Keith, J., dissenting).

1. The Rule falls outside Subsection (E) because it is not a "limitation" issued under the identified sections

a. Subsection (E) grants jurisdiction to the circuit courts over EPA action (1) "approving or promulgating" (2) "any effluent limitation or other limitation"

(3) "under section 1311, 1312, 1316, or 1345." 33 U.S.C. § 1369(b)(1)(E). This text has three elements.

First, the verbs cover EPA actions that adopt restrictions developed *by others* ("approving"), and EPA actions that issue restrictions developed *by the agency itself* ("promulgating"). *Cf. Webster's New World Dictionary* 68, 1137 (2d college ed. 1972). The use of both verbs, moreover, shows that the verb "promulgate" has a specific meaning, covering regulations that *directly* impose limitations rather than "everything [the EPA] issues" in the Federal Register. *Roll Coater, Inc. v. Reilly*, 932 F.2d 668, 670-71 (7th Cir. 1991) (Easterbrook, J.). Any broader reading of "promulgating" would render "approving" in the subsection superfluous. *Id.*

Second, the thing that the EPA approves or promulgates must be an "effluent limitation or other limitation." The Act defines "effluent limitation" as "any *restriction* established by a State or the [EPA] on quantities, rates, and concentrations of chemical, physical, biological, and other *constituents* which are *discharged from point sources* into navigable waters . . . ." 33 U.S.C. § 1362(11) (emphases added). Thus, an effluent limitation must restrict *discharges* into navigable waters from *point sources*. *See id.* § 1362(14); *Rapanos v. United States*, 547 U.S. 715, 743-44 (2006) (plurality op.). These "effluent limitations" include EPA regulations that establish *general* restrictions on discharges by *categories* of point sources, such as chemical plants. *See E.I. du Pont de Nemours and Co. v. Train*, 430 U.S. 112, 136 (1977). The EPA regularly adopts or amends those effluent limitations. *See Defenders of Wildlife v. Perciasepe*,

714 F.3d 1317 , 1320 -21 (D.C. Cir. 2013) ; 33 U.S.C. § 1311(d).

The Act does not, by contrast, define the phrase "other limitation." The word "limitation" is commonly (if unhel pfully) defined as "something that li m-its"—that is, something that "restrict [s]" or "curb [s]" action. *See* Webster's, *supra*, at 820 (defining "limitation" and "limit"). Yet Congress's use of the phrase "effluent limitation or other limitation" suggests that an "other limitation" must be similar in kind to an effluent limitation. Under "the doctrine of *noscitur a sociis*," courts "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words." *Gustafson v. Alloyd Co.* , 5 13 U.S. 561, 575 (1995). A broad view of "other limita tion"—as covering anything that r estricts anyone—would swallow up the phrase "effluent limitation." If Congress had intended for Subsection (E) to reach any limitation, it would have said "any limitation."

When r ead in context, therefore, "other limit a-tion" should cover EPA restrictions that are "directly related to effluent limitations" in that they "direct[]" the regulated community " to engage in sp ecific types of activity." *Am. Paper Inst., Inc. v. EPA*, 890 F.2d 869, 877 (7th Cir. 1989) (*"Am. Paper I"*). These types of "other limitations" fall within Subsection (E) even if they do not meet the technical definition of "effl u-ent limitation" because they do not limit *discharges* by *point sources*. The EPA, for example, regulates a point source's *intake* structures by addressing how it *receives* water. These reg ulations are not "effluent limitations." Yet the phrase "other limitation" allows circuit courts to consider the regulations along side simultaneously issued effluent limita tions. *E.g.*,

ConocoPhillips Co. v. EPA, 612 F.3d 822, 831 (5th Cir. 2010); *cf. PUD No. 1 of Jefferson Cty. v. Wash. Dep't of Ecology*, 511 U.S. 700, 713 (1994).

Third, a limitation must be approved or promulgated "under"—i.e., "according to"—"section 1311, 1312, 1316, or 1345." *See Black's Law Dictionary* 1368 (5th ed. 1979). This prepositional phrase clarifies that Subsection (E) "cover[s] a specific set of EPA" restrictions because each of the four sections directs the EPA to issue specific regulations. *Friends of the Earth v. EPA*, 333 F.3d 184, 190 (D.C. Cir. 2003). Section 1311 tells the EPA to establish *technology-based* limitations for *existing* sources. 33 U.S.C. § 1311(b)(1)(A), (2)(A). Section 1312 directs the EPA to establish *water-quality* limitations for more polluted water bodies. *Id.* § 1312(a). Section 1316 directs the EPA to establish limitations on *new* sources. *Id.* § 1316(b)(1)(B). And § 1345 directs it to establish limitations on *sewage sludge*. *Id.* § 1345(d).

Conversely, under basic interpretative principles, a limitation does not fall within Subsection (E) if the EPA's authority to establish it springs from *another* section. "It would be an odd use of language to say 'any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345,'" "if the references to particular sections were not meant to exclude others." *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1313 (9th Cir. 1992). Circuit courts, for example, have uniformly held that Subsection (E) does not cover the "total maximum daily loads" that States adopt to achieve their water-quality standards because the authority to issue those restrictions arises from § 1313. *Id.* at 1312-13; *Friends of the Earth*,

333 F.3d at 190; *Bethlehem Steel Corp. v. EPA*, 538 F.2d 513, 516-18 (2d Cir. 1976).

b. The Rule does not meet Subsection (E)'s requirements for two reasons: (1) the EPA did not "promulgate" an "effluent or other limitation," and (2) the EPA did not issue the Rule "under section 1311, 1312, 1316, or 1345."

To begin with, the Rule does not *directly* "promulgate" an "effluent limitation or other limitation." As the Agencies admit, the Rule does not issue an "effluent limitation" because it nowhere announces restrictions on the pollutants that point sources may discharge. 33 U.S.C. § 1362(11); Pet. App. 9a (McKeague, J., op.). Nor can the Rule be considered the "promulgation" of an "other limitation" because it also does not directly issue *any* restriction. To the contrary, the Rule disclaims doing so. It "does not establish any regulatory requirements," 80 Fed. Reg. at 37,054, and "imposes no enforceable duty" on "the private sector," *id.* at 37,102. Instead, the Rule "sets the jurisdictional reach for whether the discharge limitations even apply in the first place." Pet. App. 32a (Griffin, J., concurring in judgment).

In addition, the EPA did not issue the Rule according to the authority of "section 1311, 1312, 1316, or 1345." The Rule does not accomplish the actions that those sections direct EPA to undertake: It sets no technology-based limits under § 1311, water-quality limits under § 1312, new-source limits under § 1316, or sewage-sludge limits under § 1345. The Rule instead interprets language—"waters of the United States"—found *only* in a definitional section. 33 U.S.C. § 1362(7). If Congress gave the EPA the authority to clarify the meaning of § 1362's defini-

tions, that authority would spring from 33 U.S.C. § 1361. Section 1361 allows it "to prescribe such regulations as are necessary to carry out [its] fun c-tions under this chapter." *Id.* § 1361(a).

Far from tailored to Subsection (E)'s listed sections, moreover, the Rule's "defin ition will apply to all provisions of the Act." 80 Fed. Reg. at 37,104. It will govern many sections —such as § 1313 (which addresses state water-quality stan dards) or § 1344 (which addresses the Corps permitting pro gram)— that are not within § 1369(b)(1)'s reach. Subsection (E)'s citation of § 1311, 1312, 1316, and 1345 should not be read to r each such *general* regulations for the *entire* Act. Indeed, even if those four sections were removed from the Act, t hat removal would not change whatever authority the Agencies have to cla r-ify the mea ning of "wa ters of the United States" in § 1362. That is also why both Agencies, not just the EPA, issued the Rule. It covers provisions within the *Corps'* domain under § 1344 . *See* 80 Fed. Reg. at 37,115-119. That § 1369 grants jurisdiction over EPA actions, not actions of both Agencies, confirms that the multi-agency Rule should not be read as the type of EPA action contemplated by Subsection (E).

c. Only t he lead opinion below found Subsection (E)'s text expansive enough to cover the Rule. Pet. App. 8a-17a (McKeague, J., op.) . Even t hat opinion conceded that the Agencies' interpretation was "not compelling." *Id.* at 9a. It nonetheless accepted the argument that the Rule was the "promulgation" of an "other limitation" "under § 1311" based on a "pract i-cal construction." *Id.* at 10a. This reading is wrong both as a matter of text and as a matter of precedent.

Text. The Agencies argue that the Rule can be seen as the "promulgation" of an "other limitation" "under § 1311" because its "practical effect will be to *indirectly* produce various limitations on point-source operators and permit is suing authorities." Pet. App. 17a (McKeague, J., op.); *see id.* at 9a. By expanding the "waters of the United States" subject to the Act, this argument goes, the Rule triggers limitations found *elsewhere*, including § 1311(a)'s ban on di s-charges. *Id.* at 15a-17a. Subsection (E)'s text cannot extend this far.

As an initial matter, the Agencies read "limit a-tion" in isolation rather than in the context of the entire phrase "approving or promulgating any effl uent limitation o r other limitation under section 1311, 1312, 1316, or 1345." A reasonable reader of the phrase "promulgating or approving" a "limitation" would interpret it to mean that the thing being issued or approved *itself* must be the limitation. Yet the Agencies' argument hinges on limitations found in *the Act* rather than *the Rule.* They say that the Rule makes more lands subject to § 1311(a)'s ban on discharges. Br. in Opp. 13. But *Congress* (not *the EPA*) promulgated § 1311(a). Congress would have used a verb li ke "affecting" rather than "promulga t-ing" if it meant for Subsection (E) to reach regulations that implicate re strictions found elsewhere. When read in its entirety, therefore, Subsection (E) refers to "a specific set of EPA actions" —the r e-strictions that the specific sections d irect the EPA to promulgate. *Friends of the Earth*, 333 F.3d at 190.

In addition, other sections of the Act that use the phrase "effluent limitation or other limitation" all convey that the limitation is something that *itself*

can be *violated*—illustrating that it is the EPA regulation that imposes the restriction. Section 1341, for example, requires certain facilities to allow regulators to review the ir operations to ensure "that applicable effluent limitations or other limitations . . . will not be violated." *Id.* § 1341(a)(4). Section 1365 authorizes citizens to sue for a violation of an "effluent standard or limitation," defined as, among other things, "an effluent limitation or other limitation under section 1311 or 1312." *Id.* § 1365(a), (f). And the Act's whistleblower protections do not extend to employees who "deliberately violate[] any prohibition of [an] effluent limitation or other limitation under section 1311 or 1312." *Id.* § 1367(d). The Rule, however, defines a phrase; it does not establish "any regulatory requirements" that can be violated. *See* 80 Fed. Reg. at 37,054.

The Agencies' broad interpretation of "limitation" also lacks a stopping point. If they correctly read Subsection (E), this Court likely lacked jurisdiction in *Sackett v. EPA*, 566 U.S. 120 (2012). *Sackett* held that an EPA "compliance order" —an order finding lands to be waters of the United States and asserting penalties for discharges —was reviewable by a district court under the APA. *Id.* at 124, 131. This order did something similar to the Rule, but on a smaller scale. It decided that specific lands were waters of the United States, and so it too had a "practical effect" of " *indirectly* produc[ing] various limitations," including § 1311(a)'s prohibition on discharges. *See* Pet. App. 17a (McKeague, J., op.).

Finally, even if the Rule could qualify as a "limitation," the Agencies have not shown that it was issued "under section 1311." The lead opinion sug-

gested that the Rule should be deemed issued "under section 1311" because the Rule identifies that section as authorizing the EPA to issue it. 80 Fed. Reg. at 37,055; Pet. App. 15a -16a n.4 (McKeague, J., op.) . But the Rule identifies the *entire* Act as providing the EPA with the authority to issue it, and it lists several sections (such as § § 1321 and 1344) that are *not* identified in Subsection (E). 80 Fed. Reg. at 37,055. Nor should courts blindly defer to the Age n-cies' position that the y issued the Rule "under section 1311." The Act does not "empower the [EPA], after the manner of Humpty Dumpty in Through the Looking-Glass, to make a regulation an ["other limitation" " under section 1311"] by [its] mere design a-tion" as such in the regulation. *See Adamo Wrecking Co. v. United States*, 434 U.S. 275, 283 (1978).

Precedent. To expand Subsection (E), the lead opinion below rested on *E.I. du Pont*. That case, the lead opinion suggested, adopted a pragmatic a p-proach to S ubsection (E), and thus unmoored its scope from "a literal reading of the p rovision." Pet. App. 10a (McKeague, J., op.) . *E.I. du Pont* cannot bear the weight that the Agencies place on it.

While *E.I. du Pont* invoked practical concerns, it did so only to reinforce the text. That case concerned effluent limit ations that were is sued under § 1311 and so fell within Subsection (E)'s core. The Court "regard[ed] [§ 1369](b)(1)(E) as *unambiguously* authorizing court of appeals review of EPA action promulgating an effluent limitation for existing point sources under [§ 1311]." 430 U.S. at 136 (emphasis added). The challengers, however, argued for an *atextual* view of Subsection (E), one permitting r e-view only "of the grant or denial of an individual va r-

iance" from those limits under § 1311(c). *Id.* The Court disagreed. *Id.* Conducting a close textual analysis, it noted that "Congress referred to specific subsections of the Act" elsewhere in § 1369(b)(1), and "presumably would have specifically mentioned [§ 1311](c) if only action pursuant to that subsection were intended to be reviewable in the court of appeals." *Id.*

Only "*after* a plain textual rejection of the industry's position," Pet. App. 35a (Griffin, J., concurring in judgment), did the Court add practical concerns. Interpreting Subsections (E) and (F) together, it noted that a contrary reading "would produce the truly perverse situation in which" circuit courts "review numerous individual actions issuing or denying permits" under Subsection (F), but not "the basic regulations governing those individual actions" under Subsection (E). *E.I. du Pont*, 430 U.S. at 136. *E.I. du Pont* thus relied on practical concerns to reinforce Subsection (E)'s language; it did not grant circuit courts a freewheeling license to depart from the language based on those concerns.

The lead opinion also cited three circuit cases that allegedly justified the abandonment of Subsection (E)'s text. Pet. App. 11a-13a (McKeague, J., op.). The cases do no such thing.

Natural Resources Defense Council, Inc. v. EPA, 673 F.2d 400 (D.C. Cir. 1982) ("*NRDC*") (Ginsburg, J.), addressed "Consolidated Permit Regulations" that made compliance with § 1311's limitations a "permit condition" and defined how to calculate those limitations for permits. *Id.* at 401, 404-05. Because the regulations "restrict[ed] who may take advantage of certain provisions or otherwise *guide[d] the setting*

of numerical limitations in permits," they qualified as § 1311 limitations. *Id.* (emphasis added). *NRDC* thus involved "EPA actions *expressly specified* in" Subsection (E). *Friends of Earth*, 333 F.3d at 184 n.15 (discussing *NRDC*).

Virginia Electric and Power Co. v. Costle, 566 F.2d 446 (4th Cir. 1977), addressed regulations governing "cooling water intake structures." *Id.* at 449-50. These are "other limitations." *See PUD No. 1*, 511 U.S. at 713. As the Fourth Circuit noted, the Act expressly requires limitations that are issued under § 1311 (for existing sources) and § 1316 (for new sources) to include these intake-structure restrictions. *Va. Elec.*, 566 F.2d at 450; *see* 33 U.S.C. § 1326(b). Because the intake-structure restrictions were "closely related" to effluent limitations, it would have been "anomalous" to bifurcate review of them. *Va. Elec.*, 566 F.2d at 450; *cf. Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009).

Finally, *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013), addressed EPA letters concerning practices by "publicly owned treatment works." *Id.* at 854, 856. The court ruled that an EPA action qualifies as an "other limitation" under Subsection (E) if "entities subject to the [Act's] permit requirements face new restrictions on their discretion with respect to discharges *or discharge-related processes*." *Id.* at 866 (emphasis added). Applying that interpretation, it held that an EPA letter restricting the manner in which those treatment works *internally* treated wastewater qualified as an "other limitation" under § 1311(b)(1)(B). *Id.*

2. The Rule falls outside Subsection (F) because it does not "issue or deny" a permit under § 1342

a. Subsection (F) grants jurisdiction over EPA action (1) "issuing or denying" "any permit" (2) "under section 1342." 33 U.S.C. § 1369(b)(1)(F). This language has two elements.

First, "[b]y its plain terms, this provision conditions the availability of judicial review on the issuance or denial of a permit." *Rhode Island v. EPA*, 378 F.3d 19, 23 (1st Cir. 2004). The verb choices make this clear. To "deny" a permit, the EPA must "withhold the possession, use, or enjoyment of" the permit. *The Random House Dictionary of the English Language* 533 (2d ed. 1987) (defining "deny"); *see Webster's*, *supra*, at 378 (defining "deny" as "to refuse the use of or access to"). Thus, this Court has read the word "deny" to cover an EPA action that *vetoes* a state-issued permit, because the EPA's veto had the "precise effect" of a denial. *Crown Simpson Pulp Co. v. Costle*, 445 U.S. 193, 196 (1980).

To "issue" a permit, the EPA must "give [it] out publicly or officially." *Webster's*, *supra*, at 749. The EPA regularly does so. *E.g.*, *Nat. Res. Def. Council v. EPA*, 808 F.3d 556, 562 (2d Cir. 2015) (challenge to "Vessel General Permit"); *City of Pittsfield v. EPA*, 614 F.3d 7, 8 (1st Cir. 2010) (challenge to permit for wastewater treatment plant). Yet, as circuit courts have agreed, under no fair reading of "issue" could the verb cover the EPA's failure to object to, and thus silent approval of, a *state-issued* permit. *E.g.*, *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1221 & nn.7, 12 (6th Cir. 1992).

Second, the permit must issue "under" § 1342. That section identifies the permitting program run by the EPA (or state authorities) for pollutants that "readily wash downstream." *See Rapanos*, 547 U.S. at 723 (plurality op.). The EPA, by contrast, lacks authority to issue permits for dredged or fill material—which fall within the Corps' domain under § 1344. *Coeur Ala., Inc. v. Se. Ala. Conservation Council*, 557 U.S. 261, 273-74 (2009). The Act thus splits judicial review for permit decisions. It requires circuit review of EPA permitting under § 1342, *e.g.*, *City of Pittsfield*, 614 F.3d at 8, but district review of Corps permitting under § 1344, *e.g.*, *Nat'l Ass'n of Home Builders v. Army Corps of Eng'rs*, 417 F.3d 1272, 1277 (D.C. Cir. 2005).

b. The Rule does not fall within Subsection (F). The Agencies have *never* argued that the Rule "issues" or "denies" a permit to discharge pollutants under § 1342. *E.g.*, Pet. App. 18a-19a (McKeague, J., op.). Yet the language is plain. Subsection (F) unambiguously requires the EPA to have issued or denied a permit under § 1342. That ends the matter.

c. Despite the plain text, the Agencies stretch Subsection (F) to encompass *all* EPA regulations that "*impact* permitting requirements" or "*affect[]* the granting and denying of permits." Pet. App. 18a (McKeague, J., op.) (emphasis added). Here again, neither the statute's text nor this Court's cases support the Agencies' reading.

As for text, the Agencies assert that the Rule falls within Subsection (F) because it "delineates where permits are required and so sets the entire NPDES permitting scheme in motion." Br. in Opp. 14. This argument rewrites Subsection (F) from "issuing or

denying any permit" to "affecting or relating to the permitting scheme." The EPA cannot do that. "An agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms." *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2445 (2014).

As for precedent, the Agencies cite *E.I. du Pont* and *Crown Simpson* for their view. Br. in Opp. 14-15. Neither decision helps them. *E.I. du Pont* did not even involve Subsection (F). It interpreted Subsection (E). *See* 430 U.S. at 136.

Crown Simpson, as noted, held that the *veto* of a state-issued permit qualified as the "denial" of a permit under Subsection (F). 445 U.S. at 196-97. To reach that result, the Court started with the text: "When EPA, as here, objects to effluent limitations contained in a state-issued permit, the *precise effect* of its action is to 'den[y]' a permit within the meaning of [Subsection (F)]." *Id.* (emphasis added). Because the EPA veto "refuse[d] the use of or access to" the permit, it could be comfortably read as denying the permit. *Webster's*, *supra*, at 378. Only after concluding that the EPA veto qualified as a denial did the Court add a pragmatic point. The review process for permits should not depend "on the fortuitous circumstance of whether the State in which the case arose was or was not authorized to issue permits." 445 U.S. at 196-97. This language is best read as using context to confirm what is otherwise a reasonable reading of the text. That is commonplace. "Adhering to the *fair meaning* of the text (the textualist's touchstone) does not limit one to the hyperliteral meaning of each word in the text." Scalia, *supra*, at 356.

Thus, even if *Crown Simpson* "opened the door to constructions other than a *strict* literal application," Pet. App. 17a (McKeague, J., op.) (emphasis added), there is a wide gap between that case and this one. Here, the Agencies have not offered *any* reading of the phrase "issuing or denying any permit" that could encompass the Rule. Instead, they *bypass* the text by *jumping* immediately to their pragmatic point about the efficiencies of circuit review. Br. in Opp. 14-15. It is one thing to rely on a pragmatic factor to choose between two plausible interpretations of a text (as *Crown Simpson* did). It is quite another to rely on that factor to *depart* from the only plausible reading of the text (as the Agencies do). Such a contextual consideration can inform an ambiguous text; it cannot rewrite an unambiguous one.

Finally, the concurring opinion below reached its result *only* because it felt bound by *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009), which read Subsection (F) to cover rules *affecting* permits. Pet. App. 42a-44a (Griffin, J., concurring in judgment). This Court, of course, is not so bound. It should reject *National Cotton* for the reasons that the concurrence gave. *National Cotton*'s "incorrect" "jurisdictional reach . . . has no end." *Id.* at 42a, 44a. And that decision "provided no analysis" of Subsection (F)'s text. *Friends of the Everglades v. EPA*, 699 F.3d 1280, 1288 (11th Cir. 2012).

* * *

In sum, this case is straightforward under the only reasonable reading of Subsections (E) and (F). The Rule neither promulgates effluent or other limitations under § 1311, 1312, 1316, or 1345, nor issues or denies permits under § 1342.

B. Section 1369(b)(1), When Read As A Whole, Reinforces That Subsections (E) And (F) Do Not Cover The Rule

Reading § 1369(b)(1) as a whole and against the backdrop of the entire Act confirms that Subsections (E) and (F) cannot have the breadth that the Agencies seek to give them.

1. *Reading § 1369(b)(1) As A Whole.* "'It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Sturgeon v. Frost*, 136 S. Ct. 1061, 1070 (2016) (quoting *Roberts v. Sea-Land Servs., Inc.*, 132 S. Ct. 1350, 1357 (2012)). This canon reinforces the plain language of Subsections (E) and (F).

Section 1369(b)(1) authorizes circuit review over seven specific EPA actions down to the subsections under which some of those actions are authorized. As one example, Subsections (A), (B), and (E) all identify EPA actions under § 1316. (Subsection (B) accidentally refers to a new-source variance provision that was within a draft of § 1316 but did not make it into the final law.) It is noteworthy that Congress acted with this specificity in the context of a complex statute. "No sensible person accustomed to the use of words in laws would speak so narrowly and precisely of particular statutory provisions, while meaning to imply a more general and broad coverage than the statutes designated." *Longview*, 980 F.2d at 1313. This drafting precision demonstrates that § 1369(b)(1)'s seven subsections should not be read loosely to gobble up provisions that are otherwise absent from that section.

Indeed, a comparison of § 1369(b)(1) to the judicial-review provision in the Clean Air Act confirms that § 1369(b)(1) should be read according to its text. Both Acts have judicial-review provisions cataloging actions that circuits may review, but the Clean Air Act goes further by providing circuit jurisdiction over "*any other* final action of the Administrator." 42 U.S.C. § 7607(b)(1) (emphasis added); *Harrison v. PPG Indus.*, 446 U.S. 578, 589 (1980). The Clean Water Act contains no similar catch-all. The conclusion to be drawn could not be clearer: Congress knows how to provide for circuit review of all agency action. It did so under the Clean Air Act, but not under the Clean Water Act. *Cf. Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 174-75 (2009). This Court must respect that choice.

The Agencies' reading fails to do so. If this Court adopts their "exceptionally expansive view," § 1369(b)(1) could "encompass virtually all EPA actions under the" Act. *North Dakota v. EPA*, 127 F. Supp. 3d 1047, 1053 (D.N.D. 2015). Take the Agencies' broad reading of "other limitation" "under § 1311" within Subsection (E). They say that the Rule qualifies because § 1311(a) (like many sections) places restrictions on discharges into waters of the United States. Br. in Opp. 13-14. Yet § 1311 references *many* things. This Court, for example, has recognized that it "incorporates" "by reference" § 1313 (the section on state water-quality standards). *PUD No. 1*, 511 U.S. at 713; 33 U.S.C. § 1311(b)(1)(C). But the EPA has repeatedly argued *against* a reading of "other limitation" "under § 1311" that would include its approval or promulgation of the "total maximum daily loads" that are authorized by § 1313. *E.g.*, *Friends of Earth*, 333 F.3d at 187-93. The Agencies

cannot reconcile their *traditional* view that a total maximum daily load is not an "other limitation" "under 1311" with their *current* view that a rule defining waters of the United States is.

The Agencies' reading of "issuing or denying any permit" under Subsection (F) suffers from similar problems. If adopted, it could permit review over actions that Congress intentionally excluded. All agree, for example, that Corps permitting decisions under § 1344 do not fall within Subsection (F). But the Agencies' broad reading of that subsection has allowed them to seek review over the amendments to the Corps' permitting regulations that are at issue here. *E.g.*, 80 Fed. Reg. at 37,115-119.

2. *Rule Against Superfluity*. "It is 'a[nother] cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

The circuit courts have applied this principle to § 1369(b)(1). Many courts, for example, have considered whether circuit courts have jurisdiction under Subsection (G)—which covers EPA actions in "promulgating" individual control strategies under § 1314(l)—over an EPA action *approving* a state-promulgated individual control strategy. *E.g.*, *Roll Coater*, 932 F.2d at 670-71. Pointing to Subsection (E), which unlike Subsection (G), *does* use both "approving" and "promulgating," the courts have found jurisdiction lacking based on the rule against superfluity. *Id.* They have refused to write the verb "approving" out of Subsection (E) by reading the verb

"promulgating" in Subsections (E) and (G) broadly to cover both actions. *See id.*

This canon undercuts the Agencies' broad reading of Subsections (E) and (F). As for Subsection (E), a broad reading of "other limitation" "under 1311" would render other language in § 1369(b)(1) superfluous. If, for example, the Rule was issued under § 1311 merely because the phrase "navigable waters" is referenced in that section, Congress had no reason to include "under § 1312" within Subsection (E). That is because the water-quality limitations in § 1312 are likewise referenced in § 1311. 33 U.S.C. § 1311(b)(1)(C). "Thus, if accepted, [the Agencies'] reading would render [Subsection (E)'s] specific reference to section 1312 duplicative and unnecessary." *Friends of the Earth*, 333 F.3d at 190. More generally, a broad reading of "other limitation" "under § 1311" allows that phrase "to swallow up distinctions that Congress made between effluent limitations and other types of EPA regulations" in § 1369(b)(1). *Am. Paper I*, 890 F.2d at 876-77.

As for Subsection (F), the Agencies' argument that issuing or denying a permit under § 1342 extends to regulations that "impact permitting requirements" would render many provisions superfluous. Pet. App. 18a (McKeague, J., op.). Section 1342 mandates that permits "meet . . . all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343." 33 U.S.C. § 1342(a)(1). So nearly every regulation could affect permitting in some way. Section 1369(b)(1)(C), for example, grants jurisdiction over an action "promulgating any effluent standard, prohibition, or pretreatment standard under section 1317" for toxic pollutants. If Subsection

(F) includes all regulations *affecting* permitting, Congress had no reason to adopt this jurisdictional grant for § 1317's toxic-pollutant limitations. Section 1342 *expressly* identifies compliance with § 1317 limitations as a condition for permit issuance, so those § 1317 limitations will, by definition, affect permitting.

C. Background Presumptions For Interpreting Statutes Support The Plain Text

The plain-text reading, lastly, is supported by two background presumptions: (1) that jurisdictional provisions be read to establish clear rules and (2) that statutes be read to permit judicial review over agency action. The Agencies, by contrast, mistakenly invoke a competing presumption in favor of immediate appellate review that does not apply here.

1. This Court's preference for bright-line jurisdictional rules supports a plain-text approach to § 1369(b)(1)

Because § 1369(b)(1) concerns jurisdiction, it should be interpreted as written. The plain text — not the Agencies' "pragmatic" gloss on that text—sets the *clearer* boundary between the jurisdiction of the circuit courts under § 1369(b)(1) and the jurisdiction of the district courts under the APA.

a. "'Jurisdictional rules,'" the Court has noted, "'should be clear.'" *Direct Mktg. Ass'n v. Brohl*, 135 S. Ct. 1124, 1133 (2015) (citation omitted). The Court thus has an established "practice of reading jurisdictional laws, so long as consistent with their language, . . . to establish clear and administrable rules." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562, 1567-68 (2016).

This practice is a fixture of the Court's precedent. It has, for example, adopted a clear rule to identify a corporation's "principal place of business" under the diversity-jurisdiction statute (28 U.S.C. § 1332) because "administrative simplicity is a major virtue in a jurisdictional statute." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). It has done the same when interpreting "final decision" under the appellate-jurisdiction statute (28 U.S.C. § 1291), recognizing that "[c]ourts and litigants [were] best served by [its] bright-line rule." *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 202 (1988). Most famously, the Court has for over a century followed the "well-pleaded complaint rule" under the federal-question-jurisdiction statute (28 U.S.C. § 1331), praising the "clarity and simplicity of that rule." *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009); *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908).

Many reasons justify this approach. To begin with, "courts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case." *Hertz*, 559 U.S. at 94. With vague rules, by contrast, "'an enormous amount of expensive legal ability will be used up on jurisdictional issues when it could be much better spent upon elucidating the merits of cases.'" *Sisson v. Ruby*, 497 U.S. 358, 375 (1990) (Scalia, J., concurring in judgment) (quoting Zecheriah Chafee, The Thomas M. Cooley Lectures, *Some Problems of Equity* 312 (1950)). These costs "diminish the likelihood that results and settlements will reflect a claim's legal and factual merits." *Hertz*, 559 U.S. at 94.

Further, "[t]he stakes of the inquiry are high[er]" in the jurisdictional context. *Herr v. U.S. Forest*

Serv., 803 F.3d 809, 813 (6th Cir. 2015) (Sutton, J.). "'[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived.'" *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citation omitted). Thus, "a defect in subject-matter jurisdiction requires a suit's dismissal, no matter how much the parties have spent and no matter how late in the proceedings the defect comes to light." *RTP LLC v. ORIX Real Estate Capital, Inc.*, 827 F.3d 689, 693 (7th Cir. 2016). Not only that, courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh*, 546 U.S. at 514. And they have "no authority to create equitable exceptions to jurisdictional requirements." *Bowels v. Russell*, 551 U.S. 205, 214 (2007). For these reasons, "in matters of jurisdiction," "clarity" "is especially important." *United States v. Sisson*, 399 U.S. 267, 307 (1970).

b. This presumption supports the plain-text reading. Congress, after all, wrote § 1369(b)(1) to establish a "clear and orderly" review process. H.R. Rep. No. 92-911, at 136. And, unlike the Clean Air Act, 42 U.S.C. § 7607(b)(1), the Clean Water Act unambiguously *divides* jurisdiction between circuit courts and district courts. In the range of cases, it will be far easier to determine on which side of this divide an agency action falls if courts stick to § 1369(b)(1)'s text, not the Agencies' amorphous reading of it.

Start with Subsection (E). In most situations, EPA action "in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345" will have clear guideposts. 33 U.S.C. § 1369(b)(1)(E). Most notably, that action will

involve the types of specific restrictions that those four sections direct EPA to impose: technology-based restrictions under § 1311, water-quality restrictions under § 1312, new-source restrictions under § 1316, or sewage-sludge restrictions under § 1345. *See, e.g.*, *E.I. du Pont*, 430 U.S. at 136-37.

Under the Agencies' reading, by contrast, it will often be unclear whether an EPA action that is not itself a restriction under the four sections could have an "*indirect* effect" that should qualify as one. Pet. App. 15a (McKeague, J., op.). That reading could regularly require litigants to guess at a rule's "effects," and compel courts to engage in jurisdictional fact-finding over them. Potential regulations defining "waters of the United States" offer a good example. The relative breadth of a definition could determine whether or not it qualifies as a "limitation" under Subsection (E). If a regulation (like the Rule) broadens the definition to *cover* more waters, according to the Agencies, it would fall within Subsection (E). But if a regulation narrows the definition to *exclude* more waters, it would fall outside Subsection (E) because, under the Agencies' own logic, it would have the effect of "creat[ing] *exemptions* from limitations." Pet. App. 14a (McKeague, J., op.). And what happens if a regulation broadens some aspects of the definition but narrows others? Would litigants have to guess at the regulation's *net* effect? *Cf. id.* at 38a (Griffin, J., concurring in judgment). The Agencies' "indirect-effects" test is simply unworkable.

Turn to Subsection (F). Under the plain text, parties will always know whether they are challenging an EPA action "in issuing or denying [a] permit un-

der section 1342." 33 U.S.C. § 1369(b)(1)(F). The EPA will issue or deny a permit under § 1342.

Under the Agencies' reading, by contrast, parties often will not know whether a rule adequately "relates to" or "affects" the permitting process. *See* Pet. App. 18a (McKeague, J., op.). Indeed, this Court has had great difficulty in terpreting statutes, like ERISA, that use language similar to what the Age n-cies seek to incorporate into Subsection (F). "[A]s many a curbstone philosopher has observed, everything is related to everything else." *Cal. Div. of L a-bor Standards Enforcement v. Dillin gham Constr., N.A.*, 519 U.S. 316, 335 (1997) (Scalia, J., concu r-ring). The Agencies thus advocate for a vague test that has proved "excruciating for courts to p olice" in other contexts. *Merrill Lynch*, 136 S. Ct. at 1575.

In sum, the Agencies' view s on jurisdiction "jett i-son[] relative predictability for the open -ended rough-and-tumble of factors, inviting complex arg u-ment in a trial court and a virtually inevi table a p-peal." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547 (1995). Under their approach, nobody will know where to go with cha l-lenges to EPA action. Their reading would regularly force "careful counsel" to sue in both dis trict courts and circuit courts when challenging regulations. *Inv. Co. Inst.*, 551 F.2d at 1280. All of that litigation would "eat[] up time and money" on issues unrela ted to the merits, which could repr esent a costly initial step for those challenging EPA action. *Hertz*, 559 U.S. at 94. Homeowners should not be compelled to "'feel their way'" under the Agencies' ambiguous ju-risdictional tests merely to obtain the privilege of "feeling their way" under the Agencies' ambiguous

views on the waters of the Un ited States. *Sackett*, 566 U.S. at 124 (quoting *Rapanos*, 547 U.S. at 758 (Roberts, C.J., concurring)).

2. The presumption in favor of judicial review of agency action confirms that § 1369(b)(1)'s plain language controls

This Court's presumption that Congres s intends to permit judicial review over agency action confirms that courts should stick to § 1369(b)(1)'s text. That is because § 1369(b)(2) *restricts* the judicial r eview that would be available under the APA for the actions that fall within § 1369(b)(1).

a. "The APA . . . creates a 'presumption favoring judicial review of administrative action.'" *Sackett*, 566 U.S. at 128 (citation omitted). This presumption is a "'strong'" one, and an "agency bears a 'heavy burden'" to overcome it. *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645, 1651 (2015) (citation omi t-ted).

The presumption applies, most obviously, when an agency claims that the relevant action is not judicially reviewable *at all*. *See, e.g.*, *id.* at 1652-53. Yet it extends beyond that domain to a pply whenever an agency argues that a particular statute *limits* judicial review. In *U.S. Army Corps of Engineers v. Hawkes Co.*, 136 S. Ct. 1807 (2016), for example, the Agencies argued that the Clean W ater Act did not allow for judicial review over their "jurisdictional determination" that certain lands fell within the waters of the United States u ntil the *end* of the permitting process. *Id.* at 1816. Th e Court disagreed, invoking the presumption of judicial r eview. *Id.* It reasoned that "'[t]he mere fact' tha t permitting decisions are

'reviewable should not suffice to support an implication of exclusion as to other[]' agency actions, such as [the jurisdictional determinations]" that were at issue in *Hawkes*. *Id.*; *see Sackett*, 566 U.S. at 129.

b. This presumption supports the plain-text reading here. Section 1369(b)(1) grants judicial review during a short 120-day window, and § 1369(b)(2) bars judicial review of actions that could have been challenged under § 1369(b)(1) in a later "civil or criminal proceeding for enforcement." "Where . . . review is available" under § 1369(b)(1), therefore, "it is the exclusive means of challenging actions covered by the statute." *Decker v. Nw. Envtl. Def. Ctr.*, 133 S. Ct. 1326, 1334 (2013).

Given § 1369(b)(2)'s judicial-review limits, this case is the converse of *Hawkes* and *Sackett*. In those cases, this Court rejected the Agencies' arguments that landowners *prematurely* challenged the Agencies' finding that their lands were waters of the United States. In this case, § 1369(b)(2) could permit the Agencies to argue down the road that landowners *belatedly* challenged the Rule as applied to their lands. If the presumption was broad enough to rebut the Agencies' claim that judicial review was *too early* in *Hawkes* and *Sackett*, it is broad enough to rebut their claim that review is *too late* in a future case.

Some circuit courts have thus recognized that the Court's presumption disfavors a broad reading of § 1369(b)(1). The "review-preclusion proviso in § [1369](b)(2)," these courts reasoned, "dissuade[d]" them "from reading § [1369](b)(1) broadly." *Am. Paper Inst., Inc. v. EPA*, 882 F.2d 287, 289 (7th Cir. 1989) ("*Am. Paper II*"). Instead, § 1369(b)(2)'s "peculiar sting" has led them to read § 1369(b)(1) narrowly

by finding EPA actions not clearly indicated in § 1369(b)(1) subject to the general APA standards. *Longview*, 980 F.2d at 1313.

Constitutional concerns strengthen this presumption. Justice Powell, for example, suggested that "constitutional difficulties well may counsel a narrow construction of" the Clean Air Act's review-preclusion proviso. *Harrison*, 446 U.S. at 594-95 (Powell, J., concurring). It was "totally unrealistic," he thought, "to assume that more than a fraction of the persons and entities affected by a regulation—especially small contractors scattered across the country—would have knowledge of its promulgation or familiarity with or access to the Federal Register." *Adamo Wrecking*, 434 U.S. at 290 (Powell, J., concurring).

These concerns take on greater urgency for general regulations like the Rule that reach ordinary "landowners." *Hawkes*, 136 S. Ct. at 1816 (Kennedy, J., concurring). If it is "totally unrealistic" to think that "small contractors" would review the Federal Register, *Adamo Wrecking*, 434 U.S. at 290 (Powell, J., concurring), it is downright fanciful to think that the average homeowner would, *see Sackett*, 566 U.S. at 122. Yet "the consequences to landowners even for inadvertent violations can be crushing." *Hawkes*, 136 S. Ct. at 1816 (Kennedy, J., concurring). And when § 1369(b)(2)'s review-preclusion proviso applies, it has real impact. *E.g.*, *Nat'l Pork Producers Council v. EPA*, 635 F.3d 738, 754 (5th Cir. 2011); *Nat'l Wildlife Fed'n v. EPA*, 949 F. Supp. 2d 251, 252 (D.D.C. 2013). Thus, the Agencies' broad view of § 1369(b)(1) could effectively overrule *Sackett*.

The plain-text approach, by contrast, lessens these constitutional concerns. Affected parties are

much more likely to have notice of the specific actions that are listed with in § 1369(b)(1)—such as the issuance of a particular effluent limitation for a particular industry or the denial of a particular permit to a particular landowner.

c. The lead opinion below rejected this presumption of judicial review, finding the notice concerns "speculative and overblown." Pet. App. 25a (McKeague, J., op.). It initially asserted that the present challenges to "the *validity* of the Rule" would not bar a later "challenge to subsequent *application* of the Rule" to a particular property. *Id.* It is, of course, true that homeowners could challenge the Agencies' finding that their specific lands fell within the Rule as a matter of the proper *interpretation* of the Rule (accepting its *validity*). *Decker*, 133 S. Ct. at 1335. But that misses the point. If the lands squarely fell within the Rule and the homeowners sought to show that the Rule was "'invalid,'" under this Court's cases, *as applied* to those lands, there would be a serious question whether they could present that challenge. *See id.* (citation omitted).

Further, the lead opinion suggested that belated challengers could bring as-applied constitutional challenges to § 1369(b)(2)'s limits on judicial review. Pet. App. 25a (McKeague, J., op.). This flips the presumption of agency-action review and the canon of constitutional avoidance on their heads. Those tools instruct that, "when deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice." *Clark v. Martinez*, 543 U.S. 371, 380 (2005). "If one of them would raise a multitude of constitutional problems, the other should prevail—whether or not

those constitutional problems pertain to the particular litigant before the Court." *Id.* at 380-81. Because the Agencies' broad reading might raise serious problems down the road, the Court should interpret § 1369(b)(1) to avoid those problems *now*.

3. The Agencies mistakenly rely on efficiency concerns and a presumption in favor of immediate appellate review

The Agencies draw support for their "pragmatic" reading from *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985), and from concerns with judicial efficiency. *See* Pet. App. 21a-24a (McKeague, J., op.). These arguments, however, cannot support the Agencies' interpretation of Subsections (E) and (F).

To begin with, *Florida Power*, a case about the Atomic Energy Act, does not establish a universal presumption in favor of immediate circuit review similar to this Court's presumptions in favor of bright-line jurisdictional rules and of judicial review over agency actions. This Court has invoked those latter presumptions in many cases over many years. "Nowhere," by comparison, does *Florida Power* even "intimate that it was ruling as a matter of general administrative procedure." *Nader v. EPA*, 859 F.2d 747, 754 (9th Cir. 1988). Instead, *Florida Power* held that jurisdiction "must of course be governed by the intent of Congress and not by any views [courts] may have about sound policy." *Fla. Power*, 470 U.S. at 746. In this case, therefore, given § 1369(b)(1)'s unambiguous language, a majority of the Sixth Circuit panel correctly rejected the lead opinion's "reliance on [this] non-Clean Water Act case to support its policy arguments." Pet. App. 43a (Griffin, J., concurring in judgment).

In addition, the statute at issue in *Florida Power* did *not* contain anything like § 1369(b)(2)'s "review-preclusion proviso." *Am. Paper II*, 882 F.2d at 289. That proviso should lead this Court to read § 1369(b)(1) narrowly even if it were ambiguous. *Florida Power* relied on efficiency concerns, but the "presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all." *Sackett*, 566 U.S. at 130; *cf. Chrysler Corp. v. EPA*, 600 F.2d 904, 912-13 (D.C. Cir. 1979) (rejecting EPA's reliance on similar efficiency arguments because the relevant jurisdictional provision had a similar review-preclusion proviso).

Finally, the conclusion that district courts should initially review challenges to the Rule does not create a "'perverse situation.'" Br. in Opp. 14 (quoting *E.I. du Pont*, 430 U.S. at 136). To the contrary, there is competing "wisdom" in "allowing difficult issues to mature through full consideration" by different courts. *E.I. du Pont*, 430 U.S. at 135 n. 26 (noting that the Court had benefitted from competing opinions by the circuit courts). Indeed, most cases that have reached this Court implicating the scope of "waters of the United States" have involved *as-applied* challenges tied to findings for particular lands. *See Hawkes*, 136 S. Ct. at 1812-13; *Sackett*, 566 U.S. at 123-25; *Rapanos*, 547 U.S. at 729 (plurality op.); *SWANCC*, 531 U.S. at 165. Such further as-applied litigation should not be disallowed simply because the Agencies have now adopted a broad regulation on the scope of "waters of the United States."

Regardless, § 1369(b)(1)'s plain language shows the choice that *Congress* made between these competing policy views. It authorized immediate circuit

review only for seven listed EPA actions. But, unlike in the Clean Air Act, Congress required litigants to follow the normal method of judicial review start ing in the district courts for everything else —including the Rule. This case should begin —and end —with that plain text.

CONCLUSION

This Court should reverse the Sixth Circuit 's holding that it ha s subject-matter jurisdiction under 33 U.S.C. § 1369(b)(1) over the petitions for review.

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No. 16-299

In the
Supreme Court of the United States

NATIONAL ASSOCIATION OF MANUFACTURERS,
Petitioner,

v.

DEPARTMENT OF DEFENSE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN SUPPORT OF PETITIONER ON BEHALF OF AGROWSTAR, LLC; AMERICAN EXPLORATION & MINING ASSOCIATION; CALIFORNIA CATTLEMEN'S ASSOCIATION; COALITION OF ARIZONA/NEW MEXICO COUNTIES FOR STABLE ECONOMIC GROWTH; DUARTE NURSERY, INC.; GEORGIA AGRIBUSINESS COUNCIL, INC.; GREATER ATLANTA HOMEBUILDERS ASSOCIATION, INC.; HAWKES COMPANY, INC., LPF PROPERTIES, LLC; NEW MEXICO CATTLE GROWERS ASSOCIATION; NEW MEXICO FEDERAL LANDS COUNCIL; NEW MEXICO WOOL GROWERS, INC.; OREGON CATTLEMEN'S ASSOCIATION; PIERCE INVESTMENT COMPANY; R. W. GRIFFIN FEED, SEED & FERTILIZER, INC.; SOUTHEASTERN LEGAL FOUNDATION, INC., AND WASHINGTON CATTLEMEN'S ASSOCIATION

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QUESTION PRESENTED

Is the federal rule redefining "waters of the United States" under the Clean Water Act subject to exclusive review in the circuit courts of appeals under 33 U.S.C. § 1369(b)(1)?

CORPORATE DISCLOSURE STATEMENT

Respondents are non-profit advocacy groups or privately held companies that have no parent corporations and do not issue stock.

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SUMMARY OF THE ARGUMENT

The government rejects the plain meaning of § 1369(b)(1)(E) and (F) of the Clean Water Act that confer exclusive appellate jurisdiction solely on agency actions "approving or promulgating" any effluent or other limitation or "issuing or denying" any permit. The Rule defining "waters of the United States" expressly declares it has no such effect and only delineates the general scope of the Act. The government asks this Court to ignore its own statements about the Rule and interpret the text of § 1369(b)(1) expansively, relying on "practical considerations," such as judicial efficiency, to bring the Rule under appellate court review. But this approach contravenes Supreme Court precedent and the explicit language of the Act.

When interpreting a statute, this Court relies on the plain meaning of the statutory text, unless that interpretation is absurd. Restricting judicial review of some agency actions to the appellate courts while allowing other agency actions to be heard in the district courts is perfectly reasonable where Congress has expressly allocated federal court jurisdiction. But rewriting the Act, as the government urges, to cover agency actions that are clearly excluded by the plain text, undermines the intent of Congress and the "rule of law," and conflicts with this Court's treatment of § 1369(b)(1) in other cases. In each case where this Court has applied § 1369(b)(1), it relied on the Act's plain meaning. It should do so here and hold the Rule clearly falls outside § 1369(b)(1) and must be challenged in the federal district courts.

ARGUMENT

On June 29, 2015, the Environmental Protection Agency and U.S. Army Corps of Engineers promulgated a revised rule defining "waters of the United States" subject to the Clean Water Act. 80 Fed. Reg. 37054 (WOTUS Rule). The WOTUS Rule covers:

> 1. All waters which are or were or may be used in interstate or foreign commerce;
>
> 2. All interstate waters;
>
> 3. The territorial seas;
>
> 4. All impoundments of any "waters of the United States;"
>
> 5. All tributaries to waters 1-3. A "tributary" means a water that contributes flow directly or through another water (including any impoundment), to waters 1-3, that has physical indicators of a bed and bank and an ordinary high water mark. A tributary may be natural or man-made.
>
> 6. All waters adjacent to waters 1-5. "Adjacent" means bordering, contiguous, or neighboring. "Neighboring" means within 100 feet of the ordinary high water mark of waters 1-5. And, all waters within the 100-year floodplain of waters 1-5 and not more than 1,500 feet from the ordinary high water

> mark. Also, all waters within 1,500 feet of the high tide line of waters 1-3.
>
> 7. All of the following waters that have been determined on a case-by-case basis to have a significant nexus to waters 1-3: prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools, and Texas coastal prairie wetlands. "Significant nexus" means that a water, alone or in combination with similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of waters 1-3. "Significant" means more than speculative or insubstantial and includes effects on any one of nine factors.
>
> 8. And, all waters located within the 100-year floodplain of waters 1-3 and all waters within 4,000 feet of the high tide line or ordinary high water mark of waters 1-5 when they have a significant nexus to waters 1-3.

Some waters are excluded from federal regulation under the Final Rule. *Id.* at 37104-37106

The ultimate question for this Court is whether the WOTUS Rule is tantamount to:

> (E) approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of [the Act], [or]

> (F) issuing or denying any permit under section 1342 of [the Act].

33 U.S.C. § 1369(b)(1)(E) and (F).[1]

That question turns on two other questions: (1) what is the plain meaning of § 1369(b)(1)(E) and (F); and (2) did this Court authorize a departure from the plain meaning of that provision in *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977), and *Crown Simpson Pulp Co. v. Costle*, 445 U.S. 193 (1980).

I

THE PLAIN LANGUAGE OF § 1369(b)(1) CONTROLS

"In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of congress." *United States. v. Am. Trucking Ass'ns,* 310 U.S. 534, 542 (1940). The starting point in discerning congressional intent is the existing statutory text. *See Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 438 (1999). The ordinary meaning of language employed by Congress is assumed accurately to express its legislative purpose. *See Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.,* 469 U.S. 189, 194 (1985). Where the words are clear, they are controlling. *See Lamie v.*

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[1] It is undisputed that this provision only applies to effluent discharges regulated under Section 402 (33 U.S.C. § 1342) of the Act known as the National Pollutant Discharge Elimination System (or NPDES) program administered by the EPA and does not apply to "dredged and fill" discharges regulated under Section 404 (33 U.S.C. § 1344) of the Act and administered by the Army Corps of Engineers.

U.S. Tr., 540 U.S. 526, 542 (2004) (holding the courts should look at the words of the statute to determine the intent of Congress); *Am. Trucking*, 310 U.S. at 543 ("There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often, these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning."). So it is here.

In support of the petition, the States and Petitioner provided a detailed analysis of § 1369(b)(1) which we join. That analysis demonstrates that, on its face, 33 U.S.C § 1369(b)(1)(E) and (F) do not apply to the WOTUS Rule because the Rule only defines jurisdictional waters under the Act and does not purport to approve or promulgate any limitation or issue or deny any permit. The Rule itself states it "does not establish any regulatory requirements," 80 Fed. Reg. at 37054, and "imposes no enforceable duty on any state, local, or tribal governments, or the private sector, and does not contain regulatory requirements that might significantly or uniquely affect small governments," *id.* at 37102.

But the same cannot be said for agency actions "approving or promulgating any effluent limitation or other limitation" or "issuing or denying [a] permit." 33 U.S.C. § 1369(b)(1)(E) and (F). Such actions involve particularized enforcement of the Act as applied to specific entities and operations. They are several steps removed and quite different in nature, scope, impact, and time from identifying the reach of the Act under the WOTUS Rule. Therefore, under a plain reading of

the Act, § 1369(b)(1) does not apply to the Rule. This Court relies on the plain meaning of a statute unless it would lead to an absurd result:

> It is well established that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000) (internal quotation marks omitted) (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989), in turn quoting *Caminetti v. United States,* 242 U.S. 470, 485, 37 S. Ct. 192, 61 L. Ed. 442 (1917)).

Lamie, 540 U.S. at 534.

Relying on the plain meaning of § 1369(b)(1)(E) and (F) of the Clean Water Act is far from absurd. Rather, it restricts judicial review of certain NPDES (§ 402) effluent or permit actions of the EPA to the exclusive jurisdiction of the courts of appeals while allowing legal challenges to all other actions—such as defining the general scope of the Act—to proceed in the district courts. This is consistent with the general practice of our judicial system to initiate most legal challenges in the district courts.

Section 1369(b)(1) identifies only seven specific agency actions of the EPA Administrator which are subject to immediate review in the appellate courts:

(1) Review of the Administrator's action

(A) in promulgating any standard of performance under section 1316 of this title,

(B) in making any determination pursuant to section 1316(b)(1)(C) of this title,

(C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title,

(D) in making any determination as to a State permit program submitted under section 1342(b) of this title,

(E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of this title,

(F) in issuing or denying any permit under section 1342 of this title, and

(G) in promulgating any individual control strategy under section 1314(*l*) of this title,

33 U.S.C. § 1369(b)(1).

Unlike the catch-all provision in the Clean Air Act, § 1369(b)(1) is limited to these enumerated actions. *See Harrison v. PPG Indus. Inc.*, 446 U.S. 578, 579 (1980) (citing Section 307(b)(1) of the Clean Air Act that provides for direct review in a court of appeals for any "final action" of EPA under the Act). By singling out these seven actions of EPA for direct review in the courts of appeals, Congress expressed its intent through the clear text to exclude those actions not enumerated. *See Barnhart v. Peabody Coal Co.,* 537 U.S. 149, 168 (2003) (*Expressio unius est exclusio alterius* — listed items exclude non-listed items). For those actions not covered by § 1369(b)(1), the Administrative Procedure Act (APA) authorizes judicial review in the trial courts. Sections 702 and 704 of the APA provide that "[a] person suffering legal wrong" or "adversely affected or aggrieved by agency action" may bring suit in district court for judicial review of any "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. §§ 702, 704. Among the many actions not restricted to review in a court of appeals under § 1369(b)(1) are all agency actions of the Army Corps of Engineers under § 404 of the Act which must be brought in a district court under the APA. If review of agency actions in the district courts under the APA generally, and under § 404 of the Clean Water Act specifically, is not absurd, neither is limiting EPA review in the courts of appeals to some, but not all, EPA actions. A plain reading of § 1369(b)(1)(E) and (F) is perfectly reasonable and this Court should enforce it according to its terms.

Contrary to the clear text of that provision, the government argues § 1369(b)(1)(F) should be read (or

more accurately, rewritten) to apply to any agency action that "affects" a permit, no matter how indirect or attenuated. *See* Government Opposition to the Petition at 11. This expansive interpretation calls for excising the words "issuing or denying" and inserting the word "affecting," thereby altering the language, intent, and meaning of the Act. But this Court rejected such an approach to statutory interpretation in *Lamie v. U.S. Trustee*, 540 U.S. 526.

In that case, a debtor's attorney sought fees for work provided in a Chapter 7 bankruptcy proceeding. *Id.* at 526. Prior to 1994, the bankruptcy code authorized payment of fees "to a trustee, to an examiner, to a professional person [employed by the trustee and authorized by the court] . . . or to the debtor's attorney." *Id.* Under a plain reading of the code, an attorney who did work on behalf of a debtor could receive an award of fees even if not employed by the trustee and approved by the court. Congress altered the code in 1994 to authorize fees for trustees, examiners, professional persons, and attorneys, employed by the trustee and approved by the court, thus excluding debtor's attorneys from the text. *Id.* Petitioner admitted he was not employed by the trustee nor approved by the court but argued the revised code should be read like the original to authorize an award of fees to a debtor's attorney. *Id.* This Court rejected that argument and held the plain meaning of the revised code was not absurd and was therefore controlling.

The Court reasoned that the petitioner's interpretation would violate a canon of statutory construction—"reading absent word[s] into the

statute." *Lamie*, 540 U.S. at 538. "That is, his argument would result 'not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope.'" *Id.* (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926)). This Court concluded, "With a plain, *nonabsurd* meaning in view, we need not proceed in this way." *Id.* (emphasis added); s*ee Mobile Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978) ("There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted.").

Congress affirmatively and specifically enacted the text of § 1369(b)(1). Its omission of the words "affecting any permit" in subsection (F) is not absurd nor the result of inadvertence or mistake. The text of the Act is clear and intentional. Its plain language applies only to issuing or denying a permit. In deference to congressional intent as expressed in § 1369(b)(1), this Court should not enlarge the scope of the Act by rewriting it.

> Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding. It results from "deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill." *United States v. Locke,* 471 U.S. 84, 95, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985) (citing *Richards v.*

> *United States,* 369 U.S. 1, 9, 82 S. Ct. 585, 7 L. Ed. 2d 492 (1962)).

Lamie, 540 U.S. at 538.

II

THIS COURT CONSISTENTLY RELIES ON § 1369(b)(1)'S PLAIN LANGUAGE

This Court applied § 1369(b)(1) in two cases: *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. at 136, and *Crown Simpson Pulp Co.* v. *Costle*, 445 U.S. 193, 196-97. In both cases, this Court relied on the provision's plain text. This Court should do so here.

a) E.I. du Pont

Section 1369(b)(1)(E) of the Clean Water Act authorizes exclusive judicial review in a court of appeals of EPA actions "approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345" of the Act. In *E.I. du Pont*, EPA *promulgated* industrywide regulations under the Act setting *effluent limitations* on both new and existing chemical manufacturers. 430 U.S. at 115. The petitioning manufacturers argued review was proper in the court of appeals only when EPA issued individual permits rather than industrywide regulations, but this Court disagreed. By application of the Act's plain meaning, this Court held: "We regard [§ 1369(b)(1)(E)] as unambiguously authorizing court of appeals review of EPA action promulgating an effluent limitation" that applies industrywide. *Id.* at 136. This Court did not engage in a textual analysis of

this provision or call on any interpretative canon to reach this conclusion. This Court found the language clear and the conclusion unavoidable—the promulgation of effluent limitations under the Act is a promulgation of an effluent limitation under § 1369(b)(1)(E). Once the Court determined the regulation was an effluent limitation under Section 301 and not (as the petitioners argued) a guideline under Section 304, the text of the Act resolved the jurisdictional question. The plain meaning of the Act compelled appellate review of such an action.

The government tries to introduce some ambiguity into the decision by citing this Court's statement, relied on by Judge McKeague below, that the manufacturers' "construction would produce the truly perverse situation in which the court of appeals would review numerous individual actions issuing or denying permits pursuant to § 402 [NPDES] but would have no power of direct review of the basic regulations governing those individual actions." *E.I. du Pont*, 430 U.S. at 136.

The government argues the WOTUS Rule is a basic regulation governing individual § 402 permits such that it must be covered by § 1369(b)(1)(E), like the industrywide regulations in *E.I. du Pont*. *See* Government Opposition to Petition at 11-12. But the government overlooks the obvious. The regulations in *E.I. du Pont* established actual effluent limitations, as defined in § 1369(b)(1)(E), while the WOTUS Rule does not. *See E.I. du Pont*, 430 U.S. at 115 ("The Environmental Protection Agency has promulgated industrywide regulations imposing three sets of precise limitations on petitioners' discharges.")

(footnote omitted). The WOTUS Rule is solely definitional and sets no effluent limitation whatsoever. EPA did not promulgate the Rule under any of the § 1369(b)(1)(E) sections but under EPA's general Section 501(a) CWA rulemaking authority. *See* 33 U.S.C. § 1361(a). Under a plain meaning of the Act, § 1369(b)(1)(E) does not apply to the WOTUS Rule and *E.I. du Pont* supports that conclusion.

b) Crown Simpson

The government argues *Crown Simpson* endorses a pragmatic approach to statutory interpretation and that the case supports its claim that § 1369(b)(1) places jurisdiction over the WOTUS Rule litigation in the courts of appeals. The government misinterprets this Court's holding. This Court relied on the plain meaning of § 1369(b)(1) which excludes the Rule from direct appellate review.

EPA administers the Clean Water Act's § 402 or NPDES permit program for regulating industrial discharges to covered waters. The Act does allow the States to administer this program, but EPA retains the power to veto any permit the States issue. In *Crown Simpson*, California issued NPDES permits to certain pulp mills that discharge effluent into coastal waters. 445 U.S. at 194. EPA sought stricter effluent controls and "vetoed the permits." *Id.* at 195. On direct petition to the Ninth Circuit, the court held § 1369(b)(1)(E) and (F) do not apply and dismissed the case for lack of subject matter jurisdiction. *Id.*

The Ninth Circuit reasoned it had no jurisdiction to hear the case under subsection (E) because EPA's permit veto did not involve "approving or promulgating any effluent limitation or other limitation." *Crown Simpson*, 445 U.S. at 195. Judge Renfrew wrote a concurring opinion in which he agreed with the majority that § 1369(b)(1)(E) did not apply and the Ninth Circuit had no authority to review the EPA action. *Id.* at 196.

The Ninth Circuit also reasoned it had no jurisdiction to hear the case under subsection (F) because EPA's permit veto was not the same as "issuing or denying a permit." *Id.* In his concurrence, Judge Renfrew opined that the better analysis would find the EPA veto is "functionally similar" to a permit denial and that § 1369(b)(1)(F) does apply. *Id.*

This Court held: "We agree with the concurring opinion and hold the Court of Appeals had jurisdiction of this action under [§ 1369(b)(1)(F)]. When EPA, as here, objects to the effluent limitations contained in a state-issued permit, the precise effect of its action is to 'deny' a permit within the meaning of [§ 1369(b)(1)(F)]." *Id.*

It is instructive that this Court did not overturn the Ninth Circuit under § 1369(b)(1)(E). Although the permit expressly approved specific effluent limitations with which EPA disagreed, this Court did not find this a sufficiently compelling reason to even warrant a discussion of § 1369(b)(1)(E). *See id.* at 196n.7.. If this Court would not find that a permit veto directed at censoring the State's effluent limitations obviously falls within the scope of § 1369(b)(1)(E), it

would be bizarre if this Court were to find the WOTUS Rule, that involves neither a permit nor any effluent limitation, does fall within § 1369(b)(1)(E). *Crown Simpson* provides no support for the government's argument that subsection (E) applies to the Rule and that this case should be litigated in the courts of appeals.

Crown Simpson also provides no support for the government's argument that subsection (F) applies to the WOTUS Rule based on a "pragmatic approach" to interpreting that text. Nowhere in the opinion does this Court state, suggest, or imply that its interpretation of § 1369(b)(1)(F) was anything but a plain reading of the statutory language. This Court was emphatic—"the precise effect" of an EPA veto is a permit denial "within the meaning" of § 1369(b)(1)(F). *Id.* at 196. This Court applied the Act as written.

That this Court cited certain policy concerns to bolster its conclusion does not change the fact that this Court was giving effect to the plain meaning of the Act when it held a permit vetoed is a permit denied. Unlike the permit denial in *Crown Simpson*, the WOTUS Rule does not entail "issuing or denying a permit," either actually or functionally. Under *Crown Simpson* and a plain reading of § 1369(b)(1)(F), the Rule is not subject to exclusive jurisdiction in a court of appeals.

CONCLUSION

The intent of Congress as expressed in the text of § 1369(b)(1) is clear. It does not cover the WOTUS Rule. To effectuate the intent of Congress, this Court should vacate the Sixth Circuit decision and remand for further litigation in the district courts.

DATED: April, 2017

Respectfully submitted,

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NATIONAL ASSOCIATION OF MANUFACTURERS,

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U.S. DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE ARMY CORPS OF ENGINEERS, AND
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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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QUESTION PRESENTED

Whether the court of appeals has original jurisdictionunder33U.S.C.§ 1369(b)(1)overapetition for review challenging a regulation that defines the scope of the term "waters of the United States" in the Clean Water Act.*

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* This is the Question Presented by the Solicitor General in his brief in opposition. The Question Presented in the petition for certiorariaskedwhethertheSixthCircuiterredinholdingthatit had jurisdiction under 33 U.S.C. § 1369(b)(1)(F). In the brief in opposition, the Solicitor General also defended the judgment on thealternativeground—presentedbelowbutrejectedbythecourt of appeals—that the court of appeals had original jurisdiction under 33 U.S.C. § 1369(b)(1)(E). Petitioner therefore has rephrased the question pursuant to this Court's Rule 24.1(a) to more accurately reflect the procedural posture of the case. Jurisdiction under both Subsections was briefed and decided below,briefedbythepartiesatthecertioraristage,andpetitioner addresses both in this brief.

PARTIES TO THE PROCEEDINGS BELOW

AftertheJudicialPanelonMultidistrictLitigation consolidated the petitions for review in the Sixth Circuit(ConsolidationOrder,Dkt.No.3,MCPNo.135 (JPML July 28, 2015)), the Sixth Circuit permitted petitioner here, the National Association of Manufacturers, to intervene as a respondent. Order, No. 15-3751 cons. (Sept. 16, 2015).

Respondents below—the federal agency respondents here—are the U.S. Environmental Protection Agency; E. Scott Pruitt, in his official capacity as EPA Administrator; the U.S. Army Corps of Engineers; Lieutenant General Todd T. Semonite, in his official capacity as the Corps' Chief of Engineers and Commanding General; the Acting Assistant Secretary of the Army (Civil Works) in his or her official capacity; and Robert M. Speer, in his official capacity as Acting Secretary of the Army.

State intervenor-respondents below and respondents here are the States of New York, Connecticut, Hawaii, Massachusetts, Oregon, Vermont, Washington, and the District of Columbia.

Over100otherpartiesfiled22petitionsforreview below, and intervened in other petitions, and many of thosepetitionersmovedtodismisstheirownandother petitions for review for want of jurisdiction. Those petitioners below, respondents here, are as follows:

No. 15-3751: Murray Energy Corporation.

No. 15-3799: States of Ohio, Michigan, and Tennessee.

No. 15-3817: National Wildlife Federation.

No. 15-3820: NaturalResourcesDefenseCouncil, Inc.

No. 15-3822: State of Oklahoma.

No. 15-3823: Chamber of Commerce of the United States; National Federation of Independent Business; State Chamber of Oklahoma; Tulsa Regional Chamber; and Portland Cement Association.

No. 15-3831: States of North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, New Mexico Environment Department, New Mexico State Engineer.

No. 15-3837: Waterkeeper Alliance; Center for Biological Diversity; Center for Food Safety; Humboldt Baykeeper; Russian Riverkeeper; Monterey Coastkeeper; Upper Missouri Waterkeeper, Inc.; Snake River Waterkeeper, Inc.; Turtle Island Restoration Network, Inc.

No. 15-3839: Puget Sound Keeper; Sierra Club.

No. 15-3850: American Farm Bureau Federation; American Forest & Paper Association; American Petroleum Institute; American Road and Transportation Builders Association; Greater Houston Builders Association; Leading Builders of America; Matagorda County Farm Bureau; National Alliance of Forest Owners; National Association of Home Builders; National Association of Realtors; National Cattlemen's Beef Association; National Corn Growers Association; National Mining Association; National Pork Producers Council; National Stone, Sand, and Gravel Association; Public Lands Council; Texas Farm Bureau; and U.S. Poultry & Egg Association.

No. 15-3853: States of Texas, Louisiana, and Mississippi; Texas Department of Agriculture; Texas Commission on Environmental Quality; Texas Department of Transportation; Texas General Land Office; Railroad Commission of Texas; Texas Water Development Board.

No. 15-3858: Utility Water Act Group.

No. 15-3885: SoutheasternLegalFoundation,Inc.; Georgia Agribusiness Council, Inc.; Greater Atlanta Homebuilders Association, Inc.

No. 15-3887: States of Georgia, West Virginia, Alabama,Florida,Indiana,Kansas;Commonwealthof Kentucky;NorthCarolinaDepartmentofEnvironment and Natural Resources; States of South Carolina, Utah, and Wisconsin.

No. 15-3948: OneHundredMiles;SouthCarolina Coastal Conservation League.

No. 15-4159: Southeast Stormwater Association, Inc.; Florida Stormwater Association, Inc.; Florida Rural Water Association, Inc., and Florida League of Cities, Inc.

No. 15-4162: Michigan Farm Bureau.

No. 15-4188: WashingtonCattlemen'sAssociation; California Cattlemen's Association; Oregon Cattlemen's Association; New Mexico Cattle Growers Association;NewMexicoWoolGrowers,Inc.;NewMexico Federal Lands Council; Coalition of Arizona/New Mexico Counties for Stable Economic Growth; Duarte Nursery, Inc.; Pierce Investment Company; LPF Properties, LLC; Hawkes Company, Inc.

No. 15-4211: Association of American Railroads; Port Terminal Railroad Association.

No. 15-4234: Texas Alliance for Responsible Growth, Environment and Transportation.

No. 15-4305: American Exploration & Mining Association.

No. 15-4404: ArizonaMiningAssociation; Arizona FarmBureau;AssociationofCommerceandIndustry; New Mexico Mining Association; Arizona Chamber of

Commerce&Industry;ArizonaRockProductsAssociation; and New Mexico Farm & Livestock Bureau.

Many of these petitioners in the court of appeals also filed complaints in district courts. Those actions are *North Dakota* v. *EPA*, No. 3:15-cv-59 (D.N.D.); *MurrayEnergyCorp.* v. *EPA*,No.1:15-cv-110(N.D.W. Va.); *Ohio* v. *EPA*,2:15-cv-2467(S.D.Ohio); *Am.Farm Bureau Fed'n* v. *EPA*, No. 3:15-cv-165 (S.D. Tex.); *Texas* v. *EPA*,No.3:15-cv-162(S.D.Tex.); *Ass'nofAm. Railroads* v. *EPA*,No.3:15-cv-266(S.D.Tex.); *Georgia* v. *McCarthy*, No. 2:15-cv-79 (S.D. Ga.); *Oklahoma ex rel. Pruitt* v. *EPA*, No. 4:15-cv-381 (N.D. Okla.); *Chamber of Commerce* v. *EPA*, No. 4:15-cv-386 (N.D. Okla.); *Southeastern Legal Foundation* v. *EPA*, No. 1:15-cv-2488-TCB(N.D.Ga.); *WashingtonCattlemen's Association* v. *EPA*,No.0:15-cv-3058(D.Minn.); *Puget Soundkeeper Alliance* v. *McCarthy*, No. 2:15-cv-1342 (W.D. Wash.); *Waterkeeper Alliance* v. *EPA*, No. 3:15-cv-3927(N.D.Cal.); *NaturalResourcesDefenseCouncil* v. *EPA*, No. 1:15-cv-1324 (D.D.C.); *Am. Exploration & Mining Ass'n* v. *EPA*, No. 1:15-cv-1323 (D.D.C.); and *Arizona Mining Ass'n* v. *EPA*, No. 2:15-cv-1752 (D. Az.).

CORPORATE DISCLOSURE STATEMENT

PetitionerNationalAssociationofManufacturersis anot-for-profitpublicadvocacygroup.Ithasnoparent corporation and does not issue stock.

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United States v. *Mendoza*,
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United States v. *Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985).....10

Universal Health Servs., Inc. v. *United States*,
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Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500.....41

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Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054 (June 29, 2015)..... *passim*

Notice of Proposed Rulemaking, 82 Fed. Reg. 12497 (Mar. 3, 2017).....12

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Benjamin Cardozo, THE NATURE OF THE JUDICIAL PROCESS (1921).....50

123 Cong. Rec. S. 26,754 (Aug. 4, 1977).....42

EPA & U.S. Army Corps of Engineers, *Economic Analysis of the EPA-Army Clean Water Rule* (May 2015).....11

EPA, NPDES PERMIT WRITER'S GUIDE (Sept. 2010) 26, 31

The Fiscal Year 2016 EPA Budget: Joint Hearing Before the Subcomm. on Energy & Power & the Subcomm. on Environment & Economy of the House Comm. on Energy & Commerce, 114th Cong. (Feb. 25, 2015).....22

H.R Rep. No. 92-911 (1972), *reprinted in* 1 Leg. Hist. of the Water Pollution Control Act of 1972 (Comm. Print 1973).....42

Allison LaPlante *et al.*, *On Judicial Review Under the Clean Water Act in the Wake of* Decker v. Northwest Environmental Defense Center*: What We Know Now and What We Have Yet to Find Out*, 43 ENVTL. L. 767 (2013).....41

Joseph W. Mead & Nicholas A. Fromherz, *Choosing a Court to Review the Executive*, 67 ADMIN. L. REV. 1 (2015).....47, 53, 54

Richard L. Revesz, *Specialized Courts and the Administrative Lawmaking System*, 138 U. PA. L. REV. 1111 (1990).....50

Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) 30

S. Conf. Rep. 92-1236 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3776.....28

THE CLEAN WATER ACT HANDBOOK (Mark A. Ryan ed., 3d ed. 2011).....21

Webster's Third New International Dictionary (1971) 29

BRIEF FOR PETITIONER[1]

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-47a) is reported at 817 F.3d 261. The court of appeals' denialofrehearingenbanc,whichisunreported,isreproduced at Pet. App. 51a-52a.

JURISDICTION

The judgment of the court of appeals denying all motions to dismiss the petitions for review for lack of jurisdiction was entered on February 22, 2016. Pet. App. 48a-50a. The court of appeals' order denying rehearingenbancwasenteredonApril21,2016. *Id.* at

[1] Petitioner the National Association of Manufacturers ("the NAM")filedsuitchallengingthewatersoftheUnitedStatesRule in district court as part of a broad-based coalition of 18 industry groups. *Am. Farm Bureau Fed'n, et al.* v. *EPA*, No. 3:15-cv-165 (S.D.Tex.).Whenthatcoalitionalsofiledaprotectivepetitionfor reviewintheSixthCircuit,itagreedthattheNAMwould *not* join the petition, so as to ensure that the NAM could challenge the Sixth Circuit's jurisdiction.

TheNAM'sfellowcoalitionmembers,petitionersinNo.15-3850, filed a brief as respondents in support of the NAM's certiorari petition. These respondents—the American Farm Bureau Federation;AmericanForest&PaperAssociation;AmericanPetroleum Institute; American Road and Transportation Builders Association; Greater Houston Builders Association; Leading Builders of America; Matagorda County Farm Bureau; National AllianceofForestOwners;NationalAssociationofHomeBuilders; National Association of Realtors; National Cattlemen's Beef Association;NationalCornGrowersAssociation;NationalMining Association; National Pork Producers Council; National Stone, Sand,andGravelAssociation;PublicLandsCouncil;TexasFarm Bureau;andU.S.Poultry&EggAssociation—eachfullysupports andjoinsintheargumentsmadeinthisbriefandwillnotbefiling a separate brief.

51a.OnJuly1,2016,JusticeKaganextendedthetime to file a petition for certiorari to September 2, 2016. ThisCourtgrantedatimelyfiledpetitionforcertiorari on January 13, 2017. Jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTES AND REGULATION INVOLVED

Relevant portions of the Clean Water Act, 33 U.S.C.§§ 1251 *etseq.* ,arereproducedinanAddendum. TheWatersofthe UnitedStatesRule("WOTUSRule" or"Rule")ispublishedat *CleanWaterRule:Definition of "Waters of the United States,"* 80 Fed. Reg. 37,054 (June 29, 2015).

STATEMENT

A. Introduction

Section 509(b) of the Clean Water Act ("CWA" or "Act"),33U.S.C.§ 1369(b),providesfor"judicialreview in the United States courts of appeals of various particular actions by the [EPA] Administrator." *Middlesex County Sewerage Auth.* v. *Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 13-14 (1981). The seven categories of action specified in Section 1369(b)(1) are EPA Administrator action

> (A) in promulgating any standard of performance under section 1316 of this title [for new sources of discharges],
>
> (B) in making any determination pursuant to section 1316(b)(1)(C) of this title,
>
> (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section1317ofthistitle[fortoxicpollutantsor pollutants introduced into treatment works],

> (D) in making any determination as to a State permit program submitted under section 1342(b) of this title,
>
> (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of this title,
>
> (F) in issuing or denying any permit under section 1342 of this title, and
>
> (G) in promulgating any individual control strategy under section 1314(*l*) of this title [to address toxic pollutant discharges] * * *.

Jurisdictioninthecourtsofappealsoverchallengesto those EPA actions is not only original, but also "exclusive." *Decker* v. *Nw. Envtl. Def. Ctr.*, 133 S. Ct. 1326,1334(2013).And"anapplicationforreviewmust belodgedinthecourtofappealswithin120daysofthe Administrator's action, §1369(b)(1)." *Ibid.*

Challenges to final agency action under the CWA not covered by Section 1369(b)—including all actions by the U.S. Army Corps of Engineers ("Corps") in administering permits for discharges of dredged and fill material under Section 1344—are governed by the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq*. ("APA"). The APA provides that "[a] person suffering legal wrong" or "adversely affected or aggrieved by agency action" may bring suit in district court for judicial review of any "final agency action for which thereisnootheradequateremedyinacourt."5U.S.C. §§ 702, 704. An APA suit may be brought within six years of the challenged agency action. 28 U.S.C. § 2401(a).

Section 1369(b) thus"extendsonly to *certain* suits challenging *some* agency actions" taken by *one* of the federal agencies that, along with the States, are

responsibleforimplementingtheCWA. *Decker*,133S. Ct. at 1334 (emphasis added). Litigants whose claims fall outside those narrow confines may invoke the jurisdiction of the district court under the APA and28 U.S.C. § 1331.[2]

In this case, challengers filed numerous petitions for review of the final WOTUS Rule promulgated jointly by EPA and the Corps. 80 Fed. Reg. 37,054 (June 29, 2015). That Rule significantly revised the scope of the Clean Water Act by redefining the phrase "thewatersoftheUnitedStates."Rejectingintervenor the NAM's and other motions to dismiss the petitions for lack of jurisdiction, the Sixth Circuit held that it had original jurisdiction over the rule challenges by virtue of Section 1369(b)(1)(F). Following circuit precedent that the judge who supplied the controlling vote deemed "incorrect" (Pet. App. 44a), the majority heldthatthepetitionsforreviewfellunderSubsection (F) because they challenged an EPA "regulation 'governing'" permitting pursuant to the National Pollutant Discharge Elimination System ("NPDES") established in 33 U.S.C. § 1342. Pet. App. 44a.

The agencies, in their brief in opposition to certiorari,defendedtheSixthCircuit'sjudgmentonthe additional ground—rejected by the majority below—thattheWOTUSRulefallsunderSection1369(b)(1)(E) because it "approv[es] or promulgat[es] any effluent limitationorotherlimitationundersection1311,1312, 1316, or 1345." See Br. for Fed. Resps. in Opp. 11, 13-14 ("Fed. BIO"). Accordingly, the applicability of both

[2] Section 1365 governs citizen enforcement actions, including claims that the Administrator failed to perform a non-discretionary duty. Congress provided that "[t]he district courts shall have jurisdiction" over such claims. 33 U.S.C. § 1365(a).

Subsections (E) and (F) to the petitions for review is before this Court.

A majority of the Sixth Circuit panel correctly recognized that it is "illogical and unreasonable" to conclude that either Subsection (E) or (F) governs challengestotheWOTUSRule.Pet.App.29a(Griffin, J., concurring in judgment); see *id.* at 45a (Keith, J., dissenting). The Rule doesnot fit within the plain and unambiguous language of either subsection. The Rule definesabasicjurisdictionaltermusedthroughoutthe CWA; it does not approve orpromulgateaneffluent or otherlimitationunderanyofthespecifiedprovisionsof theAct,orissueordenyanypermitundertheNPDES program.Aplainreadingofstatutorytextisenoughto require reversal. And it is the only approach that producesa"[s]implejurisdictionalrule"thatpromotes "predictability" and under which courts "can readily assurethemselvesoftheirpowertohearacase." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010).

Other considerations confirm that conclusion. Canonsofstatutoryinterpretation,statutorystructure, legislative history, the principle that "jurisdictional rules should be clear" (*Lapides* v. *Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 621 (2002)), and the presumption that agency action is reviewable all contradict the agencies'position andsupport reversal. And contrary to the agencies' contention, this Court's decisions in *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977), and *Crown Simpson Pulp Co.* v. *Costle*,445U.S.193(1980),arereadilydistinguishable and in any event cast no doubt on that analysis.

This Court should reverse the judgment of the courtofappealsandorderdismissalofthepetitionsfor review for want of jurisdiction.

B. The Clean Water Act

CongressenactedtheCleanWaterActtoeliminate "thedischargeofpollutantsintothenavigablewaters." 33 U.S.C. § 1251(a)(1). Section 1311(a) of the Act generally prohibits "the discharge of any pollutant by any person" without a permit. A "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source," such as a pipe,ditchorother"confinedanddiscreteconveyance." *Id.* § 1362(12), (14). "Navigable waters," in turn, are defined as "the waters of the United States." *Id.* § 1362(7).

Accordingly, whether a feature qualifies as a "water of the United States" is only one factor, along with other complex inquiries—such as whether an activity involves an "addition" of a "pollutant" from a "point source"—that determines whether a CWA permit is required for an activity. That determination depends too on whether exclusions to permitting requirements apply, such as those for certain water transfers,[3] stormwater discharges from most logging operations,[4] agricultural return flows,[5] certain discharges from mining, oil, or gas operations,[6] and others.Byitself,determiningthatafeatureisa"water of the United States"tellsone nothing abouthow land may be used or whether an activity requires or qualifies for a permit; instead it leads to a further inquiry focused on other statutory and regulatory

---

[3] See 40 C.F.R. § 122.3(i); *South Fla. Water Mgmt. Dist.* v. *Miccosukee Tribe*, 541 U.S. 95 (2004)

[4] See 40 C.F.R. § 122.26(a)(1)(ii), (b)(14)(ii); *Decker*, 133 S. Ct. 1326.

[5] See 33 U.S.C. § 1342(*l*)(1).

[6] See 33 U.S.C. § 1342(*l*)(2), § 1362(6)(b), (24).

factors that, together, determine what and how substantive rules apply.

TheCWApermittingprograms. TheActestablishes two permitting programs to regulate discharges of pollutants into the waters of the United States. The NPDES program established in 33 U.S.C. § 1342 authorizesEPAtoissuepermitsfordischargesthatdo not involve fill material—generally, effluent discharges. An NPDES permit imposes effluent limits based on the technology available to treat the pollutants. It restricts "the quantities, rates, and concentrations of specified [pollutants] which are dischargedfrompointsources." *Arkansas* v. *Oklahoma*, 503U.S.91,101(1992);see33U.S.C. §§1311(b)(1)(A)-(B), 1317(a), 1342(a)(3), (b)(1)(A).

Sometimestechnology-basedlimitsareinsufficient to achieve water quality standards "promulgated by the States [to] establish the desired condition of a waterway." *Arkansas*, 503 U.S. at 101. In that event, permits also impose any more stringent limits or strategies necessary to achieve water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1312(a). Most States administer the Section 1342 permit program within theirown borders, as authorizedunderSection 1342(b).

Section 1344 establishes a separate permit program, administered by the Corps of Engineers, for "the discharge of dredged or fill material into the navigablewaters."Thatprogramappliestodischarges of "solids that do not readily wash downstream" (*Rapanos* v. *United States*, 547 U.S. 715, 723 (2006) (plurality)) and so "chang[e] the bottom elevation" of water. 40 C.F.R. § 232.2. In determining whether to issue a Section 1344 permit, the Corpsappliescriteria developed by both EPA and the Corps pursuant to

Section 1344(b)(1). EPA also has the authority to veto the specification of a site for discharge of fill material. 33U.S.C.§ 1344(c);see *CoeurAlaska,Inc.* v. *Southeast Alaska Conservation Council*, 557 U.S. 261, 266-269 (2009). Two States operate the Section 1344 program under Section 1344(g).

The CWA's jurisdictional terms define the geographic scope of the entire statute. The terms "navigable waters" and "waters of the United States" definethegeographicreachoftheAct'stwopermitting schemes,butalsothatof"theentirestatute." *Rapanos*, 547 U.S. at 742. Those terms appear repeatedly throughout the 1972 Act and its later amendments to establish the geographic scope of regulatory programs and actions. For example:

- Section 1313(c)(2)(A) requires each State to establishwaterqualitystandardsbasedon"the designatedusesofthenavigablewaters"within its borders, subject to EPA oversight and EPA's authoritytopromulgatewaterqualitystandards if the State does not adequately do so. See 33 U.S.C. § 1313(c)(3).
- Section 1314(*l*) requires each State to identify "allnavigablewatersinsuchState"thatcannot meetStatewaterqualitystandardsduetopoint-source discharges of toxic pollutants, and to develop "an individual control strategy" to address those discharges, which EPA must approve or reject and which EPA may promulgate itself if the State fails to do so. See 33 U.S.C. § 1314(*l*)(2), (3).
- Section 1329 requires each State to identify "navigable waterswithin the state" that cannot meet State water quality standards "without additional action to control nonpoint sources of

pollution," and to establish a program of best management practices and other measures for controlling such pollution, which EPA may approve,disapprove,modify,orimplementitself if the State fails to do so. See 33 U.S.C. § 1329(d).

- Section 1252(a) requires the Administrator to "develop comprehensive programs for preventing,reducing,oreliminatingthepollutionofthe navigable waters * * *."
- Section1256(e)conditionscertainfederalgrants to the States on the adequacy of their monitoring of "the quality of navigable waters."
- Section 1288(b)(4) provides for State areawide waste treatment management plans to include bestmanagementpracticestocontroldischarges of "dredged or fill material which adversely affects navigable waters," in lieu of obtaining a Section 1344 permit.
- Section 1315(b) requires each State to provide regular, detailed reports to EPA on "the water quality of all navigable waters in such State."
- Section 1341(a)(1) conditions receipt of any federal license orpermit forany activity "which may result in any discharge into the navigable waters" on obtaining "a certification from the Stateinwhichthedischargeoriginates"thatthe dischargecomplieswithspecifiedrequirements.

Accordingly,theterm"watersoftheUnitedStates" isoneelement,albeitanimportantone,ofareticulated statutory scheme with many components that work together.Itdefinesthegeographicreachofmostofthe CWA'srequirements,butbyitselfrequiresnoaction.It imposes no obligation except when applied in conjunction with other, separate statutory concepts.

This Court has previously addressed the term "waters of the United States." This Court considered the meaning of the term "waters of the United States" in the CWA in three cases. In *United States* v. *Riverside Bayview Homes, Inc.*, 474 U.S. 121, 135 (1985), this Court concluded that the agencies permissibly interpreted "waters of the United States" toencompasswetlandsthatabuttraditionalnavigable waters. In *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) ("*SWANCC*"), it struck down the agencies' "Migratory Bird Rule," which purported to extend agency jurisdiction to any waters that are or might be used as habitat for migratory birds, no matter how isolated or remote from navigable waters. And in *Rapanos*, the Court reversed the agencies' determinationthattheyhadjurisdictionoverwetlandsthat"lie near ditches or man-made drains that eventually emptyintotraditionalnavigablewaters,"whichswept in"virtuallyanyparceloflandcontainingachannelor conduit***throughwhichrainwaterordrainagemay occasionally or intermittently flow." 547 U.S. at 722, 729(plurality);see *id.* at759(Kennedy,J.,concurring) (applying a "significant nexus" test).

C. The Waters of the United States Rule

TheWOTUSRulepurportstodefine"watersofthe United States" within the meaning of the CWA and *Rapanos*, *SWANCC*, and *Riverside Bayview*. 80 Fed. Reg. at 37,054. The agencies describe their WOTUS Rule as "a definitional rule that clarifies the scope of theCleanWaterAct."80Fed.Reg.at37,104.Theysay that it "does not establish any regulatory requirements." *Id.* at 37,054. And they claim it "imposes no enforceable duty on any state, local, or tribal governments, or the private sector." *Id.* at 37,102;seealsoEPA&Corps, *EconomicAnalysisofthe*

EPA-ArmyCleanWaterRule 61(May2015)("Thefinal rule is not designed to 'subject' any entitiesof any size to any specific regulatory burden" but "to clarify the statutory scope of 'the waters of the United States'"); *id.* at vii ("This rule does not result in any direct costs or benefits * * *. A finding of jurisdiction regarding a particular water does not incur any direct costs").

The WOTUS Rule separates waters into three jurisdictionalgroups.Inthefirstgrouparewatersthat are categorically jurisdictional: (1) traditional navigable waters, (2) interstate waters, (3) territorial seas, (4) impoundments of any water deemed to be a "water of the United States," (5) certain tributaries, and (6) certain waters that are "adjacent" to the foregoingfivecategoriesofwaters.33C.F.R.§ 328.3(a).

In the second group are waters "that require a case-specificsignificantnexusevaluation"todetermine if they are jurisdictional. 80 Fed. Reg. at 37,073. Watersthataresubjecttojurisdictionbasedonacase-specific significant nexus determination include: (A) waters, any part of which are within the 100-year floodplain of a traditional navigable water, interstate water, or territorial sea; or (B) waters, any part of which are within4,000 feet of the ordinary high water mark of any of those jurisdictional waters, any impoundment of those jurisdictional waters, or any covered tributary. 33 C.F.R. § 328.3(a)(8).

In the third group are waters excluded from jurisdiction. These include: swimming pools, puddles, ornamental waters, prior converted cropland, waste treatment systems, some drainage ditches, farm and stock watering ponds, settling basins, water-filled depressions incidental to mining or construction activity, subsurface drainage systems, and certain wastewater recycling structures. 33 C.F.R. § 328.3(b).

Petitioners challenging the WOTUS Rule have shown that it is deeply flawed both in substance and procedure and that the breadth and uncertainty of its definitionsviolatethisCourt'sprecedentsandtheAct. The Rule is arbitrary and capricious and not in accordance with law and consequently violates the APA,5U.S.C.§ 706(2)(A)-(D).SeeBr.fortheBusiness and Municipal Ptrs., *In re Clean Water Rule*, No. 15-3751 cons., Dkt. 129-1 (6th Cir. Nov. 1, 2016).[7] The merits of the Rule, however, are not at issue here. Merits litigation has been held in abeyance pending this Court's ruling on which court has jurisdiction.

The agencies issued a notice of proposed rule-making announcing their "intention to review and rescind or revise" the WOTUS Rule. 82 Fed. Reg. 12497 (Mar. 3, 2017). This Court denied the agencies' motion to hold this case in abeyance pending that review. Order (Apr. 3, 2017).

D. Judicial Review Of The Rule

Scores of state, municipal, industry, and environmental plaintiffs filed suits challenging the WOTUS Rule in district courts. See *supra* p. v. The NAM filed suit, as part of a coalition of industry groups, in the Southern District of Texas. See *supra* n.1.

The Judicial Panel on Multidistrict Litigation deniedthe agencies'request to consolidate the district courtactionsandtotransferthemtotheDistrictCourt for the District of Columbia. See *In re Clean Water Rule*, MDL No. 2663, Dkt. 163 (JPML Oct. 13, 2015). The Judicial Panel held that transfer was inappropriate under 28 U.S.C. § 1407 because the complaints turn on issues of law and "different

[7] Exceptwhereotherwiseindicated,docketreferencesthroughout this brief ("Dkt.") are to this Sixth Circuit docket.

jurisdictionalrulingsbytheinvolvedcourts"counseled against consolidation. *Id.* at 2.

Reflectingtheuncertaintysurroundingthescopeof Section 1369(b) and the exclusivity of its grant of jurisdiction, many plaintiffs who filed district court actions (but not petitioner the NAM) also filed "protective" petitions for review in various courts of appeals, as courts have acknowledged is appropriate. *E.g.*, *Inv. Co. Inst.* v. *Bd. of Governors of Fed. Reserve Sys.*, 551 F.2d 1270, 1280 (D.C. Cir. 1977) ("If any doubt as to the proper forum exists, careful counsel should file suit in both the court of appeals and the districtcourt"); *RollCoater,Inc.* v. *Reilly*,932F.2d668, 671 (7th Cir. 1991) ("careful counsel must respond to the combination of uncertain opportunities for review and§ [1369(b)(2)] by filing buckshot petitions"). Those petitions were consolidated and transferred to the Sixth Circuit pursuant to 28 U.S.C. § 2112(a). Cons. Order, MCP No. 135 (JPML July 28, 2015).[8]

Theagenciesmovedtostayordismisscases inthe district courts in favor of the circuit court litigation. Some district courts held that the Sixth Circuit had exclusive jurisdiction. *E.g.*, *Murray Energy Corp.* v. *EPA*, 2015 WL 5062506 (N.D. W. Va. Aug. 26, 2015); *Georgia* v. *McCarthy*,2015WL5092568(S.D.Ga.Aug. 27, 2015), case stayed on appeal, 833 F.3d 1317 (11th Cir. 2016). The District Court for the District of North Dakota, by contrast, held it had jurisdiction. *North Dakota* v. *EPA*, 127 F. Supp. 3d 1047, 1053 (D.N.D. 2015) ("If the exceptionally expansive view" of Section 1369(b) "advocated by the government is adopted, it would encompass virtually all EPA actions under the

[8] The 22 petitions for review and more than 100 petitioners are identified *supra* pp. ii-v.

Clean Water Act"); *id.*, 3:15-cv-59, Dkt. 156 (D.N.D. May 24, 2016) (staying case "pending further decision by the Courts of Appeals or Supreme Court").

E. The Sixth Circuit's Decision

The NAM successfully moved to intervene as a respondentintheSixthCircuit.Dkt.8(Sept.16,2015). It then moved to dismiss the petitions for want of jurisdiction (Dkt. 39 (Oct. 2, 2015)), as did many parties that had filed protective petitions or intervened.

The Sixth Circuit concluded, in a fractured 1-1-1 decision, that it and not the district courts had jurisdiction to hear the rule challenges. The panel agreedthatSubsections(E)and(F)werethe"onlytwo provisionsof§ 1369(b)(1)"that"potentiallyapply"(Pet. App. 8a), but otherwise splintered.

Judge McKeague's opinion. Judge McKeague recognized that the agencies' textual arguments as to Subsection (E) were "not compelling." Pet. App. 9a. "[T]he Rule's clarified definition," he wrote, does not "approve or promulgate *any* limitation that imposes *ipso facto* any restriction or requirement on point source operators or permit issuers." *Ibid.* (emphasis added). "Rather," it is"a definitionalrule that, operatinginconjunctionwithotherregulations,willresultin imposition of such limitations." *Ibid.*

Judge McKeague nevertheless concluded that jurisdiction lies in the court of appeals under Subsection (E), citing this Court's decision in *E.I. du Pont deNemours&Co.* v. *Train*, *supra.*Hebelievedthat *du Pont* "eschewed" a "literal reading" of Section 1369-(b)(1) in favor of a "more generou[s]" interpretation that "further[ed] Congress's evident purposes." Pet. App. 10a, 13a, 26a. Judge McKeague believed this interpretationencompassestheWOTUSRulebecause

theRule's"practicaleffectwillbeto *indirectly* produce various limitations on point-source operators and permit issuing authorities." *Id.* at 17a.

Turning to Subsection (F), Judge McKeague recognizedthattheRuledoesnot"issue"or"deny"any permits, but declined to give the provision "a strict literal application." Pet. App. 17a. He pointed to this Court's opinion in *Crown Simpson Pulp Co.* v. *Costle*, *supra*, and the Sixth Circuit's decision in *National Cotton Council of America* v. *EPA*, 553 F.3d 927 (6th Cir. 2009), as supporting direct review in the circuit courts of any regulation that "*affects* permitting requirements." Pet. App. 19a (emphasis added).

Judge Griffin's concurrence. Judge Griffin concurredinthejudgmentonly.Heconcludedthatthe SixthCircuitlackedjurisdictionunderthe"plaintext" of Subsection (E) because the Rule is not an "effluent limitation or other limitation," and also "does not emanatefrom"Sections1311,1312,1316,or1345,but "is a phrase used in the Act's definitional section, § 1362," which "is not mentioned in § 1369." Pet. App. 30a-31a. He read *du Pont* to authorize review under Subsection (E) of EPA regulations that "'promulgate effluent limitations,'" no more. *Id.* at 34a.

Judge Griffin further concluded that "[o]n its face, subsection(F)clearlydoesnotapply"becausetheRule "neitherissuesnordeniesapermitundertheNPDES." Pet. App. 39a. But he concurred in the judgment because, in his view, the Sixth Circuit's earlier (and "incorrect") decision in "*National Cotton* dictates [the] conclusion" that Subsection (F) encompasses the WOTUS Rule. *Id.* at 42a, 44a. Judge Griffin nevertheless criticized that conclusion because it means that Subsection (F)'s "jurisdictional reach" has

"no end," catching "*anything* relating to permitting." *Id.* at 42a.

Judge Keith's dissent. Judge Keith dissented. He joined Judge Griffin in holding Subsection (E) inapplicable on its face. Pet. App. 45a. Turning to Subsection (F), he refused to read *National Cotton* to authorize original jurisdiction over "all rules '*relating*' to [permitting] procedures, such as the one at issue here," which "merely defines the scope of the term 'waters of the United States.'" *Id.* at 46a.

TheSixthCircuitdeniedrehearing.Pet.App.51a-52a. It held merits briefing in abeyance after this Court granted certiorari. Dkt. 171-2 (Jan. 25, 2017).

SUMMARY OF THE ARGUMENT

I. The Sixth Circuit's erroneous exercise of jurisdictionunderSection1369(b)violatesthestatute's plain language and structure.

A. Contrary to the Sixth Circuit's ruling, it lacks jurisdiction under Section 1369(b)(1)(F). It is undisputed that the WOTUS Rule does *not* "issu[e] or den[y]anypermitundersection1342."Itthereforelies outside Subsection (F)'s unambiguous text. That fact should end the analysis.

In stretching Subsection (F) to reach all EPA actions that *affect* the granting or denying of Section 1342 permits, Judge McKeague misread this Court's decision in *Crown Simpson Pulp Co.* v. *Costle*, *supra*, which did involve EPA's denial of a permit. His rewriting of Subsection (F) would cover most agency action under the CWA and render superfluous Subsections (A), (C), (D), (E), and (G) of Section 1369(b)(1).

B. A majority of the panel correctly determined that Section 1369(b)(1)(E) does not confer jurisdiction

on the court of appeals. The Rule falls outside Subsection (E)'s plain language because it is not a "limitation," it is not an "other limitation" within the meaning of Subsection (E), and it was not issued "under section 1311." To the contrary, the Rule addresses a phrase in Section 1362(7) that defines the geographic scope of the Act as a whole and thus impacts dozens of CWA provisions just as or more directlythanSection1311.Anditlimitsnoaction:any limitation arises only when multiple additional statutoryterms,like"addition,""pollutant,"and"point source," also apply, and when exclusions from permitting requirements are ruled out.

In eschewing a literal reading, Judge McKeague misinterpreted Subsection (E) to extend to any EPA action that merely affects point source operators or permit issuers. In doing so he misread this Court's decision in *E.I. du Pont de Nemours & Co.* v. *Train*, *supra*, which involved industry-wide effluent limitationsissuedunderSection1311.Hisanalysishas no stopping point, conflicts with this Court's recent holdings, and would render other provisions redundant.

C. Section 1369(b)'s structure confirms the Sixth Circuit's lack of jurisdiction. Congress enacted seven narrow bases for original jurisdiction in the courts of appeals. Its specificfocusshows that Congressdid not intend Section 1369(b) to provide courts of appeals withoriginaljurisdictiontoreviewallnationwiderule-makingundertheCWA.Congress'smarkedlydifferent language in the Clean Air Act's judicial review provisions reinforces this conclusion. There, Congress granted courts of appeals jurisdiction to review all nationally,regionally,orlocallyapplicableregulations. Congress's omission of similarly broad language from the CWA must be given meaning.

D. Legislative history bolsters this conclusion. Although there is scant legislative history surrounding the enactment of Section 1369(b) in 1972, in 1977, Senator Kennedy attempted, with EPA support, to expand Section 1369(b) to cover nationwide rulemaking. He was unsuccessful, yet that same Congress expanded the Clean Air Act's direct judicial-review provisions to include nationwide rulemaking. The negative implication raised by Congress's disparate actions is compelling.

II. Because Section 1369(b)'s plain language resolves this case, there is no need to consider the policy implications of Congress's allocation of jurisdiction. There are, nevertheless, strong policy reasons that support Congress's choice.

A. This Court has emphasized that jurisdictional rules must be clear and administrable. Reading Section 1369(b) textually produces a straightforward jurisdictional standard. Judge McKeague's approach, by contrast, fosters uncertainty over jurisdiction that leads to wasteful litigation. By limiting Section 1369(b) to its text, this Court can put an end to the wasteful practice of duplicative district court and circuit court challenges to agency action under the CWA.

B. Section 1369(b)'s preclusion provision compels a narrow interpretation of the statute. Section 1369(b)(2) prohibits parties in criminal and civil enforcement proceedings from challenging agency action that could have been reviewed under Section 1369(b)(1). A broad interpretation of Section 1369(b)(1) exacerbates the CWA's crushing penalties and creates due process concerns by foreclosing judicial review of unlawful agency action. A broad reading also increases Section 1369(b)(2)'s perverse incentive for parties to petition

for review of all agency action that conceivably falls within Section 1369(b)(1).

C. A plain-language reading of Section 1369(b) allowsdistrictcourts andmultiplecourtsof appealsto reviewagencyactionandtherebyimprovesthequality ofjudicialdecision-making.Disagreementamonglower courts increases the probability of correct decisions. And having multiple courts review agency action will ensurefullpercolationofissuesinthelowercourtsand improve this Court's ability to decide which cases to review. There is no reason to think that multi-court review is less appropriate for agency action than for other cases, such as those involving the meaning or constitutionality of federal statutes.

D. Judge McKeague greatly overstated efficiency gains under his atextual reading of Section 1369(b). WhetherreviewliesunderSection1369(b)ortheAPA, challengestoimportantagencyactiontypicallywillbe filed quickly. And parties often coordinate their rule challenges to avoid duplicative litigation. District courts are efficient in reviewing agency action and adept at finding any facts relevant to such review. In anyevent,efficiencyconcernscannotoverridetheplain languageofSection1369(b).ThisCourtshouldreverse the Sixth Circuit's judgment and remand with instructions to dismiss for lack of jurisdiction.

ARGUMENT

The Sixth Circuit erred in ruling that it had jurisdiction under Section 1369(b). "Section 1369(b) extends only to certain suits challenging some agency actions,"whichtheprovisionclearlyidentifies. *Decker*, 133 S. Ct. at 1334. It does not extend to suits challenging the WOTUS Rule.

I. The Sixth Circuit Lacks Jurisdiction Under The Plain Language Of Section 1369(b).

"A statute affecting federal jurisdiction 'must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes.'" *Kucana* v. *Holder*, 558 U.S. 233, 252 (2010). That simple principle resolves this case. As Judges Griffin and Keith explained, the Sixth Circuit lacks jurisdiction under the unambiguous language of Subsections 1369(b)(1)(E) and (F). See Pet. App. 29a (Griffin,J.)("itisillogicalandunreasonabletoreadthe text of either subsection (E) or (F) as creating jurisdiction in the courts of appeals"), 45a (Keith, J.) ("under the plain meaning of the statute, neither subsection(E)nor(F)* * *confersoriginaljurisdiction on the appellate courts"). The Sixth Circuit should have dismissed the petitions for lack of jurisdiction.

A. The Sixth Circuit Erroneously Exercised Jurisdiction Under Section 1369(b)(1)(F).

We begin with Section 1369(b)(1)(F), under which the Sixth Circuit took jurisdiction. Subsection (F) grantscourts of appealsoriginaljurisdictionto review "the Administrator's action * * * in issuing or denying any permit under section 1342." As a matter of plain statutory language and precedent, the Sixth Circuit lacks jurisdiction under Subsection (F).

1. The WOTUS Rule Falls Outside The Unambiguous Language Of Subsection (F).

The WOTUSRuleis *not* an EPA action "issuing or denying any permit under section 1342." Permits under Section 1342 "authoriz[e] the discharge of pollutants" into jurisdictional waters "in accordance withspecifiedconditions." *GwaltneyofSmithfield,Ltd.* v. *ChesapeakeBayFound.,Inc.* ,484U.S.49,52(1987).

Section 1342 permits contain "five general types of provisions: technology-based effluent limitations, water-quality-based effluent limitations, monitoring and reporting requirements, standard conditions, and specialconditions."T HE CLEAN WATER ACT HANDBOOK 33 (Mark A. Ryan ed., 3d ed. 2011). They are enforceablebyadministrativeactionsandcitizensuits. 33 U.S.C. §§ 1319, 1365.

There are plenty of examples in which EPA *actually* issues or denies a permit under Section 1342; those EPA actions may be directly reviewed by the courts of appeals.[9]

Here, however, it is *undisputed* that the WOTUS Ruledoesnotissueordenya Section1342permit.The panel was unanimous on this point. Judge Griffin observed that the WOTUS Rule "neither issues nor deniesapermit"andthus,"[o]nitsface,subsection(F) clearly does not apply." Pet. App. 39a. Judge Keith agreed,writingthattheSixthCircuitlacksjurisdiction "undertheplainmeaning"ofSubsection(F). *Id.* at45a. Even Judge McKeague conceded the point, admitting that our reading is "consonant with the plain language" of Subsection (F). *Id.* at 23a-24a.

TheagencieshaveneverclaimedthattheWOTUS Rule issues or denies a Section 1342 permit. EPA's then-AdministratorGinaMcCarthyadmittedthatthe Rule does not do so: "[T]he Clean Water Rule is a

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[9] See, *e.g.*, *Nat.Res.Def.Council* v. *EPA*,808F.3d556,562&n.4 (2d Cir. 2015) (challenging grant of Section 1342 permit to vessels); *AlaskaEskimoWhalingComm'n* v. *EPA*,791F.3d1088, 1090-1091 (9th Cir. 2015) (challenging grant of Section 1342 permit to oil and gas exploration facilities); *Upper Blackstone Water Pollution Abatement Dist.* v. *EPA*, 690 F.3d 9, 11, 20 (1st Cir. 2012) (challenging grant of Section 1342 permit to sewage treatment plant).

jurisdictional rule. It doesn't result in automatic permit decisions." *The Fiscal Year 2016 EPA Budget: JointHearingBeforetheSubcomm.onEnergy&Power & the Subcomm. on Environment & Economy of the HouseComm. on Energy & Commerce*, 114th Cong. 70 (Feb. 25, 2015).

The fact that the WOTUS Rule does not issue or deny permits "should end the analysis." Pet. App. 39a (Griffin,J.).Statutoryinterpretation"begins'withthe language of the statute itself,' and that 'is also where the inquiry should end,' for 'the statute's language is plain.'" *Puerto Rico* v. *Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016); accord *Jimenez* v. *Quarterman*, 555 U.S. 113, 118 (2009) ("when the statutory language is plain, we must enforce it according to its terms"). Because the WOTUS Rule is not an EPA action "issuing or denying any permit under section 1342," jurisdiction is lacking under Section 1369(b)(1)(F).

2. Subsection (F) DoesNot ExtendTo EPA Actions That Merely Affect The Issuing Or Denying Of Permits.

a. Despite conceding a lack of textual support, Judge McKeague interpreted Section 1369(b)(1)(F) to encompassany EPAactionthat" *impacts* thegranting and denying of permits." Pet. App. 21a (emphasis added).HebelievedthatthisCourt'sdecisionin *Crown Simpson Pulp Co.* v. *Costle* "opened the door to constructions other than a strict literal application" and had allowed "the scope of direct circuit court review[to]graduallyexpan[d]"overthedecades. *Id.* at 17a, 26a. Judge McKeague misread *Crown Simpson*.

In *Crown Simpson*, EPA vetoed Section 1342 permits that a California agency had issued to pulp mills in Eureka, California after EPA had delegated

permitting authority to the State. 445 U.S. at 194-195 & n.3. This Court held that the Ninth Circuit had jurisdiction under Section 1369(b)(1)(F) to review the mills' challenges to EPA's vetoes because the vetoes were "functionally similar to [EPA's] denial of a permit in States which do not administer an approved permit-issuing program" and *had "the precise effect" of denying the permits*. *Id.* at 196 (emphasis added). The Court explained that the CWA did not create "a seemingly irrational bifurcated system" in which "denials of NPDES permits would be reviewable at different levels of the federal-court system depending on the fortuitous circumstance of whether the State in which the case arose was or was not authorized to issue permits." *Id.* at 196-197.

EPA has successfully argued in other cases that *Crown Simpson* was superseded by the 1977 amendments to the CWA.[10] Regardless, "'[t]he facts of [*Crown Simpson*] make clear that the Court understood functional similarity in a narrow sense.'" Pet. App. 40a (Griffin, J.) (quoting *Nw. Envtl. Advocates* v. *EPA*, 537 F.3d 1006, 1016 (9th Cir. 2008)).

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[10] The 1977 amendments gave EPA the power to issue Section 1342 permits directly when States failed to revise State-proposed permits to meet EPA's objections. See *Crown Simpson*, 445 U.S. at 194 n.2. The challenge in *Crown Simpson* preceded the amendments, the impact of which this Court expressly "d[id] not consider." *Ibid.* Courts of appeals have since agreed with EPA that the 1977 amendments supersede *Crown Simpson*'s holding. As the Seventh Circuit explained in *Am. Paper Inst., Inc.* v. *EPA*, 890 F.2d 869, 874 (7th Cir. 1989), the amendments "fundamentally altered the underpinnings of" *Crown Simpson*. "Under the old system, an EPA objection effectively denied a permit." *Ibid.* The 1977 amendments "allow[ed] the EPA to issue a permit" on revised terms "if the state refuses to modify its proposed permit," so that "an EPA objection to a proposed state permit is no longer 'functionally similar' to denying a permit." *Ibid.*

In *Crown Simpson*, EPA *denied* Section 1342 permits: EPA decided that specific permits proposed by a state agency would not issue.

Crown Simpson thus merely held that EPA's veto of a state-issued permit is the denial of a Section 1342 permit covered by Subsection (F). That unexceptional ruling cannot plausibly be read to authorize a vast expansion of Subsection (F) to "apply to any 'regulationsrelatingtopermitting'"(Pet.App.43a),as Judge McKeague held here. Pet. App. 18a-24a.

Unlikethepermitvetoatissuein *CrownSimpson*, the WOTUS Rule does not deny permits. The Rule insteadpurportstodefineoneaspectofthescopeofthe CWA—its geographical reach. Nothing in *Crown Simpson* suggests that a jurisdictional rule affecting one factor that goes into a determination whether permits are or are not required—along with other factors such as whether there is an "addition" of a "pollutant" from a "point source," or whether any statutory or regulatory exclusion from the permitting requirement applies—is itself a permit denial or issuance covered by Subsection (F).

Reading *Crown Simpson* expansively, as the Eleventh Circuit concluded, "is contrary to the statutory text." *Friends of the Everglades* v. *EPA*, 699 F.3d 1280, 1288 (11th Cir. 2012). Congress could have written Subsection (F) to apply to any EPA action "relatingtopermitting"or"affectingwhenpermitsmay be required under Section 1342." Its failure to "'adopt [that] readily available and apparent alternative stronglysupports'theconclusion"thatSection1369(b) does not authorize such broad court of appeals jurisdiction. *NLRB* v. *SWGen.,Inc.* ,137S.Ct.929,939 (2017).

b. As Judges Griffin and Keith recognized, it is difficult to imagine any case in which Judge McKeague's expansive rewriting of Subsection (F) would not confer jurisdiction. See Pet. App. 42a (Griffin, J.) (Subsection (F)'s "jurisdictional reach" would have "no end"); *id.* at 47a (Keith, J.) (ruling "expands the jurisdictional reach of subsection (F) in an all-encompassing, limitless fashion").

Most provisions of the CWA have some impact on permitting. Definitions of "pollutant," "person," and "point source," the term "addition," lists of toxic pollutants or new sources, rules about best management practices, definitions of various exclusions to permitting requirements, and countless other regulatory pronouncements would be encompassedbyan" *impacts*-the-granting-or-denying-of-permits" test for Subsection (F) jurisdiction. Any EPAactionregardinganyofthoseprovisionsconcerns eitherthescopeofpermittingauthorityorthetermson which permits are issued.

If Subsection (F) were expanded beyond the issuanceordenialofNPDESpermitstocoveranyEPA action affecting permitting, the "foreseeable consequence" would be that the courts of appeals "would exercise original subject-matter jurisdiction over all things related to the Clean Water Act." Pet. App. 47a (Keith, J.). That "exceptionally expansive view" is "precisely contrary to Section 1369(b)(1)(F)'s grantofjurisdiction." *NorthDakota* ,127F.Supp.3dat 1051.

c. Because most other CWA provisions relate in some way to permit issuance or denial, Judge McKeague's interpretation also "run[s] headlong into the rule against superfluity." *Lockhart* v. *United States*,136S.Ct.958,966(2016).Underhisapproach,

most of the other designations Congress made in Section 1369(b) would be unnecessary because they would be covered by Subsection (F).

Section 1369(b)(1)(D), for example, grants the courtsofappealsjurisdictiontoreviewEPAactions"in making any determination as to a State permit programsubmittedundersection1342(b)."Byitsvery nature, EPA's determination about the authority of a State to run the NPDES permitting program will "impact the granting and denying of permits" (Pet. App. 21a) and thus satisfy Judge McKeague's standard. If that impact were enough to trigger jurisdictionunderSection1369(b)(1)(F),therewouldbe no need for Section 1369(b)(1)(D).

Other superfluities abound. The "standards of performance,""pretreatmentstandards"and"effluent limitations" referred to in Subsections (A), (C) and (E) are *incorporated* into, and therefore plainly "impac[t] the granting and denying of," Section 1342 permits. Pet. App. 21a. Satisfying Section 1316's new source performance standards, referenced in Section 1369(b)(1)(A), is a condition of any NPDES permit. 40 C.F.R. § 401.12(i). "[T]he requirements to develop and implement a [Publicly Owned Treatment Works] pretreatmentprogram"underSection1317,referenced in Section 1369(b)(1)(C), likewise "are included as enforceableconditionsinthePOTW'sNPDESpermit." EPA, PERMIT WRITER'S GUIDE at 9-10 (Sept. 2010).[11] "Effluent standards" and "limitations" referred to in Subsections (C) and (E) likewise are written into permits. *Id.* at 5-1 ("NPDES permit writers [are required] to develop technology-based treatment

[11] https://www.epa.gov/sites/production/files/2015-09/documents/pwm_chapt_09.pdf.

requirements, consistent with CWA section [1311(b)], thatrepresentthe minimumlevelofcontrolthatmust be imposed in a permit. * * * [P]ermit writers [also] must include in permits additional or more stringent effluent limitations and conditions, including those necessary to protect water quality").[12]

As if that were not enough, the State-developed "individualcontrolstrategies"fortoxicpollutantsthat EPA approves or disapproves pursuant to Section 1314(*l*)—referredtoinSection1369(b)(1)(G)—alsoare integrated into NPDES permits. Indeed, EPA regulations specify that "the term individual control strategy, as set forth in section [1314(*l*)] of the CWA, *means* a final NPDES permit with supporting documentation"showing"thatapplicablewaterquality standards will be met * * *." 40 C.F.R. § 123.46(c) (emphasis added).

Accordingly,ifSubsection(F)coversallEPAaction that impacts permitting, Subsections (A), (C), (E) and (G) are unnecessary because they each concern EPA action on requirements that become NPDES permit conditions. Judge McKeague's interpretation flatly violates the principle that "a statute should be construedsothateffectisgiventoallitsprovisions,so that no part will be inoperative or superfluous." *Clark* v. *Rameker*, 134 S. Ct. 2242, 2248 (2014). This Court should "avoid" an interpretation that "makes a mess of" Section 1369(b) in this way. *SW Gen.*, 137 S. Ct. at 941.[13]

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[12] https://www.epa.gov/sites/production/files/2015-09/documents/pwm_chapt_05.pdf

[13] Section 1369(b)(1)(B) is not included in our list of subsections rendered superfluous by an "affects permitting" test because the CWAprovisionreferredtothere,33U.S.C.§ 1316(b)(1)(C),never became law. That provision would have given EPA authority to

ThisCourtshouldholdthattheSixthCircuiterred in exercising jurisdiction under Section 1369(b)(1)(F).

B. The Sixth Circuit Correctly Held That It Lacks Jurisdiction Under Subsection (E).

The Sixth Circuit correctly concluded that Section 1369(b)(1)(E)doesnotconferjurisdiction.Theagencies nonetheless invoke Subsection (E) as an alternative groundforaffirmance.Fed.BIO11.Theymisreadthat provision.

1. The WOTUS Rule Falls Outside The Plain Language Of Subsection (E).

Subsection (E) grants jurisdiction to courts of appeals to review "the Administrator's action" in "approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345."ItisundisputedthattheWOTUSRuleis *not* an"effluentlimitation,"whichisa"restriction* * *on quantities, rates, and concentrations" of pollutants dischargedintonavigablewaters.33U.S.C.§ 1362(11); seePet.App.8a-9a.ItalsoisundisputedthattheRule was *not* issued under Sections 1312, 1316, or 1345. 80 Fed.Reg.at37,055;Fed.BIO13-14.Theagencies'sole argument has been that the WOTUS Ruleisan "other limitation under section 1311." Gov't Opp. to Mots. to Dismiss 15, Dkt. 58 (Oct. 23, 2015). That argument fails under the "plain and unambiguous text" of Subsection (E). Pet. App. 33a (Griffin, J.).

a. The WOTUS Rule is not a "limitation" in any ordinary sense of the word. Limitation is most naturally defined in Section 1369(b)(1)(E) to mean "a

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make a determination exempting sources from new source standards of performance, and thus would have impacted permitting had it been adopted. It was "eliminated," however, beforeenactment.S.Conf.Rep.92-1236,at3805(1972), *reprinted in* 1972 U.S.C.C.A.N. 3776.

restriction or restraint imposed" by EPA. Webster's Third New International Dictionary 1312 (1971); accord *Friends of the Everglades*, 699 F.3d at 1286 ("Black's Law Dictionary defines a 'limitation' as a 'restriction'"). That definition does not capture the WOTUSRule.Theagenciesadmittedinpromulgating the Rule that it "does not establish any regulatory requirements" and "imposes no enforceable duty" on "the private sector." 80 Fed. Reg. at 37,054, 37,102. It "is definitional only and does not *directly* impose any restrictionorlimitation."Pet.App.15a(McKeague,J.); see80Fed.Reg.at37,104(itis"adefinitionalrulethat clarifies the scope of the Clean Water Act").

TheRulealso"isnotself-executing."Pet.App.31a (Griffin, J.). It "operates in conjunction with other sections scattered throughout the Act to define when [the Act's other] restrictions * * * apply." *Ibid.*; accord *id.*at9a(McKeague,J.)(only"operatinginconjunction with other regulations [will the Rule] result in imposition of such limitations").

Furthermore,JudgeGriffinrecognized,theRule"is not a 'limitation' on the discharge of pollutants *into* waters of the United States; rather, it sets the jurisdictional reach for whether the discharge limitationsevenapplyinthefirstplace."Pet.App.32a. It would be "circular" to read a rule establishing the Act'sgeographicalboundariesasa"'limitatio[n]'under" the Act. *Ibid.*

b.TheRulealsoisnotan"otherlimitation"within the meaning of Subsection (E). Congress's use of the phrase "any effluent limitation or other limitation" makesclearthatitintended"otherlimitation"tohave asimilarmeaningto"effluentlimitation."Thatistrue under the *ejusdem generis* canon, which reads a general term following a specific term as "embrac[ing]

only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 114-115 (2001). It is equally true under the *noscitur a sociis* canon,which"avoid[s]ascribingtoonewordameaning so broad that it is inconsistent with its accompanying words." *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 575 (1995). Both canons reflect the common-sense notion that Congress would not have said "any effluent limitation or other limitation" if what it meant was "any limitation." A contrary reading would render "superfluous"the"specificword[s]" *effluentlimitation*. AntoninScalia&BryanA.Garner,R EADING LAW: THE INTERPRETATION OF LEGAL TEXTS 206 (2012). The SeventhCircuitthusgotitrightwhenit"interpret[ed] the 'other limitation' language of subsection 1369(b)(1)(E) as restricted to limitations directly relatedtoeffluentlimitations." *Am.PaperInst.,Inc.* v. *EPA*, 890 F.2d 869, 877 (7th Cir. 1989).

Effluent limitations "dictate in specific and technical terms the amount of each pollutant that a point source may emit." *Am. Paper Inst.*, 890 F.2d at 876.Otherlimitationslikeeffluentlimitationsinclude, for example, non-numerical operational practices or equipmentspecifications.See *infra* p.31.ButtheRule, aregulatorydefinitionof"watersoftheUnitedStates," is not remotely similar in nature to an effluent limitation.

TheWOTUSRuleisnotan"otherlimitation"fora second reason. As Judge Griffin explained, "the 'limitations' set forth in §§ 1311, 1312, 1316, and 1345 providetheboundariesforwhatconstitutesaneffluent or other limitation." Pet. App. 30a. Each of those sections addresses effluent limitations or effluent limitation-like rules. Section 1311 governs "effluent limitations." Section 1312 governs "water quality related

effluent limitations," which are additional effluent limitations that may be imposed where other limitations fail to achieve water quality standards. Section 1316 governs effluent controls for new sources of discharges.AndSection1345restrictsthedischargeof sewage sludge. Confirming that these are all effluent limitationsorsimilartothem,allareincorporatedinto NPDESpermits.See40C.F.R.§ 401.12(i)(permitsare conditioned on satisfying requirements of Sections 1311, 1312, and 1316); NPDES PERMIT WRITER'S MANUAL 9-1 (Sept. 2010) ("special conditions" in permitsinclude"NPDESprogrammaticrequirements" such as those concerning "sewage sludge" under Section 1345).

And there are "other limitations" within these sections—limitationsthatthestatutedoesnotdescribe as "effluent limitations." Section 1311(b)(1)(C) allows EPA to issue "any more stringent limitation[s]" if technology-based effluent limitations cannot "meet water quality standards, treatment standards, or schedules of compliance." Section 1316(a)(1) permits EPAtouse"alternatives"toachieveeffluentreductions fornewsourcesif"controltechnology,processes,[and] operatingmethods"areinsufficient.Section1345(d)(3) provides that, if "it is not feasible to prescribe or enforceanumericallimitation"onpollutantsinsewage sludge, EPA may "promulgate a design, equipment, management practice, or operational standard."

Using"otherlimitation[s],"EPAmayissue"highly specific and detailed provisions that direc[t] the point sources to engage in specific types of activity." *Am. Paper Inst.*, 890 F.2d at 877. But those "limitations" are nothing like the WOTUS Rule, which attempts to define where the CWA does and does not apply.

c. The WOTUS Rule does not properly fall "under section 1311." Section 1311, titled "Effluent limitations,"setsstandardsforeffluentandotherlimitations on many subjects, including existing point sources; publicly owned treatment works; toxic pollutants; radiological,chemical,orbiologicalwarfareagents;and innovative technologies. This Court held in *du Pont* thatSection1311"unambiguouslyprovides"EPAwith authoritytoestablish"effluentlimitations."430U.S.at 127. Because Section 1311 plainly "authorizes EPA to issue effluent limitations, the reference in section [1369](b)(1)(E)" to Section 1311 "is readily understandable." *Bethlehem Steel Corp.* v. *EPA*, 538 F.2d 513, 516 (2d Cir. 1976).

The WOTUS Rule falls outside that readily understandable reference. The phrase "waters of the UnitedStates"doesnotappearinSection1311."Itisa phrase used in the Act's definitional section, § 1362." Pet. App. 31a (Griffin, J.). Judge Griffin thus reached the unassailable conclusion that WOTUS Rule "does not emanate from" Section 1311. *Ibid.*

Indeed, it is inconceivable that Congress intended aregulatorydefinitionofonephraseinSection1362to constituteanEPAaction"undersection1311."Ittakes multiple steps to get from Section 1311 to the phrase "watersoftheUnitedStates."Section1311(a)provides that, "[e]xcept as in compliance with this section and sections1312,1316,1317,1328,1342,and1344ofthis title,thedischargeofanypollutantbyanypersonshall be unlawful." Section 1362(12), in turn, defines the phrase "discharge of a pollutant" to include "any additionofanypollutanttonavigablewatersfromany point source." Next, Section 1362(7) states that "[t]he term'navigablewaters'meansthewatersoftheUnited States, including the territorial seas." The WOTUS Rule defines a portion of that last sentence, and but

one factor among many that feeds into the Section 1311(a) prohibition.

Ifthatchainofreferenceswereenoughtomakethe WOTUS Rule an "other limitation" "under" Section 1311(a), then any regulation addressing the other key terms that appear in Section 1311(a)—"discharge," "pollutant," and "person"—would equally be an "other limitation." And so would EPA action addressing the meaning of the concepts used in Section 1362 in definingthoseterms.See33U.S.C.§ 1362(5)(defining "person"); § 1362(6) (defining "pollutant"); § 1362(12) (defining"discharge"asan"additionofanypollutantto navigable waters from any point source"); § 1362(14) (defining "point source").

For example, EPA's Water Transfers Rule, 40 C.F.R. § 122.3(i), clarifies that a water transfer that "conveysorconnects watersoftheUnitedStates"does not involve an "addition" of pollutants to navigable waters and so is not a "discharge" that requires a permit, unless the transfer "subject[s] the transferred water to intervening industrial, municipal, or commercial use." The Eleventh Circuit held that the Water Transfers Rule is not an "other limitation" covered by Section 1369(b)(1)(E) and dismissed petitionsforreview forwant of jurisdiction. *Friendsof the Everglades*, 699 F.3d 1280. Challenges to the rule were then litigated in district court in New York. *CatskillMountainsChapterofTroutUnlimited* v. *EPA*, 8 F. Supp. 3d 500 (S.D.N.Y. 2014), *rev'd*, 846 F.3d 492 (2d Cir. 2017). Under the agencies' theory, that case was litigated in the wrong court: any rule defining what is and is not an "addition" or "discharge" is a limitation under Section 1311 because it governs the meaning of terms central to that provision. The breathtaking scope of that expansion would surely shockthedraftersofSection1369(b).Definitionsofthe

many individual constituent elements directly or indirectlyreferredtoinSection1311arenotplausibly "limitations" "under" that provision.

d. Finally, the WOTUS Rule is not an "other limitation under section 1311, 1312, 1316, or 1345" becauseitisadefinitionalrulethat"appliesacrossthe entire Act." Pet. App. 41a (Griffin, J.); see *Rapanos*, 547 U.S. at 742 ("the same definition of 'navigable waters' applies to the entire statute") (plurality).

The phrases "waters of the United States" and "navigable water" are used throughout the CWA. And they have no special relationship to the sections identified in Subsection (E). See *supra* pp. 8-9 (listing examples). "Waters of the United States" does *not* appearinSection1311,butitisusedinSections1272, 1293a, 1321, 1322, and 1342. And while Section 1311(a) does *not* contain the term "navigable waters," that term is used in Sections 1251, 1252, 1256, 1272, 1288,1293a,1312,1313,1314,1315,1321,1322,1329, 1341, 1342, 1344, 1345, and 1371. The phrase "dischargeofanypollutant"inSection1311(a)appears, with slight variants, in Sections 1251, 1254, 1255, 1281, 1312, 1314, 1315, 1316, 1317, 1342, 1344, 1364, 1370, 1371, and 1375. Thus, the WOTUS Rule affects dozens of CWA provisions *as or more directly* than it affects Section 1311(a).[14]

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[14] For all these reasons, it is immaterial that the agencies cited Section1311amongtheprovisionsunderwhichtheypurportedto haveissuedtheRule.80Fed.Reg.at37,055(assertingthat"[t]he authority for this rule is the [CWA]" *in its entirety*, "including" Sections1311,1314,1321,1341,1342,1344,and1361);cf. *Adamo Wrecking Co.* v. *United States*, 434 U.S. 275, 283 (1978) ("[Congress] did not empower the [EPA] Administrator, after the manner of Humpty Dumpty in Through the Looking-Glass, to make a regulation an 'emission standard' by his mere designation").

Congress could have listed Section 1362(7) within Section 1369(b)'s grant of jurisdiction to the courts of appeals—anomissionthat"counselsheavilyagainsta finding of jurisdiction." Pet. App. 31a (Griffin, J.). Or Congresscouldhavesaidthatany EPAaction"directly orindirectlyaffectingsection1311"isreviewableinthe courtsofappeals—inwhichcase *all* EPAactionslikely would be reviewable by the courts of appeals. But the languagethatCongressactuallyused—EPAactions"in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345"—does not extend to a regulation that defines a phrase in Section 1362(7) which underlies the entire Act and imposes no limitation unless a slew of other statutory and regulatory provisions also apply. The Sixth Circuit correctly held that it lacks jurisdiction under Section 1369(b)(1)(E).

2. Subsection(E)DoesNotExtendToEPA Actions That Merely Impact Point Source Operators Or Regulators.

a. In casting the sole vote to exercise jurisdiction under Section 1369(b)(1)(E), Judge McKeague construedthat provision"not ina strictliteralsense," but insteadtocoveranyEPAaction"whosepracticaleffect will be to *indirectly* produce various limitations on point-sourceoperatorsandpermitissuingauthorities." Pet. App. 17a, 26a. Judge McKeague claimed support forthisatextualinterpretation inthisCourt's *du Pont* decision, which he said "eschewed a strict, literal reading" and granted courts "a license to construe Congress's purposes in § 1369(b)(1) more generously thanitslanguagewouldindicate." *Id.* at10a,13a.That view of *du Pont* is incorrect.

DuPont isastraightforwardapplicationofSection 1369(b)(1)(E)'s plain language. Petitioners there

challenged industry-wide effluent limitations issued underSection1311.430U.S.at124.Theyarguedthat EPAlackedauthoritytoimposebindingindustry-wide effluent limitations by regulation under Section 1311, that EPA could only issue "guidelines" under Section 1314, and that court of appeals jurisdiction was thereforelackingunderSubsection(E). *Id.* at124-125. The jurisdictional issue was thus "subsidiary" to and "intertwined with the issue of EPA's power to issue" bindingindustry-wideregulationsunderSection1311. *Ibid.* This Court first held that Section 1311 empowered EPA to impose industry-wide effluent limitations by regulation. *Id.* at 126-136. And that holding"necessarilyresolve[d]thejurisdictionalissue" because Section 1369(b)(1)(E) "unambiguously authoriz[es]" the court of appeals to review Section 1311 effluent limitations. *Id.* at 136.

This Court in *du Pont* also rejected petitioners' fallback jurisdictional argument that Section 1369(b)(1)(E)'s reference to "section 1311" should be understood to refer only to Section 1311(c), which allows for individual variances from effluent limitations.430U.S.at136.TheCourtexplainedthat, "in other portions of [Section 1369], Congress referred to specific subsections" and "presumably would have specifically mentioned" Section 1311(c) if petitioners' reading were correct. *Ibid.* The Court also noted that its holding avoided "the truly perverse situation in which" courts of appeals could review NPDES permitting decisions under Section 1342 "but would havenopowerofdirectreviewofthebasicregulations" under Section 1311 that "govern[ed] those individual actions." *Ibid.* And the Court had "no doubt that Congress intended review of" effluent limitations on existing sources under Section 1311 "to be had in the same forum" as review of effluent limitations on new

sources under Section 1316 (*id.* at 136-137)—an obvious conclusion because Section 1369(b)(1)(E) expresslyappliesto"effluentlimitations"issued"under section 1311" *and* "1316."

Judge McKeague misread *du Pont*. He believed that "the challenged regulation [in *du Pont*] was promulgatedunder"aprovisionthatwasnotoneofthe "enumerated sections" listed in Subsection (E). Pet. App. 10a. But that was *petitioners'* argument in *du Pont*, which this Court rejected. This Court held instead that EPA had issued the challenged regulations establishing effluent limitations under Section 1311. 430 U.S. at 126-136. Judge McKeague also mistakenly claimed that this Court "eschewed a strict, literal reading" of Section 1369(b)(1)(E). Pet. App. 10a. In fact, this Court applied Subsection (E)'s "unambiguou[s]"text.430U.S.at136.Tobesure,this Court *mentioned* policy, but the "policy reason came *after* a plain textual rejection of the industry's position." Pet. App. 35a (Griffin, J.).

As Judge Griffin explained, it is "a far stretch to take [*du Pont*'s] dicta and expand it" to "find jurisdictionproperwhenaregulation's'practicaleffect' only sets forth 'indirect' limits." Pet. App. 35a. "[U]nlike" *duPont* ,theagencieshere"admittheyhave notpromulgatedaneffluentlimitation." *Ibid. DuPont* does not authorize Sixth Circuit jurisdiction under Subsection (E)'s "other limitation" provision.

b. There is no stopping point to Judge McKeague's logic. Nearly any EPA action under the CWA can be saidto" *indirectly* producevariouslimitationsonpoint-source operators and permit issuing authorities." Pet. App. 17a. For example, an EPA administrative enforcement order under Section 1319(a)(1) certainly will impact the permit holder and the permitting

authority and has no more tenuous a connection to Section 1311 than the WOTUS Rule. Judge McKeague's ruling therefore would vest the courts of appealswithexclusivejurisdictiontoreviewtheorder. Yet that result contradicts this Court's holding in *Sackett* v. *EPA*, 566 U.S. 120 (2012), that landowners may challenge EPA's administrative enforcement orders in the district courts under the APA.

Similarly,Section1313authorizesEPAtoapprove or promulgate water quality standards. 33 U.S.C. § 1313(b), (c)(3). Those standards impact point source operators and permitting authorities indirectly under Section 1311, because effluent limitations must be designed to meet water quality standards. *Id.* § 1311(b)(1)(C). Yet the courts of appeals have uniformly *agreed with EPA* that Section 1313 standards donotfallwithinSection1369(b)(1)(E).See *Friends of Earth* v. *EPA*, 333 F.3d 184, 186 (D.C. Cir. 2003); *Longview Fibre Co.* v. *Rasmussen*, 980 F.2d 1307, 1311 (9th Cir. 1992); *Bethlehem Steel*, 538 F.2d at 514.

c. Judge McKeague's reading also renders superfluous parts of Subsection (E). Section 1312 water-quality-based effluent limitations impact point source operatorsandregulatorsindirectlyunderSection1311 "because [Section 1312 limitations] are limitations 'necessary to meet water quality standards'" under Section 1311(b)(1)(C). *Friends of Earth*, 333 F.3d at 190. Yet "section 1369(b)(1) *expressly* provides for originalappellatecourtreviewofsection1312actions," withtheresultthatJudgeMcKeague'sreadingrenders that Subsection's "specific reference to section 1312 duplicativeandunnecessary." *Ibid.* JudgeMcKeague's reading fails to "compor[t] with the presumption 'that statutory language is not superfluous.'" *McDonnell* v. *United States*, 136 S. Ct. 2355, 2369 (2016).

d. To be sure, some courts, like Judge McKeague, haveread *CrownSimpson* and *duPont* toauthorize"a practical rather than a cramped construction" of Section 1369(b)(1) that expands courts of appeals' jurisdictionbeyondEPA'sissuanceordenialofpermits or imposition of effluent-like limitations. *NRDC* v. *EPA*,673F.2d400,405(D.C.Cir.1982).In *NRDC*,the court held that a challenge to Consolidated Permit Regulationsthatestablished"proceduresforissuingor denying NPDES permits" fell under Subsection (F) because they were "'a limitation on point sources and permitissuers'"and"'arestrictionontheuntrammeled discretion of the industry.'" *Id.* at 402, 405. Similarly, in *VEPCO* v. *Costle*, 566 F.2d 446, 450 (4th Cir. 1977), the court held that standards regulating the construction of cooling water intakes were an "other limitation" because they set forth "information that must be considered in determining the type of intake structures that individual point sources may employ."

These influential decisions—from a period when courts claimed more authority to deviate from plain statutory language than is now the case—can be parsed,explained,anddistinguished.See, *e.g.*, *Friends of the Earth* v. *EPA*, 333 F.3d 184, 191 n.15 (D.C. Cir. 2003). But it is soundest instead to reject their approach.StrayingfromtheplaintermsCongressused hasonlyledtouncertaintyoverjurisdiction,duplicate filingsandwastefullitigation,andjudicialcontortions in which appeals to "policy" are necessary to override the "technical criteria" specified in Section 1369(b)(1). *NRDC*, 673 F.2d at 405 n.15. More recent decisions rely on the "plain language," canons of construction, and "structural" guides to meaning that we advocate here. *Friends of the Earth*, 333 F.3d at 189-192 (holding that a Section 1313(d) total maximum daily load was not an "other limitation" within Subsection

(E)); *Friends of the Everglades*, 699 F.3d at 1286-1288 (rejectingEPAcontentionthatwatertransfersrulefell under Subsections (E) and (F) as "contrary to the statutory text").

C. Congress's Specific And Narrow Focus In Section 1369(b) Confirms That The Sixth Circuit Lacks Jurisdiction.

Congress"draftedsevencarefullydefinedbasesfor originaljurisdictionintheappellatecourts"(Pet.App. 46a (Keith, J.)), which embody "fine" "distinctions." *Longview Fibre*, 980 F.2d at 1313. Its use of this structure"justif[ies]theinference"thatageneralgrant of jurisdiction to courts of appeals over all agency action under the CWA was "excluded by deliberate choice, not inadvertence." *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003). As the Second Circuit put it, "the complexity and specificity" of Section 1369(b) "suggests that not all [EPA] actions" are reviewable in the courts of appeals; Congress's "specifyingparticularactionsandleavingoutothers"is incompatible with cramming most EPA action under the CWA into Section 1369(b). *Bethlehem Steel*, 538 F.2dat 517; see also *Longview Fibre*, 980 F.2dat 1313 ("Nosensiblepersonaccustomedtotheuseofwordsin laws would speak so narrowly and precisely of particularstatutoryprovisions,whilemeaningtoimply a more general and broad coverage than the statutes designated").

The need to interpret Section 1369(b) narrowly according to its plain terms takes on special force because"Congresswellknowshowto"granthecourts of appeals broad jurisdiction to review EPA's actions: "In[an]otherstatut[e],usingdifferentlanguage,ithas done just that." *Mathis* v. *United States*, 136 S. Ct. 2243, 2252 (2016).

In the CWA's sister statute, the Clean Air Act, Congress authorized the courts of appeals to review specificcategoriesofagencyaction—somethatmustbe reviewed by the D.C. Circuit and others that must be reviewed by the regional circuits. 42 U.S.C. § 7607(b)(1). Congress then went further by granting the D.C. Circuit original jurisdiction to review "*any othernationallyapplicableregulations* promulgated,or final action taken, by the Administrator under this chapter" and granted regional circuits jurisdiction to review "*any other final action* of the Administrator under this chapter * * * *which is locally or regionally applicable*." *Ibid.* (emphases added). Similarly broad jurisdictional language is conspicuously absent from the CWA.

Congress's decision to use different "judicial review" language in the Clean Air Act is yet another reason"counselingagainstconstruing"Section1369(b) as embracing all nationally applicable rulemaking undertheCWA. *UnitedStates* v. *Bean*,537U.S.71,76 n.4 (2002) ("'The use of different terms within related statutes generally implies that different meanings were intended'").

D. The Legislative History Suggests That Congress Did Not Intend The Courts Of Appeals To Review All Nationwide Rules.

Section 1369(b) was originally enacted as part of theFederalWaterPollutionControlActAmendments of1972,Pub.L.No.92-500."Thelegislativehistoryfor the 1972 amendments reveals little about Congress's intent behind the CWA's judicial review provisions." Allison LaPlante *et al.*, *On Judicial Review Under the Clean Water Act in the Wake of* Decker v. Northwest Environmental Defense Center*: What We Now Know*

and What We Have Yet to Find Out, 43 ENVTL. L. 767, 776 (2013).

The agencies have repeatedly cited a fragment of an early House Report stating that the purpose of Section 1369(b) was "to establish a clear and orderly process for judicial review." H.R Rep. No. 92-911, at 136 (1972), *reprinted in* 1 Leg. Hist. of the Water Pollution Control Act of 1972 at 823 (Comm. Print 1973); *e.g.*,Fed.BIO4-5,19.Thatphrasebyitselfsays nothing about what process is clear and orderly. And the agencies failed to acknowledge that the House at that time had proposed placing judicial review "in the district court[s]," and had emphasized that "the inclusion of section [1369] is not intended to exclude judicial review" that is "otherwise permitted by law," includingundertheAPA.H.R.Rep.No.92-911,at136 (1972), 1 Leg. Hist. at 823. The House Report does not suggest that Congress intended that the courts of appeals would review nationwide regulations other than those it narrowly specified in Section 1369(b).

More illuminating are Congress's actions in passing the 1977 amendments to the CWA, which modifiedmanypartsoftheAct.SeeCleanWaterActof 1977,Pub.L.No.95-217,91Stat.1566(Dec.27,1977). Congress did *not* amend Section 1369. And it was not for lack of trying. With the EPA Administrator's "strong support," Senator Kennedy introduced an amendment that would have broadened Section 1369(b) to cover "national regulations promulgated under the [CWA]" and would have required those regulations to be challenged in the D.C. Circuit. 123 Cong. Rec. S. 26,754, 26,756 (Aug. 4, 1977). Senator Kennedy emphasized several times during the debate thathisproposedamendmentwassimilartotheClean Air Act's judicial review provision. *Id.* at 26,755-56, 26,759, 26,761. He encountered strong opposition,

including concern about trying to "nickel and dime the district courts of the United States out of business." *Id.* at 26,759. The amendment was tabled and never enacted. *Id.* at 26,761.

Three days later, the Clean *Air* Act Amendments of 1977 became law, with modified judicial review language. See *supra* p. 41; Pub. L. No. 95-95, 91 Stat. 685, 776 (Aug. 7, 1977). This Court "cannot ignore Congress' decision to amend [the Clean Air Act's] relevant provisions but not make similar changes to the [CWA]." *Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 174 (2009). "When Congress amends one statutory provision but not another, it is presumed to have acted intentionally." *Ibid.* Indeed, "'negative implications raised by disparate provisions are strongest' when the provisions were 'considered simultaneously when the language raising the implication was inserted,'" as they were here. *Id.* at 175.

In short, all considerations based on the text, structure, related statutes, and legislative history lead to the same place: the WOTUS Rule falls outside of Section 1369(b)(1)'s provisions, and the Sixth Circuit erred in exercising jurisdiction.

II. Policy Considerations Favor Interpreting Section 1369(b) Textually To Exclude The WOTUS Rule.

The agencies contend that rules that are national in scope "are best reviewed directly in the courts of appeals." Dkt. 58, at 57 (Oct. 23, 2015). They also say they prefer to avoid having to defend rules in more than one forum, to husband their resources and avoid the risk that different courts will reach different conclusions. *Id.* at 58-59. Even if these policy considerations were valid, they "could not overcome the clarity [evident] in the statute's text." *Kloeckner* v.

Solis, 133 S. Ct. 596, 607 n.4 (2012). But there are strongerpolicyreasonsforinterpretingSection1369(b) according to its plain text.

A. Interpreting Section 1369(b) Textually Promotes Jurisdictional Clarity.

1.ThisCourthasemphasizedcountlesstimesthat "jurisdictionalrulesshouldbeclear." *Lapides*,535U.S. at621."[A]dministrativesimplicityisamajorvirtuein a jurisdictional statute." *Hertz*, 559 U.S. at 94. "[C]ourts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case." *Ibid.* Litigants benefit because clearer jurisdictional lines "promote greater predictability." *Ibid.* "[J]urisdictional rule[s]" should be interpreted in such a way as to provide litigants and courtswith"clearguidanceabouttheproperforumfor [a particular claim] at the outset of the case." *Elgin* v. *Dep't of the Treasury*, 132 S. Ct. 2126, 2135 (2012).

Nebulous standards, by contrast, "invit[e] greater litigation"—as WOTUS Rule litigation illustrates. *Hertz*, 559 U.S. at 94. They "complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Ibid.* "Uncertainty regarding the question of jurisdiction is particularly undesirable, and collateral litigation on the point particularlywasteful." *GrupoDataflux* v. *AtlasGlobal Group, L.P.*, 541 U.S. 567, 582 (2004).

In light of those concerns, this Court "place[s] primary weight upon the need for judicial administrationofajurisdictionalstatutetoremainassimple as possible." *Hertz*, 559 U.S. at 80. A standard that is "more straightforward and administrable than the alternative"best"servesthegoals[thatthisCourthas] consistentlyunderscoredininterpretingjurisdictional

statutes." *MerrillLynch,Pierce,Fenner&SmithInc.* v. *Manning*, 136 S. Ct. 1562, 1573 (2016).

Our textual reading of Section 1369(b) offers a straightforward standard to determine whether jurisdictionexistsunderSection1369(b)(1)(F).Acourt need ask only whether EPA has issued or denied a Section 1342 permit. If, as in this case, EPA has made no determination regarding a specific permit, then there is no jurisdiction under Section 1369(b)(1)(F). It is similarly straightforward to decide jurisdiction under Section 1369(b)(1)(E). A court need ask only whether EPA has issued an effluent or effluent-like limitationunderSections1311,1312,1316,or1345.If EPAhasnotissuedaneffluentorsimilarlimitation,or ifitsactionarisesoutofanothersectionoftheCWAor out of the statute as a whole (see 80 Fed. Reg. at 37,055), then the courts of appeals lack jurisdiction under Section 1369(b)(1)(E).

By contrast, Judge McKeague's "'functional' approach," which attempts to divine how "Congress's manifest purposes are best fulfilled" (Pet. App. 4a), or the *NRDC* court's "practical rather than a cramped" construction, produce uncertainty and endless litigation.Courtsandpartieswillpuzzleoverwhether "Congress must have intended" for review by "the circuit courts" based on "the *indirect* effect" of EPA action (Pet. App. 15a), and over what result is "practical." Those "approach[es are] at war with administrative simplicity" (*Hertz*, 559 U.S. at 92), leading to a jurisdictional "line [that] is hazy at best and incoherent at worst." *Elgin*, 132 S. Ct. at 2135.

2. To say that the meaning of each subsection in Section1369(b)isplainonitsfaceisnottosaythatthe list is coherent or readily explicable by some overarching theory about what issues are best resolved at

which level of the court system. The list can be criticized as odd or arbitrary.

For example, the reference in Subsection (B) to Section 1316(b)(1)(C), though that provision was dropped in conference, suggests a lack of care in drafting.

Anotherexample.ItisunclearwhyreviewofEPA's issuance ordenial ofNPDES permits shouldbelongin the courts of appeals under Subsection (F), but review of agency action in issuing or denying dredged or fill permits under Section 1344 remains in the district courts. As the agencies have pointed out (Dkt. 58 at 45),thoughtheCorpsgenerallyprocessesdredgeorfill permits, nevertheless "EPA plays a substantial role." Yet even EPA actions under Section 1344 that are paralleltoNPDESprogramactionscoveredbySection 1369(b) are left to the district courts. See 33 U.S.C. § 1344(h) (EPA determination as to adequacy of State program), § 1344(i) (EPA authority to issue permit after disapproval of proposed State permit), § 1344(c) (EPA may determine in advance of permit application to prohibit or restrict use of a location for discharges).

Section 1369(b) draws other distinctions that are hard to fathom. Review of EPA's promulgation of a standard of performance under Section 1316 goes to the courts of appeals (Subsection (A)), as does its determination as to the adequacy of a State NPDES program (Subsection (D)). Yet an EPA determination underSection1316(c)toapproveaStateprocedurefor applyingandenforcingstandardsofperformanceisnot listed in Section 1369(b) and hence is reviewed by the district courts.

But Section 1369(b) is not unusual in this regard. "[T]he *United States Code* is replete with thousands of compromisesdividinginitialreviewof agencydecisions

betweendistrictandcircuitcourts."JosephW.Mead& Nicholas A.Fromherz, *Choosing aCourt to Review the Executive*, 67 ADMIN. L. REV. 1, 2 (2015). Congress generally "declines to explain its choice of forum," and "Congress'schoiceshavevarieddramatically—without apparent rhyme or reason—from statute to statute, year to year, and even within particular legislation." *Id.* at 15-16. "Horse Protection Act regulations can be challengedindistrictcourt,butadjudicationsgotothe circuit court." *Id.* at 17. Department of Health and Human Services decisions regarding the approval of Medicaid state plans are challenged in district court, except that a state may challenge an adverse decision in the court of appeals. *Ibid.* Bizarre examples pepper the U.S. Code. See *id.* at 15-19. The sorts of "anomal[ies]"thattheagencieswanttotrytoeradicate byadoptionofa"pragmaticconstruction"thatlooksto a statute's "objectives" (Fed. BIO 11) would lead to judicial rewriting of thousands of jurisdictional statutes. It would be an endless and ultimately arbitrary task for the courts to try to impose rationality by deducing how "Congress's manifest purposesarebestfulfilled."Pet.App.4a.Theonlyway to make sense of jurisdictional provisions, and give parties and courts predictability, is to *apply the language as written*.

"[T]henecessityofhavingaclea[r]rule"governing the CWA is compelling. *Hertz*, 559 U.S. at 96. As this Court observed in *du Pont*, parties have been filing duplicativedistrictandcircuitcourtchallengestoEPA actionssince 1974. 430 U.S. at 123 n.11. Fartoo much ink has been spilled, and far too many public and private resources wasted, in attempting to infer whether Congress would have wanted the courts of appealstoreviewEPAactionsthatfalloutsideSection 1369(b)'splainlanguage.TheCourtshouldputanend

to this misguided practice by limiting Section 1369(b) to its text.

B. A Narrow Reading Is Necessary Due To Section 1369(b)'s Preclusion Provision.

The Court should reject the agencies' invitation to read Section 1369(b) broadly because "[r]eviewability undersection 1369 carriesa peculiar sting." *Longview Fibre*, 980 F.2d at 1313. Parties have "120 days" to challenge EPA actions that fall within Section 1369(b)(1) unless the challenge is "based solely on grounds which arose after such 120th day." Actions thatcouldhavebeenchallenged"shallnotbesubjectto judicial review in any civil or criminal proceeding for enforcement." *Id.* § 1369(b)(2); *Decker*, 133 S. Ct. at 1334 (if "available," review under Section 1369(b) is "exclusive").

ArmedwithSection1369(b)'spreclusionprovision, the Government might criminally prosecute someone for violating an *unlawful* EPA regulation while attempting to bar that person from challenging the regulation's lawfulness. And a conviction could result in"substantial"penalties. *U.S.ArmyCorpsofEng'rs* v. *Hawkes Co.*, 136 S. Ct. 1807, 1812 (2016). Negligent violations of the Act are punishable by up to 2 years' imprisonment,andknowingviolationsarepunishable by fines up to $50,000 per day and up to 3 years in prison. 33 U.S.C. § 1319(c)(1)-(2). "[T]he consequences to landowners even for inadvertent violations can be crushing." *Hawkes*, 136 S. Ct. at 1816 (Kennedy, J., concurring).

AcceptingtheSixthCircuit'sjudgmentwould"have a significant bearing on whether the Clean Water Act comportswithdueprocess." *Hawkes*,136S.Ct.at1817 (Kennedy, J., concurring); see also *Sackett*, 132 S. Ct. at 1375 (Alito, J., concurring) (noting "due process"

concerns if the CWA barred landowners from challenging enforcement orders). It is "totally unrealistic to assume that more than a fraction of the persons and entities affected by a regulation" would "have knowledge of its promulgation or familiarity with or access to the Federal Register." *Adamo WreckingCo.* v. *UnitedStates* ,434U.S.275,290(1978) (Powell, J., concurring). It is even more unrealistic to assume that these persons and entities will monitor and then challenge within 120 days all CWA regulationsthat,yearsordecadeslater,mightresultin a"civilorcriminalproceedingforenforcement"against them. 33 U.S.C. § 1369(b)(2). The Court accordingly shouldinterpretSubsections(E)and(F)"aswrittento avoid the significant constitutional * * * questions raised by [Judge McKeague's] interpretation." *SWANCC*, 531 U.S. at 174.

Theruleoflenityalsorequiresanarrowreadingof Section 1369(b) because its preclusion provision explicitly applies in a "criminal prosecution." See *Adamo Wrecking*, 434 U.S. at 285 (applying rule of lenity in interpreting Clean Air Act's preclusion provision); *Leocal* v. *Ashcroft*,543U.S.1,11n.8(2004) (applying rule of lenity in a civil case "[b]ecause we must interpret the statute consistently" in both a "criminal or noncriminal context"). Thus, if there is even"somedoubt"astothemeaningofSubsections(E) and (F), that doubt must be resolved in favor of a narrow interpretation to avoid prejudicing criminal defendants. *Adamo Wrecking*, 434 U.S. at 285.

For pragmatic reasons as well, Section 1369(b)'s preclusion provision should "dissuad[e] [the Court] from reading § [1369](b)(1) broadly." *Am. Paper Inst.*, 882F.2dat289.AsJudgeEasterbrookexplained,"the more [a court] pull[s] within § [1369](b)(1), the more arguments will be knocked out by inadvertence later

on—andthemorereasonfirmswillhavetopetitionfor review of everything in sight." *Ibid.* ThisCourt should "expressgreat reluctance to multiply the occasionsfor review [under Section 1369(b)(1)], especially when careful counsel must respond to the combination of uncertainopportunitiesforreviewand§[1369](b)(2)by filingbuckshotpetitions." *RollCoater* ,932F.2dat671. The best way to do so is by reading Section 1369(b) textually.

C. ANarrowReadingOffersParties,Agencies, And Courts The Benefits Of Multilateral Review Of Agency Rulemaking.

Under the Sixth Circuit's ruling, challenges to important CWA regulations would be funneled to a single court of appeals, without the benefit of initial consideration by the district courts or the opinions of other federal courts of appeals on the same issues. On some of the most critical issues under the CWA—like the regulation here—the quality of legal decision-making, and of this Court's ability to decide which cases to review, would be diminished.

Percolation among lower courts "helps to explain and formulate the underlying principles" this Court "mustconsider." *Obergefell* v. *Hodges*,135S.Ct.2584, 2597(2015).Italso"winnowsouttheunnecessary and discordantelementsofdoctrine." *California* v. *Carney*, 471 U.S. 386, 400-401 (1985) (Stevens, J., dissenting) (citing Benjamin Cardozo, THE NATURE OF THE JUDICIAL PROCESS 179(1921)).Accordingly,thisCourt typically"permit[s]severalcourtsofappealstoexplore adifficultquestionbefore[it]grantscertiorari." *United States* v. *Mendoza*, 464 U.S. 154, 160 (1984).

Thebenefitsofmulti-courtreviewaccrueasclearly in the review of administrative rules as in other types ofcases.SeeRichardL.Revesz, *SpecializedCourtsand*

the Administrative Lawmaking System, 138 U. PA. L. REV. 1111, 1155 (1990) (explaining "[w]hy [we] should * * *takeuniformadministrativedecisionsandsubject them to review in the various regional circuit courts under a system that makes it possible for these courts to disagree with one another"). These benefits include that "the possibility of intercircuit disagreement providesasimpledeviceforsignalingthatcertainhard casesareworthyofadditionaljudicialresources";that "the doctrinal dialogue that occurs when a court of appeals addresses the legal reasoning of another and reaches a contrary conclusion * * * improves the quality of legal decisions"; and that exploration of an issue by multiple courts aids this Court "both in its consideration of the legal merits of an issue and in its case selection decisions." *Id.* at 1156-1157.

Thus, any judicial disagreements that may arise from initial consideration in multiple district courts "increase the probability of a correct disposition" (*Atchison, Topeka& Santa FeRy. Co.* v. *Pena*, 44 F.3d 437,447(7thCir.1994)(Easterbrook,J.,concurring)), and tee up issues more thoroughly for this Court's consideration. There is nothing about agency regulations that makes this process less appropriate for rule challenges than for other types of cases, like those involving the meaning or constitutionality of federal statutes. The benefits of multi-court consideration would be lost if Section 1369(b)were stretched beyond the defined categories of agency action that Congress designated for original court of appeals review.

Furthermore,Section1369(b)mustbereadinlight of the default rule that Congress established in the APA, which is that agency action is subject to multilateral judicial review. "[I]n the absence or inadequacy" of a "special statutory review proceeding," any "person suffering legal wrong because of agency

action" is "entitled to judicial review" "in a court of competentjurisdiction."5U.S.C.§§ 702-703.Aplaintiff generally may file suit where it resides. See 28 U.S.C. §§ 1331,1391(e);seealso *Bowen* v. *Massachusetts*,487 U.S. 879, 904 (1988) (Congress "inten[ded] that [the APA]coverabroadspectrumofadministrativeactions, and this Court has echoed that theme by noting that the[APA's]'generousreviewprovisions'mustbegiven a 'hospitable' interpretation").

In the absence of a clear statement from Congress in Section 1369(b), the Sixth Circuit should not have upended the APA judicial review process. This Court shouldrestoreAPAreviewtoCWArulemakingoutside the specific categories that Congress identified in Section 1369(b).

D. Judge McKeague's Efficiency Arguments Are Unpersuasive.

Judge McKeague believed that review of the WOTUSRuleunderSection1369(b)wasnecessaryfor "efficiency, judicial economy, clarity, uniformity and finality" (Pet. App. 23a), considerations urged too by the agencies. Fed. BIO 15-16. Those policy arguments carry little weight in practice.

Despite the APA'slengthierstatute of limitations, inmostcasesrulechallengeswillbeinitiatedverysoon after the rule's promulgation. The most likely challengersareoftencloselyinvolvedinthenoticeand comment process and eager to mount challenges quickly, before a harmful rule takes effect. As a practical matter, an APA challenge is likely to come withindaysorweeks,notyears.Thatisespeciallytrue for rules that have sweeping nationwide impacts, like the WOTUS Rule. The agencies issued the Rule in June2015,andwithinthatsameyear16districtcourt

challenges were filed, most of them very quickly after the Rule's issuance. See *supra* p. v.

Parties may coordinate their challenges to EPA actions to avoid litigation in many different forums. Forexample, inlitigation over EPA's Water Transfers Rule, 40 C.F.R. § 122.3(i), some environmental organizations quickly filed an APA challenge in the Southern District of New York. Nine States and a Canadianprovincefiledasecondchallengeinthesame court, which consolidated the actions. Eleven States, New York City, many Western water districts, and othersintervenedasdefendantsinsupportoftherule. See *Catskill Mountains*, 846 F.3d at 500-501 & n.6, 505-506. Environmental groups that had filed APA actions in the Southern District of Florida voluntarily dismissed those suits and intervened as plaintiffs in the New York suits. See Joint Notice of Voluntary Dismissal, *Friends of theEverglades* v. *EPA*, No. 1:08-cv-21785 consol. (S.D. Fla. Nov. 13, 2012). Thus, although multiple parties from across the country challenged the same EPA regulation, only one district court ruled on the merits of their challenges. There is reason to expect that, where CWA rule challenges proceed in district court, there will be some degree of voluntary consolidation.

It is in any event hardly certain that Judge McKeague'srulingincreasesefficiency."[T]hecasefor direct review in circuit courts has little in the way of theoretical or empirical heft." Mead & Fromherz, *supra*, 67 ADMIN. L. REV. at 5. And "district courts are generallyascapable—andusuallymoreefficient—than their counterparts at the circuit level." *Ibid.* It is also moreefficienttohavethedistrictcourtratherthanthe appellate court resolve factual disputes, such as whether the challenger has Article III standing and whether the agency has prepared a complete record.

Id. at 29, 55. In this case, the parties spent months litigating whether the agencies had provided a completerecord,whichcausedtheSixthCircuittohold the briefing deadlines in abeyance. See Motions to Supplement Certified Record, Dkts. 103-105 (July 8, 2016);Opinion&OrderonAdministrativeRecord,Dkt. 119 (Oct. 4, 2016); see also Order, Dkt. 116 (Sept. 22, 2016);seealsoMead &Fromherz, *supra*,67A DMIN. L. REV. at 29-30. For these and other reasons, commentators have concluded that, all things considered,district courtsgenerallyshouldundertake original review of agency actions. *Id.* at 22-59.

Regardless, efficiency concerns carry no weight in this case because "policy arguments cannot supersede the clear statutory text." *Universal Health Servs., Inc.* v. *United States*, 136 S. Ct. 1989, 2002 (2016). "[N]o law pursues its purpose at all costs, and ... the textual limitations upon a law's scope are no less a part of its 'purpose'thanitssubstantiveauthorizations." *Kucana*, 558U.S.at252.Jurisdictionis"governedbytheintent of Congress" as expressed in the statutory text, "and not by any views [courts] may have about sound policy." *Fla.Power&LightCo.* v. *Lorion*,470U.S.729, 746(1985). [15] StretchingthetextofSection1369(b)past its breaking point to increase efficiency undermines the very purpose of the APA. "The APA's presumption

[15] Judge McKeague erroneously read this Court's decision in *Florida Power* to establish in all cases a "strong preference" in favor of "direct circuit court review of agency action." Pet. App. 23a. His reliance on that "non-Clean Water Act case" is "unavailing,"asJudgeGriffinexplained. *Id.* at43a. *FloridaPower* found the relevant "statute ambiguous on its face." 470 U.S. at 737. And its "holding depended on its lengthy exegesis of those specific statutes; nowhere did the Court intimate that it was rulingasamatterofgeneraladministrativeprocedure." *Nader* v. *EPA*, 859 F.2d 747, 754 (9th Cir. 1988).

of judicial review is a repudiation of the principle that efficiency of regulation conquers all." *Sackett*, 132 S. Ct. at 1374. Section 1369(b)'s plain language controls, andthatlanguagedoesnotvesttheSixthCircuitwith jurisdiction to review the WOTUS Rule.

CONCLUSION

The judgment should be reversed and the case remanded with instructions to dismiss for lack of jurisdiction.

Respectfully submitted.

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ADDENDUM OF STATUTORY PROVISIONS

33 U.S.C. § 1311. Effluent Limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment

standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

* * * * *

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

* * * * *

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

* * * * *

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an

innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

* * * * *

33 U.S.C. § 1312. Water Quality Related Effluent Limitations

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314(*l*) of this title, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

* * * * *

33 U.S.C. § 1314. Information and Guidelines

* * * * *

(*l*) Individual control strategies for toxic pollutants

(1) State list of navigable waters and development of strategies

Not later than 2 years after February 4, 1987, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

(A) a list of those waters within the State which after the application of effluent limitations required under section 1311(b)(2) of this title cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 1313(c)(2)(B) of this title, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 1313 of this title will be achieved after the requirements of sections 1311(b), 1316, and 1317(b) of this title are met, due entirely or substantially to discharges from point sources of any toxic pollu-

tants listed pursuant to section 1317(a) of this title;

(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 1342 of this title and water quality standards under section 1313(c)(2)(B) of this title, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

(2) Approval or disapproval

Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

(3) Administrator's action

If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted

by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

* * * * *

33 U.S.C. § 1316. National Standards of Performance

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources * * *.

* * * * *

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Adminis-

trator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality, environmental impact and energy requirements.

* * * * *

(c) State enforcement of standards of performance

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

* * * * *

33 U.S.C. § 1317 – Toxic And Pretreatment Effluent Standards

(a) Toxic Pollutant List; Revision; Hearing; Promulgation of Standards; Effective Date; Consultation.

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. * * *

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2) and 1314(b)(2) of this title.

* * * * *

(b) Pretreatment Standards; Hearing; Promulgation; Compliance Period; Revision; Application to State and Local Laws.

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by

such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, of otherwise is incompatible with such works. * * *

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

* * * * *

(c) New Sources of Pollutants into Publicly Owned Treatment Works.

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall pre-

vent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

* * * * *

33 U.S.C. § 1342. National Pollutant Discharge Elimination System

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

* * * * *

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

* * * * *

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

* * * * *

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall with-

draw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

* * * * *

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a per-

mit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

* * * * *

(*l*) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material,

intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(3) Silvicultural activities

(A) NPDES permit requirements for silvicultural activities

The Administrator shall not require a permit under this section nor directly or indirectly require any State to require a permit under this section for a discharge from runoff resulting from the conduct of the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance.

* * * * *

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

* * * * *

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and manage-

ment practices and treatment requirements, as appropriate.

* * * * *

33 U.S.C. § 1345. Disposal or Use of Sewage Sludge

(a) Permit

Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 1342 of this title.

(b) Issuance of permit; regulations

The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 1342 of this title. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title.

(c) State permit program

Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title.

* * * * *

(2) Identification and regulation of toxic pollutants

(A) On basis of available information

(i) Proposed regulations

Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

(ii) Final regulations

Not later than August 31, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

(B) Others

(i) Proposed regulations

Not later than July 31, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for

sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

(ii) Final regulations

Not later than June 15, 1988, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

(C) Review

From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

(D) Minimum standards; compliance date

The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance as expeditiously as practicable but in no case later than 12 months after their publication, unless such regulations require the construction of new pollution control facilities, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

(3) Alternative standards

For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

* * * * *

(f) Implementation of regulations

(1) Through section 1342 permits

Any permit issued under section 1342 of this title to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.], part C of the Safe Drinking Water Act [42 U.S.C.A. § 300h et seq.], the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C.A. § 1401 et seq.], or the Clean Air Act [42 U.S.C.A. § 7401 et seq.], or under

State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section.

* * * * *

U.S.C. § 1369. Administrative Procedure and Judicial Review

* * * * *

(b) Review of Administrator's actions; selection of court; fees

(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of this title, (F) in issuing or denying any permit under section 1342 of this title, and (G) in promulgating any individual control strategy under section 1314(l) of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts business which is directly affected by such action upon application by such person. Any such application shall be made within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such

date only if such application is based solely on grounds which arose after such 120th day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

* * * * *

No. 16-299

IN THE

Supreme Court of the United States

NATIONAL ASSOCIATION OF MANUFACTURERS,
Petitioner,

v.

U.S. DEPARTMENT OF DEFENSE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENT UTILITY WATER ACT GROUP IN SUPPORT OF PETITIONER

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April 27, 2017

QUESTION PRESENTED

The question presented is whether the Sixth Circuit erred when it held that it has jurisdiction under 33 U.S.C. § 1369(b)(1)(F) to decide petitions to review the waters of the United States rule, even though the rule does not "issu[e] or den[y] any permit" but instead defines the waters that fall within Clean Water Act jurisdiction.

CORPORATE DISCLOSURE STATEMENT

The Utility Water Act Group ("UWAG") is an ad hoc, non-profit, unincorporated group composed of individual electric utilities and national trade associations of electric utilities. UWAG's purpose is to participate on behalf of its members in rulemakings under the Clean Water Act and in litigation arising from those rulemakings. UWAG is not a parent, subsidiary, or affiliate of any corporation or other entity that has any outstanding securities in the hands of the public, and no publicly-held company has a 10% or greater ownership interest in UWAG.

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Eagle-Picher Indus., Inc. v. *EPA*, 759 F.2d 905 (D.C. Cir. 1985) 17

Friends of the Earth v. *EPA*, 333 F.3d 184 (D.C. Cir. 2003) 13

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Hart v. *Massanari*, 266 F.3d 1155 (9th Cir. 2001) 15

Howmet Corp. v. *EPA*, 614 F.3d 544 (D.C. Cir. 2010) 19

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League of Wilderness Defs./Blue Mountains Biodiversity Project v. *Forsgren*, 309 F.3d 1181 (9th Cir. 2002) 13

Longview Fibre Co. v. *Rasmussen*, 980 F.2d 1307 (9th Cir. 1992) 12, 13

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National Cotton Council v. *EPA*, 553 F.3d 927 (6th Cir. 2009) 9

Northwest Envtl. Advocates v. *EPA*, 537 F.3d 1006 (9th Cir. 2008) 13

Oklahoma ex rel. Pruitt v. *EPA*, No. 15-CV-0381-CVE-FHM, 2016 WL 3189807 (N.D. Okla. Feb. 24, 2016) 8

Precon Dev. Corp. v. *U.S. Army Corps of Eng'rs*, 633 F.3d 278 (4th Cir. 2011) 21

Sackett v. *EPA*, 566 U.S. 120 (2012) 16, 21

U.S. Army Corps. of Eng'rs v. *Hawkes Co.*, 136 S. Ct. 1807 (2016) 16

Washington Cattlemen's Ass'n v. *EPA*, No. 15-3058 (DWF/LIB), 2016 WL 6645765 (D. Minn. Nov. 8, 2016) 8

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Pending Cases:

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Federal Statutes:

28 U.S.C. § 2112(a)(3) 5, 7

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Clean Water Act, 33 U.S.C. §§ 1251 et seq.

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33 U.S.C. § 1369(b)(2) 5, 13, 18

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123 Cong. Rec. 26,759-60 (Aug. 4, 1977) 15

H.R. Rep. No. 92-911 (1972), *reprinted in*, S. Comm. on Public Works, 93d Cong., 1st Sess., 1 A Legislative History of the Water Pollution Control Act Amendments of 1972, at 753 (1973)..... 12

Federal Regulations:

33 C.F.R. § 320.1(a)(6)..... 20

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33 C.F.R. § 328.3(b)..... 6

Federal Register:

Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)..... 6, 14

Civil Monetary Penalty Inflation Adjustment Rule; Interim Final Rule, 81 Fed. Reg. 43,091 (July 1, 2016)..... 19, 20

Court Materials:

In re EPA, MCP No. 135 (J.P.M.L. filed July 27, 2015)

- Consolidation Order (July 28, 2015), ECF No. 3 8

In re U.S. Dep't of Def., 817 F.3d 261 (6th Cir. 2016) (No. 15-3751)

- Order (Apr. 21, 2016), ECF No. 92-1 9
- Case Management Order No. 2 (June 14, 2016), ECF No. 99-1 9

Miscellaneous:

U.S. Army Corps of Eng'rs, Regulatory Guidance Letter No. 08-02, Jurisdictional Determinations (June 26, 2008), http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08-02.0df 20

STATEMENT OF THE CASE

This case presents a recurring question crucial to determining the proper forum for judicial review of Clean Water Act ("CWA") regulations. The challenged rule ("WOTUS Rule" or "Rule"), jointly issued by the U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers ("Corps") (together, "Agencies"), interprets a key statutory term–"the waters of the United States"–that establishes the geographic scope of the Agencies' jurisdiction for all CWA regulatory programs.

The Agencies' definition of "the waters of the United States" has considerable regulatory consequences for a wide range of industry activities, and its impacts on Utility Water Act Group ("UWAG")[1] member company facilities and activities is enormous. UWAG members operate a range of facilities

[1] UWAG is a voluntary, ad hoc, non-profit, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. UWAG's purpose is to participate on behalf of its members in federal agency proceedings under the CWA, and in litigation arising from those proceedings. UWAG members own and operate many types of electric generating facilities, including steam electric power plants, combustion turbines, and hydroelectric facilities, and an increasing array of renewable generation sites, including wind and solar facilities, as well as electric transmission and distribution lines, natural gas and oil distribution lines, and railroad tracks, all of which are critical to meet the energy needs of our country.

that produce, transmit, and distribute electricity nationwide, and each is affected by the Rule in a unique and significant way.

As a result of the Rule, UWAG members' facilities and activities would be newly subject to CWA regulatory jurisdiction for activities on or affecting lands or waters not previously defined as jurisdictional. For example, UWAG members would be required to obtain Corps-issued CWA § 404 permits for discharges of dredged or fill material, or EPA- or State-issued permits under the CWA § 402 National Pollutant Discharge Elimination System ("NPDES") for discharges of other pollutants, to areas not previously deemed to be "waters of the United States." The Rule also triggers new Spill Prevention, Control, and Countermeasure requirements and other CWA § 311 requirements for UWAG members with respect to such newly identified jurisdictional areas.

Thus, UWAG and its members have a significant interest in ensuring that judicial review of the WOTUS Rule occurs in a manner that allows a full opportunity to address the broad impacts and implications of the Rule for all of these programs, and that does not foreclose later judicial review. Treating the WOTUS Rule as one of the discrete actions subject to the consolidated and exclusive appellate review with the condensed deadlines and preclusive effects that § 509(b)(1) requires would prevent the type of review that is critical for such a sweeping and important rule.

Moreover, the significance of this Court's determination regarding the applicability of § 509(b)(1) to a rule defining the geographic scope of federal CWA jurisdiction has implications that transcend the 2015 WOTUS Rule and will likely affect countless future CWA rulemakings. UWAG has experience with a panoply of CWA rulemakings and litigation. The lack of clarity across and within circuits on the threshold issue of jurisdiction over CWA actions has resulted in confusion, inefficiency, and a waste of judicial resources.[2] The Court's determination on where jurisdiction lies for challenges to the WOTUS Rule will guide federal courts in their future application of § 509(b)(1) for other CWA rulemakings, including–but not limited to–future rulemakings to define "the waters of the United States."

I. Statutory Background

The CWA is a comprehensive statute that partners all levels of federal, state, and local government and deploys a number of programs–both regulatory and non-regulatory–to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The Act prohibits the "discharge of any pollutant" into "navigable

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[2] Indeed, while this case has been pending, the applicability of § 509(b)(1) has caused similar confusion and inefficiency for recent challenges to EPA's denial of petitions for expanded CWA stormwater permitting in Los Angeles and Maryland under EPA's "residual designation authority." See *Blue Water Baltimore, Inc.* v. *Pruitt*, No. 17-1258 (4th Cir. filed Feb. 28, 2017); *Los Angeles Waterkeeper* v. *Pruitt*, No. 17-70570 (9th Cir. filed Feb. 27, 2017).

waters" except in compliance with specified provisions of the statute, including those requiring a permit. *Id.* §§ 1311(a), 1362(12). The Act defines "navigable waters" as "the waters of the United States, including the territorial seas." *Id.* § 1362(7).

EPA and States with delegated authority issue NPDES permits under 33 U.S.C. § 1342, which authorize and control discharges of pollutants into waters of the United States. NPDES permits must ensure compliance with a variety of effluent limitations and other limitations, including, *inter alia*, requirements promulgated or approved by EPA under 33 U.S.C. §§ 1311 (effluent limitations guidelines), 1312 (water quality limitations), 1316 (new source performance standards), 1317 (toxic standards), and 1345 (limitations for disposal or use of sewage sludge).

EPA's administration of the NPDES program is not the only method Congress established to meet the goals of the Act. The Act authorized billions of dollars in federal assistance for the construction of municipal sewage treatment plants to end a principal cause of water pollution–the discharge of raw sewage into our Nation's waterways. *Id.* § 1281. The Act also includes separate programs for "nonpoint sources" of pollution, *id.* § 1329, and a host of other research and pollutant-specific programs.

Of particular importance for the WOTUS Rule, which was jointly issued by EPA and the Corps to amend regulations that separately implement each of the Agencies' individual CWA regulatory programs, is the regulation of discharges of dredged or

fill material administered by the Corps, *id.* § 1344. EPA is thus only one of the federal agencies charged with administering the CWA. Other federal agencies, such as the Corps and the U.S. Coast Guard, also have significant and independent responsibilities under the Act, as do the States.

Of the many actions States, EPA, the Corps, and the U.S. Coast Guard are empowered to take, CWA § 509(b)(1) provides the courts of appeals with original jurisdiction over only actions performed by the *EPA Administrator* and, of those, over only seven categories of EPA action. 33 U.S.C. § 1369(b)(1). The EPA actions subject to review under § 509(b)(1) include "approving or promulgating any effluent limitation or other limitation under [CWA §§ 301, 302, 306, or 405]," *id.* § 1369(b)(1)(E), and actions "issuing or denying any permit under [CWA § 402]." *Id.* § 1369(b)(1)(F).

Section 509(b)(1), 33 U.S.C. § 1369 (b)(1), sets a 120-day statute of limitations for petitions seeking judicial review; 28 U.S.C. § 2112(a)(3) provides for consolidation of such petitions; and § 509(b)(2), 33 U.S.C. § 1369(b)(2), precludes later review in civil or criminal proceedings of any EPA action reviewable under § 509(b)(1). Thus, any party who wishes to challenge one of EPA's actions subject to § 509(b)(1) must file that challenge within 120 days of publication of the final action, will face consolidation of that action with other challenges (thus substantially limiting that party's ability to present its own claims), and will face claim preclusion after final review of the petitions.

II. WOTUS Rulemaking

On June 29, 2015, EPA and the Corps finalized a rule that purports to "clarif[y] the scope of 'waters of the United States'" for purposes of all CWA programs. Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015). The WOTUS Rule identifies broad categories of waters that are subject to CWA jurisdiction by rule, narrow categories of waters that are not subject to CWA jurisdiction, and two categories of isolated waters that may be jurisdictional if a site-specific analysis determines that they possess a "significant nexus" to certain types of jurisdictional waters. *Id.* at 37,104-06.

Waters subject to CWA jurisdiction by rule include: (1) traditional navigable waters, (2) interstate waters, (3) territorial seas, (4) impoundments of waters of the United States, (5) certain tributaries, and (6) waters "adjacent" to the waters in the preceding five categories. 33 C.F.R. § 328.3(a).

Waters excluded from federal regulatory jurisdiction include waste treatment systems, prior converted cropland, certain drainage ditches, artificially irrigated areas, swimming or reflecting pools, ornamental waters, artificial lakes and ponds, farm and stock watering ponds, cooling ponds, settling basins, water-filled depressions incidental to mining or construction activity, puddles, subsurface drainage systems, stormwater control features, and certain wastewater recycling structures. *Id.* § 328.3(b).

Waters that are subject to jurisdiction based on a case-specific significant nexus determination include: (A) waters, any part of which are within the 100-year floodplain of a traditional navigable water, interstate water, or territorial sea; and (B) waters, any part of which are within 4,000 feet of the ordinary high water mark of any of those jurisdictional waters, any impoundment of jurisdictional waters, or any covered tributary. *Id.* § 328.3(a)(8).

III. Challenges to the Final WOTUS Rule

Immediately following the Agencies' publication of the WOTUS Rule, numerous interested parties, including 53 environmental and industrial organizations and 31 States, filed complaints challenging the validity of the rule in multiple federal district courts[3] and (often protective) petitions for review in federal appellate courts.[4]

UWAG protectively filed its original petition in the U.S. Court of Appeals for the Fifth Circuit. The Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. § 2112(a)(3), consolidated UWAG's petition, along with twelve other petitions for review in eight different courts of appeals, and transferred

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[3] District of Arizona, Northern District of California, District of the District of Columbia, Northern District of Florida, Northern and Southern Districts of Georgia, District of Minnesota, District of North Dakota, Southern District of Ohio, Northern District of Oklahoma, Southern District of Texas, Western District of Washington, Northern District of West Virginia.

[4] Second, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits.

them to the Sixth Circuit. Consolidation Order, *In re EPA*, MCP No. 135 (J.P.M.L. July 28, 2015), ECF No. 3.

In response to petitioners' motions for a preliminary stay of the Rule, the Sixth Circuit, on October 9, 2015, granted a motion to stay the WOTUS Rule nationwide, pending a determination regarding whether the "litigation is properly pursued in [the Sixth Circuit] or in the district courts." *In re EPA*, 803 F.3d 804, 806 (6th Cir. 2015).

On February 22, 2016, the Sixth Circuit issued a fractured decision with respect to whether it has jurisdiction to review the WOTUS Rule under § 509.[5] The court concluded that it had exclusive jurisdiction to decide the challenges to the WOTUS Rule. *In re U.S. Dep't of Def.*, 817 F.3d 261 (6th Cir. 2016), *cert. granted sub nom. Nat'l Ass'n of Mfrs.* v. *Dep't of Def.*, 137 S. Ct. 811 (2017). Judge McKeague found that the WOTUS Rule is subject to circuit court review under both CWA § 509(b)(1)(E) (review of EPA action approving or promulgating any effluent limitation or other limitation under 33 U.S.C. §§ 1311, 1312, 1316, or 1345) and (F) (review of EPA action in issuing or denying any permit under 33 U.S.C. § 1342). *Id.* at 266-74. Judge Griffin found that the WOTUS Rule is

[5] Following the Sixth Circuit's decision, the U.S. District Court for the Northern District of Oklahoma and the U.S. District Court for the District of Minnesota declined jurisdiction. *Oklahoma ex rel. Pruitt* v. *EPA*, No. 15-CV-0381-CVE-FHM, 2016 WL 3189807 (N.D. Okla. Feb. 24, 2016); *Wash. Cattlemen's Ass'n* v. *EPA*, No. 15-3058 (DWF/LIB), 2016 WL 6645765 (D. Minn. Nov. 8, 2016).

not an "effluent limitation or other limitation" under § 509(b)(1)(E), but concurred that the circuit courts have jurisdiction over the WOTUS Rule under § 509(b)(1)(F) (review of EPA action in issuing or denying any permit under 33 U.S.C. § 1342) only because he determined that the panel was bound by prior Sixth Circuit precedent, *National Cotton Council* v. *EPA*, 553 F.3d 927 (6th Cir. 2009). *Id.* at 275 (Griffin, J., concurring) Judge Griffin dedicated his opinion to explaining why *National Cotton Council* was incorrectly decided and why § 509(b)(1)(F) should not apply because the WOTUS Rule is not an action issuing or denying a permit under 33 U.S.C. § 1342. Judge Keith dissented, joining Judge Griffin in finding § 509(b)(1)(E) inapplicable, and concluding that *National Cotton Council* does not require a finding that the WOTUS Rule is subject to circuit court review under § 509(b)(1)(F). *Id.* at 283-84 (Keith, J., dissenting).

UWAG, along with other petitioners, filed a petition for rehearing *en banc*. The Sixth Circuit denied rehearing and set a briefing schedule on the merits. Order, *In re U.S. Dep't of Def.*, No. 15-3751 (6th Cir. filed Apr. 21, 2016), ECF No. 92-1; Case Management Order No. 2, *In re U.S. Dep't of Def.*, No. 15-3751 (6th Cir. June 14, 2016), ECF No. 99-1. On September 2, 2016, the National Association of Manufacturers ("NAM") filed a petition for writ of certiorari seeking Supreme Court review of the Sixth Circuit's decision that it has original jurisdiction over challenges to the WOTUS Rule. UWAG joined a Respondent brief in support of NAM, filed October 7,

2016, and on January 13, 2017, the Supreme Court granted certiorari. *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.*, 137 S. Ct. 811 (2017).

SUMMARY OF ARGUMENT

Section 509(b)(1) provides for immediate circuit court review for a specific set of discrete EPA actions. In light of the precise language used by Congress in that provision, as well as the "peculiar sting" associated with the stringent limitations Congress placed on review of those specific categories of EPA actions subject to § 509(b)–namely, direct circuit court review, the potentially preclusive effect of that review, and the 120-day window within which to bring challenges–courts have counseled against the expansive application of § 509(b)(1). Indeed, given the context and structure of § 509(b)(1), district court review is particularly appropriate for the WOTUS Rule, a joint rule of broad applicability that establishes geographic CWA jurisdiction for all CWA regulatory programs.

Moreover, limiting the WOTUS Rule to direct circuit court review under § 509(b)(1) would raise significant due process concerns. A landowner can have certainty that a particular land or water feature is or is not a "water of the United States" only if he or she seeks a jurisdictional determination or permit from the Agencies. Because the exact scope and applicability of the WOTUS Rule will not become clear without facts regarding a particular feature at issue and the Agencies' interpretation of the applicability of the Rule to that feature, potentially regulated par-

ties have no particularized notice that an area on their site could be subject to the Rule.

Accordingly, this Court should reverse the judgment of the Court of Appeals, and hold that the WOTUS Rule is not subject to § 509(b)(1) and must be challenged in the district courts.

ARGUMENT

EPA and the Corps issued a joint rule defining the pivotal phrase "the waters of the United States" on which CWA jurisdiction turns. The Rule does not fall within any of the seven narrowly drawn categories of EPA action that CWA § 509(b)(1), 33 U.S.C. § 1369(b)(1), commits to the circuit courts for review. Rather, jurisdiction to review the validity of the Rule rests exclusively in the district courts.

In support of the petition, the States and Petitioner provided detailed analyses of § 509(b)(1), which we join. Those analyses demonstrate that neither § 509(b)(1)(E) nor (F) applies to the WOTUS Rule. UWAG adopts in full the States' and NAM's arguments, and does not repeat them here.[6]

In light of the considerable regulatory consequences that the applicability of § 509(b)(1) to a variety of CWA actions has for UWAG members, UWAG

[6] The Sixth Circuit held that the WOTUS Rule was not an "effluent or other limitation," so although review of § 509(b)(1)(E) is not necessarily part of the question presented here, the States and Petitioner have demonstrated that provision would not provide circuit court jurisdiction over the WOTUS Rule.

writes this separate brief to provide its singular perspective on why jurisdiction to review the WOTUS Rule properly lies in the district courts.

I. District Court Review of the WOTUS Rule Is Appropriate Given the Context and Structure of § 509(b)(1).

Section 509(b)(1) creates an exception to the general rule that agency actions implementing the CWA are reviewable in federal district court. That exception applies only to a specific, enumerated set of discrete EPA actions that comprise a narrow slice of the overall CWA framework. Congress adopted § 509(b)(1) to "establish a clear and orderly process for judicial review" of those EPA actions to which it applies, and was careful to explain that "the inclusion of section 509 is not intended to exclude judicial review under other provisions of the legislation that are otherwise permitted by law." H.R. Rep. No. 92-911, at 136 (1972), *reprinted in* S. Comm. on Public Works, 93d Cong., 1st Sess., 1 A Legislative History of the Water Pollution Control Act Amendments of 1972, at 753, 823 (1973).

Consistent with this Congressional intent, courts have recognized that the specificity of § 509(b)(1)'s plain language demonstrates that agency actions not clearly falling within the certain, limited categories of § 509(b)(1) are not subject to original review in the courts of appeals. *Longview Fibre Co.* v. *Rasmussen*, 980 F.2d 1307, 1313 (9th Cir. 1992) ("The specificity and precision of [§ 509], and the sense of it, persuade us that it is designed to exclude" EPA actions that

Congress did not specify.); *Friends of the Earth* v. *EPA*, 333 F.3d 184, 193 (D.C. Cir. 2003).

Moreover, in light of § 509(b)(2)'s restriction that actions subject to circuit court review under § 509(b)(1) "shall not be subject to judicial review in any civil or criminal proceeding for enforcement," 33 U.S.C. § 1369(b)(2)–which could be asserted by the Agencies to foreclose jurisdiction over as-applied challenges that raise issues for which review could have been sought within 120 days of promulgation–the Ninth Circuit has noted that reviewability under § 509(b)(1) "carries a peculiar sting." *Longview Fibre Co.*, 980 F.2d at 1313.

Given the precise language of § 509(b)(1) and the "peculiar sting" of its application, courts have "'counseled against [its] expansive application.'" *Nw. Envtl. Advocates* v. *EPA*, 537 F.3d 1006, 1015 (9th Cir. 2008) (quoting *League of Wilderness Defs./Blue Mountains Biodiversity Project* v. *Forsgren*, 309 F.3d 1181, 1190 n.8 (9th Cir. 2002)).

In light of the structure and context of § 509(b)(1), it is appropriate that Congress provided for direct circuit court review of only seven specific categories of EPA actions in § 509(b)(1). Those specific EPA actions are discrete, and are of a nature that Congress's choice to direct appellate review with preclusive effects stands to reason. The enumerated EPA actions include actions "in approving or promulgating any effluent limitation or other limitation" under CWA sections 301, 302, 306, or 405, § 509(b)(1)(E), 33 U.S.C. § 1369(b)(1)(E), and EPA actions in "issu-

ing or denying any permit under section 1342," § 509(b)(1)(F), 33 U.S.C. § 1369(b)(1)(F). For each of these categories of EPA action, it is clear who is regulated, and each regulated party or category of parties has clear and specific notice of the limits, restrictions, and/or standards to which they are subject, or the authorizations they have or have not received. For that narrow category of enumerated EPA actions, the action and its import are relatively precise, and additional factual development or analysis is not necessary to determine applicability. Accordingly, Congress appropriately determined that one-time, immediate circuit court review is adequate for such actions.

Conversely, in light of § 509(b)(1)'s structure and context, it is equally evident that § 509(b)(1) is inapplicable to the WOTUS Rule. The Rule interprets a keystone statutory term that applies broadly to all CWA regulatory programs. 80 Fed. Reg. at 37,054, 37,102. It neither narrowly restricts discharges or other activities, nor determines whether or on what terms EPA may issue a permit. Rather, it broadly determines where the Act applies. It is a statutory predicate to needing any permit, not the issuance or denial of a permit. And it is a predicate determined by Congress, not EPA.

Whether the Rule's definition of "the waters of the United States" applies to a specific water feature depends on the facts and characteristics of that fea-

ture.[7] As such, review of the joint Corps and EPA WOTUS Rule is proper in the district courts–where all of the case law addressing the key CWA term "the waters of the United States" has originated.

It would be inappropriate to ignore Congress's carefully crafted provisions in § 509 simply to further judicial efficiency. In fact, during the 1977 CWA amendment discussions, when Congress considered selecting the D.C. Circuit as the appropriate venue for review of all § 509(b)(1) actions, many members spoke out against such centralization and argued that the CWA's judicial provision should not "dictate uniformity" or "destroy the diversity of the judicial system." 123 Cong. Rec. 26,759-60 (Aug. 4, 1977) (statement of Sen. McClure). Extending § 509(b)(1) jurisdiction to encompass the key jurisdictional definition in the WOTUS Rule, in order to avoid multiple district court rulings, would have the very effect Congress sought to avoid.

The federal judicial system is well equipped to handle consideration of complex legal issues by multiple district courts. Often, the views of multiple courts are important for developing and considering different views, and ensuring the well-informed development of the law. See *Hart* v. *Massanari*, 266 F.3d 1155, 1173 (9th Cir. 2001). Moreover, it is

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[7] As Judge Griffin pointed out, to interpret a definitional rule like the WOTUS Rule to be subject to one-time circuit court review under § 509(b)(1)(F) would essentially require § 509(b)(1) review of *all* CWA rules. *In re U.S. Dep't of Def.*, 817 F.3d at 282 (Griffin, J., concurring).

common for district courts to review regulations of broad applicability. See, *e.g.*, *Friends of the Everglades* v. *EPA*, 699 F.3d 1280, 1288 (11th Cir. 2012) (review of water transfer rule proper in district court); *Chem. Mfrs. Ass'n* v. *EPA*, 870 F.2d 177, 265-66 (5th Cir. 1989) (EPA decision to reserve certain pollutants for future technology-based rulemaking held reviewable only in a district court).

Review of the WOTUS Rule, which broadly establishes geographic CWA jurisdiction for all CWA programs, is appropriate in district court. To hold otherwise would ignore the context and structure of the statute, and would sidestep Congress's division of jurisdiction between the courts.

II. Limiting the WOTUS Rule to One-Time Circuit Court Review Would Raise Significant Concerns for Potentially Regulated Parties.

The WOTUS Rule is different from the narrow list of EPA actions subject to circuit court review under § 509(b)(1) because it establishes geographic CWA jurisdiction for all CWA programs. As Justices Kennedy, Thomas, and Alito have noted, "the Act's reach is 'notoriously unclear' and the consequences to landowners even for inadvertent violations can be crushing." *U.S. Army Corps of Eng'rs* v. *Hawkes Co.*, 136 S. Ct. 1807, 1816 (2016) (Kennedy, J., concurring); see also *Sackett* v. *EPA*, 566 U.S. 120, 132 (2012) (Alito, J., concurring). As such, the need to avoid the serious due process issues and other "crushing" consequences that would result if

§ 509(b)(1) is held to apply to the WOTUS Rule outweighs any concerns that judicial inefficiency or chaos may result from review of the WOTUS Rule in multiple district courts.

As noted above, the applicability–or not–of § 509(b)(1) is of critical importance because, if the Rule is deemed to fall under § 509(b)(1), any party seeking to challenge the Rule must file its petition in the court of appeals within 120 days after the promulgation of the rule, or after 120 days "only if such application is based solely on grounds which arose after such 120th day." 33 U.S.C. § 1369(b)(1). A party that does not file a petition for review within that time period may be barred from later challenging review of the rule.[8] In addition to the 120-day statute of limitations, § 509(b)(2) adds a further restriction, which could be asserted by the Agencies to foreclose jurisdiction over as-applied challenges that raise is-

[8] At least one circuit, applying essentially the same limitation in § 113(a) of the Comprehensive Environmental Response, Compensation and Liability Act, has held that petitions to review actions subject to such a provision must be brought within the prescribed time period even if those potentially affected are uncertain whether the issues raised are ripe for review. *Eagle-Picher Indus., Inc.* v. *EPA*, 759 F.2d 905 (D.C. Cir. 1985). The court noted that "[P]etitioners who delay filing requests for review on their own assessment of when an issue is ripe for review do so at the risk of finding their claims time-barred." *Id.* at 909.

sues for which review could have been sought within 120 days of promulgation. *Id.* § 1369(b)(2).[9]

Section 509(b)'s "peculiar sting," as the Ninth Circuit has called it, would apply with even greater force here because the challenged rule has broad applicability and purports to define the scope of CWA jurisdiction. The WOTUS Rule affords no particularized notice that a landowner's site is subject to the rule, and it provides no specific record and/or basis for reviewing whether the Rule's definition of "the waters of the United States" applies to a particular water feature. The terminology used to define each of the WOTUS Rule's categories of jurisdictional waters and exclusions is ambiguous and subject to varying potential interpretations as applied to particular water features. The Rule is distinct from the enumerated EPA actions subject to circuit court review under § 509(b)(1) because, without facts regarding the water feature at issue and the Agencies' interpretation regarding whether the Rule supports assertion of CWA jurisdiction over that feature (*i.e.*, through a jurisdictional determination ("JD") or permit received from the Corps or EPA), the Rule's impact is unclear. If circuit court review of the Rule is mandated, a landowner or project proponent who may have no knowledge of how the Rule would apply to that land or project could be barred from judicial review. Such a result would be particularly inappro-

[9] By contrast, APA challenges are subject to a six-year statute of limitations, 28 U.S.C. § 2401(a), and that limitation does not preclude later as-applied challenges to a rule.

priate because CWA jurisdiction will remain uncertain in many places until the Agencies actually apply the Rule.

Foreclosing later challenges to the WOTUS Rule would violate basic due process principles: "Informed by basic principles of due process, it is a cardinal rule of administrative law that a regulated party must be given fair warning of what conduct is prohibited or required of it." *Wis. Res. Prot. Council* v. *Flambeau Mining Co.*, 727 F.3d 700, 707 (7th Cir. 2013) (internal quotation marks omitted). The D.C. Circuit has explained that "[i]n the absence of notice–for example, where the regulation is not sufficiently clear to warn a party about what is expected of it–an agency may not deprive a party of property by imposing civil or criminal liability." *Gen. Elec. Co.* v. *EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995). In determining whether a party received fair notice, courts frequently look to the regulations and other agency guidance to determine whether "a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform . . . ." *Howmet Corp.* v. *EPA*, 614 F.3d 544, 553-54 (D.C. Cir. 2010).

The threat of foreclosing future judicial review is severe because the CWA is a strict liability statute. It *prohibits* all non-permitted "discharges" into statutory "navigable waters." 33 U.S.C. § 1311. Violations are subject to civil and criminal penalties of up to $51,470 per day per violation, and imprisonment for up to three years. 33 U.S.C. § 1319(c)(2), (d); 81

Fed. Reg. 43,091, 43,095 (July 1, 2016). The WOTUS Rule leaves certain boundaries of CWA jurisdiction uncertain, and subject to case-by-case judgment by the Agencies. Today, without a formal determination regarding the presence or absence of waters of the United States on a particular parcel, a landowner or project proponent may not know whether a proposed activity is subject to the CWA.[10]

If § 509(b)(1) is broadly interpreted to require one-time circuit court review of the WOTUS Rule, the Rule could be enforced against private parties who may face the argument that they are precluded from challenging the validity of the Rule due to a failure to seek immediate review. "The nagging presence of a substantial due process question indicates, . . . at the very least, the propriety of a narrow interpretation of" the jurisdictional statute. *Chrysler Corp.* v. *EPA*, 600 F.2d 904, 913 (D.C. Cir. 1979).

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[10] For the CWA § 404 program, a Corps determination may be sought to establish whether a particular parcel of land contains jurisdictional waters, and if so, where those waters begin and end. 33 C.F.R. § 320.1(a)(6). But there is no analogous process for obtaining determinations regarding the presence or absence of waters of the United States for other CWA regulatory programs. And the Corps has previously stated that the Corps' JD process cannot be used to determine the presence of waters of the United States for the purpose of other CWA regulatory programs. U.S. Army Corps of Eng'rs, Regulatory Guidance Letter No. 08-02, Jurisdictional Determinations (June 26, 2008), http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08-02.pdf. Even for instances where landowners can seek jurisdictional determinations for their parcels, the Corps' JD process often takes longer than the 120-day window provided by § 509(b)(2).

There is no question that a whole host of parties will now be subject to regulation where they were previously excluded. But the exact scope of the Rule and its application may not become clear for some time. Precluding later judicial review would deny those parties of their significant due process rights and could have "crushing" consequences.

Addressing the myriad aspects and implications of the Rule can be achieved only by review in the district courts. Indeed, the need to understand whether a particular area is a "water of the United States" is at the very heart of many permitting challenges and enforcement actions that arise in the district courts. See, *e.g.*, *Sackett* v. *EPA*, 566 U.S. 120 (2012); *Precon Dev. Corp.* v. *U.S. Army Corps of Eng'rs*, 633 F.3d 278 (4th Cir. 2011).

In light of these significant concerns, the WOTUS Rule is distinguishable from the narrow list of EPA actions subject to circuit court review under § 509(b)(1), and the importance of district court review for a rule of this type outweighs any concerns regarding the inconvenience or chaos that may result from review of the WOTUS Rule in multiple district courts.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

April 27, 2017

Respectfully submitted,

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FYI

Looks fine to me

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Subject: draft desk statement for tribal consultation

Hi Liz,

Sorry for the delay in getting this to you. I'm sending you a draft desk statement on our tribal consultation process. We have a webinar at 2:00 today so OPA may be getting questions. We are also working on a desk statement in anticipation of sending our first rule to OMB shortly. Stay tuned for that.

thanks

Mindy Eisenberg

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Only got this today.

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]
Cc: Farris, Erika D.[Farris.Erika@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Campbell, Ann
Sent: Wed 4/26/2017 4:58:54 PM
Subject: Notes from General w/ Sarah G.
OA Weekly Agenda_Annotated_042617notes.docx

All, please find attached the agenda and notes from today's general with Sarah G. Please let me know if you have any questions.

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Wed 4/26/2017 12:58:16 AM
Subject: FOR YOUR REIVEW: Draft Agenda for Weekly w/ Sarah
OA Weekly Agenda_Annotated_042617.docx

Still looking for updates on Steam Electric and a response to the question Sarah has posed on the Deliberative Process / Ex. 5 t the rest is ready for your review. Please let me know if you have any edits or additions/deletions to the agenda.

Thanks,
Ann

Weekly General with Sarah Greenwalt

April 19, 2017

AGENDA

ISSUES CURRENTLY UNDER CONSIDERATION

1. **Steam Electric**

Deliberative Process / Ex. 5

2. Deliberative Process / Ex. 5

3. **FL & WA WQS Petitions for Reconsideration**

Deliberative Process / Ex. 5

4. **Puerto Rico SRF**

UPDATE: This week OW and USDA are meeting with the Puerto Rico Financial Oversight and Management Board in Puerto Rico at their request. The Puerto Rico Fiscal Agency and Financial Advisory Authority (PRFAFAA) is currently working with the Financial Oversight and Management Board for the certification of various fiscal plans and their corresponding budgets before April 30 as required and in compliance with the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). This meeting is intended to encourage

Deliberative Process / Ex. 5

5. Deliberative Process / Ex. 5

6. Deliberative Process / Ex. 5

6. Deliberative Process / Ex. 5

HOT ISSUES

1. **WOTUS:** Meetings scheduled every Wednesday at 10AM

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

PENDING DECISIONS

Deliberative Process / Ex. 5

UPCOMING ISSUES

Deliberative Process / Ex. 5

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Christensen, Damaris
Sent: Wed 4/26/2017 12:17:51 AM
Subject: Re: Email note to Goodin

Me neither! One more moving piece.

Sent from my iPhone

On Apr 25, 2017, at 7:53 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Bowles, Jack" <Bowles.Jack@epa.gov>
Date: April 25, 2017 at 7:27:02 PM EDT
To: "Goodin, John" <Goodin.John@epa.gov>
Cc: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Eargle, Frances" <Eargle.Frances@epa.gov>
Subject: FW: Email note to Goodin

Hey John,

The LGAC's Protecting America's Waters Workgroup is meeting on **Wednesday, May 3rd, 4:30-5:30 ET** via teleconference. We would like you to speak to them regarding Waters of the U.S. E.O. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Best,

Jack

<LGAC-WOTUS-DraftCharge-04-21-17(3).docx>

<WaterWG-AGENDA-May3-2017.docx>

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/25/2017 11:53:21 PM
Subject: Fwd: Email note to Goodin
LGAC-WOTUS-DraftCharge-04-21-17(3).docx
ATT00001.htm
WaterWG-AGENDA-May3-2017.docx
ATT00002.htm

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Bowles, Jack" <Bowles.Jack@epa.gov>
Date: April 25, 2017 at 7:27:02 PM EDT
To: "Goodin, John" <Goodin.John@epa.gov>
Cc: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Eargle, Frances" <Eargle.Frances@epa.gov>
Subject: FW: Email note to Goodin

Hey John,

The LGAC's Protecting America's Waters Workgroup is meeting on **Wednesday, May 3rd, 4:30-5:30 ET** via teleconference. We would like you to speak to them regarding Waters of the U.S. E.O. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Best,

Jack

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Cooper, David R SES USARMY CEHQ (US)[David.R.Cooper@usace.army.mil]; Craig R SES (US) Schmauder[craig.r.schmauder.civ@mail.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Vail, Timothy R LTC USARMY HQDA ASA CW (US)[timothy.r.vail.mil@mail.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]
From: Eisenberg, Mindy
Sent: Tue 4/25/2017 10:35:53 PM
Subject: materials for Wednesday 10:00 waters meeting
WOTUS-2 Step 1 Preamble 4-25-2017.docx
draft WOTUS2 tribal info and consultation.pptx
tribal info-consultation webinars DRAFT run of show.docx

All,

Please find attached the latest version of the draft step 1 preamble, the draft tribal consultation slides [please review slide 12] and draft script for Thursday's tribal webinar. Deliberative Process / Ex. 5 **Deliberative Process / Ex. 5** There are a few items flagged with comment bubbles that we would like to discuss tomorrow at our meeting.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Orvin, Chris[Orvin.Chris@epa.gov]
From: Fields, Wanda
Sent: Tue 4/25/2017 1:04:37 PM
Subject: Executive Correspondence: AX-17-000-7867 (Suh, Rhea)
AX 17-000-7867 SUH.pdf

CITIZEN/ORIGINATOR: Suh, Rhea, et.al.

CONTROL NUMBER: AX-17-000-7867

STATUS: Pending

DUE DATE: 5/9/2017

SUBJECT: Perspective on Intention to Eliminate the Federal Safeguards Included in the 2015 Clean Water Rule

ASSIGNMENT: OWOW

Natural Resources Defense Council · Earthjustice · Sierra Club · Environment America · National Parks Conservation Association · GreenLatinos · Southern Environmental Law Center · League of United Latin American Citizens · Clean Water Action · American Rivers · National Audubon Society · League of Conservation Voters · Gulf Restoration Network · Save The River · Kentucky Waterways Alliance · Tennessee Clean Water Network · Prairie Rivers Network · Cahaba River Society · Alliance of Nurses for Healthy Environments · Healing Our Waters-Great Lakes Coalition · Voces Verdes · River Network · BlueGreen Alliance · Ohio Environmental Council · Midwest Environmental Advocates

Administrator Scott Pruitt
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

2017 APR 24 PM 12: 07
OFFICE OF THE
EXECUTIVE SECRETARIAT

April 19, 2017

Dear Administrator Pruitt:

On behalf of our millions of supporters, we write to provide our perspective on your avowed intention to eliminate the important federal safeguards included in the 2015 Clean Water Rule -- a process initiated when President Trump signed Executive Order 13,778 on February 28. We seek your commitment to carry out any such rulemaking in a way that is at least as deliberate, inclusive, and protective of vital waterways as the Clean Water Rule process was and that is based in sound science.

In contrast to the extensive and inclusive process that led to the Clean Water Rule, the administration reportedly plans a hasty rulemaking without meaningful public participation. We are dismayed by reports that the agency intends to provide very little time for stakeholder engagement before proposing to undermine the Clean Water Rule's protections and for official public comment on the proposal. And we especially fear the damage that a final rule would inflict on the nation's waterways if, as Executive Order 13,778 forecasts, it relies on a legal test that a majority of the justices on the Supreme Court rejected and that would weaken the federal rules so that they protect fewer resources than they have in several decades.

The water bodies that could be endangered by a rollback rulemaking serve numerous critical functions. Most notably, more than 117 million Americans receive drinking water from public water systems that draw supply from headwater, seasonal, or rain-dependent streams. Wetlands cover roughly 110 million acres in the continental U.S., and those waters perform numerous functions; for example, wetlands filter pollution from contaminated runoff, recharge groundwater supplies, and an acre of wetlands can store upwards of a million gallons of flood water. Regulatory changes interpreting the scope of the Clean Water Act's pollution control programs must therefore not be taken lightly.

Accordingly, EPA and the Army Corps of Engineers developed the Clean Water Rule over a period of several years, providing ample opportunities for stakeholders to evaluate the technical and legal basis for the rule and express their views. The rulemaking process started in 2011,[1] which itself followed many years of public debate about the proper scope of the Clean Water Act after the Supreme Court's ruling

in *Rapanos v. U.S.*[ii] The agencies took comment on the proposal from April 21-November 14, 2014, receiving more than 1.1 million comments. In parallel, EPA produced an extensively peer-reviewed scientific report confirming that the physical, chemical, and biological integrity of water bodies depend significantly on upstream streams, wetlands, and other waters;[iii] this process included a peer review by the independent Science Advisory Board, during which the agency received more than 130,000 comments. During the comment period on the proposed rule, EPA met with more than 400 stakeholders.[iv] The agencies then developed a rule that relied on the public input, on a strong scientific record, and on the Supreme Court's direction about the kinds of waters the Clean Water Act protects.

For any planned rulemaking, the agencies should provide ample opportunity for affected communities to express their views about any proposal and should base any rule on the Act's purpose, history, and text, and on the best scientific evidence available about water bodies' functions. Any attempt to revise or rescind the Clean Water Rule should be as inclusive of diverse stakeholder opinions as the Clean Water Rule rulemaking. Any rollback initiative should also provide as much time to evaluate rule options prior to proposal, and to receive public input on any proposal, as the Clean Water Rule process did. The planned repeal rule should be built on a scientific foundation that is as robust as the Clean Water Rule's is. Finally, any new action should ensure that water bodies would receive at least as much protection from pollution as they would under the Clean Water Rule.

Thank you in advance for your consideration of this request.

Sincerely,

Rhea Suh
President
Natural Resources Defense Council

Trip Van Noppen
President
Earthjustice

Michael Brune
Executive Director
Sierra Club

Margie Alt
Executive Director
Environment America

Theresa Pierno
President and Chief Executive Officer
National Parks Conservation Association

Mark Magaña
President and Chief Executive Officer
GreenLatinos

Frederick S. Middleton III
Executive Director
Southern Environmental Law Center

Brent Wilkes
Chief Executive Officer
League of United Latin American Citizens

Robert Wendelgass
President and Chief Executive Officer
Clean Water Action

Wm. Robert Irvin
President and Chief Executive Officer
American Rivers

David Yarnold
President and Chief Executive Officer
National Audubon Society

Gene Karpinski
President
League of Conservation Voters

Cynthia Sarthou
Executive Director
Gulf Restoration Network

Lee Willbanks
Upper St. Lawrence Riverkeeper
Executive Director, Save The River

Ward Wilson
Executive Director
Kentucky Waterways Alliance

Renee Hoyos
Executive Director
Tennessee Clean Water Network

Carol Hays
Executive Director
Prairie Rivers Network

Kimberlee Wright
Executive Director
Midwest Environmental Advocates

Beth Stewart
Executive Director
Cahaba River Society

Katie Huffling, RN, MS, CNM
Executive Director
Alliance of Nurses for Healthy Environments

Todd Ambs
Campaign Director
Healing Our Waters-Great Lakes Coalition

Adrianna Quintero
Executive Director
Voces Verdes

Nicole Silk
President
River Network

Kim Glas
Executive Director
BlueGreen Alliance

Kristy Meyer, MS
Managing Director, Natural Resources
Ohio Environmental Council

---

[i] *See* 80 Fed. Reg. 37,054, 37,102-03 (June 29, 2015) (describing consultation with states, local governments, and Indian tribes at the "onset of rule development in 2011"); Definition of "Waters of the United States" Under the Clean Water Act; Proposed Rule, 79 Fed. Reg. 22,188, 22,196 (Apr. 21, 2014) (stating that a draft of EPA's report on the connectivity of streams, wetlands, and downstream waters, which provides much of the scientific basis for the Rule, was completed in October 2011).

[ii] *See, e.g.*, EPA and Army Corps of Engineers Guidance Regarding Clean Water Act Jurisdiction after Rapanos, Notice of Availability, 72 Fed. Reg. 31,824 (June 8, 2007) (issuing immediately effective guidance for agencies' staff & soliciting public comment); EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act, Notice of Availability & Request for Comments, 76 Fed. Reg. 24,479 (May 2, 2011) (making draft guidance available for public comment without making it effective; agencies received more than 230,000 comments on this document).

[iii] *See generally* 80 Fed. Reg. 37,054, 37,061-65 (June 29, 2015) (final Clean Water Rule summary of science report findings).

[iv] *See* EPA Headquarters Proposed Rule Meetings/Events For Docket EPA-HQ-OW-2011-0880 (following the release of the proposed rule), available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13183; 2014 EPA Regional Proposed Rule Meetings/Events for Docket EPA-HQ-OW-2011-0880, available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13182; EPA Headquarters Stakeholder Meetings for Docket EPA-HQ-OW-2011-0880 Occurring After the Close of the Comment Period (November 14, 2014), available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-20870.

NATURAL RESOURCES DEFENSE COUNCIL
1152 15th Street, NW, Suite 300
Washington, DC 20005

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Environmental Protection agency
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Washington, DC 20460

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WOTUS_Rule_FOIAs_0022794

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Goodin, John
Sent: Mon 4/24/2017 6:04:37 PM
Subject: FW: HEADS UP RE: REVISIONS RE: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting

Folks-- Note especially second paragraph from Steve.

Thanks

John

From: Neugeboren, Steven
Sent: Monday, April 24, 2017 2:02 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>
Cc: Goodin, John <Goodin.John@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: HEADS UP RE: REVISIONS RE: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting
Importance: High

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Wehling, Carrie
Sent: Monday, April 24, 2017 1:04 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>
Cc: Goodin, John <Goodin.John@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting

Hey, folks. Attached is a revised draft of the WOTUS 2, step 1 preamble that we have

Attorney Client / Ex. 5

We can discuss at our meeting tomorrow, so feel free to forward to whomever might need to review, [Attorney Client / Ex. 5

Attorney Client / Ex. 5

Please let me know if a separate call before tomorrow's meeting would be useful.

Thanks.

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Spraul, Greg[Spraul.Greg@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]
From: Thomas, Latosha
Sent: Mon 4/24/2017 1:31:22 PM
Subject: RE: Call for Agenda Topics: Enviro (4.24) and States (4.26) Stakeholder Meetings
Enviro Stakeholder Meeting Agenda (ANNOTATED).docx

Hi All,

Here is an updated version of today's agenda (TPs included). There was a revision to the budget TPs. Keep in mind that these will probably change by Wednesday's states stakeholder meeting. Thanks!

From: Thomas, Latosha
Sent: Friday, April 21, 2017 5:43 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>
Subject: RE: Call for Agenda Topics: Enviro (4.24) and States (4.26) Stakeholder Meetings
Importance: High

Hi All,

Here are both versions of the agendas for the Enviro (4.24 at 12PM) and States (4.26 at 1PM) stakeholder meetings next week. Please be aware that some items came in late, but we still wanted to add them to the agendas. If you can, please send me the TPs for the items highlighted

in yellow (by 11AM on Monday for Enviro and by 12PM on Tuesday for States) before the meetings. If you can't make these deadlines, please be present to respond to/address your topics. Thanks!

Note: The budget talking points will probably be updated right before Monday's Enviro meeting.

From: Thomas, Latosha
Sent: Thursday, April 20, 2017 9:15 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Subject: RE: Call for Agenda Topics: Enviro (4.24) and States (4.26) Stakeholder Meetings

Hi All,

Just a reminder that talking points are due at COB today. Thanks!

From: Thomas, Latosha
Sent: Monday, April 17, 2017 10:16 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: Call for Agenda Topics: Enviro (4.24) and States (4.26) Stakeholder Meetings

Hi All,

We have an enviro stakeholder meeting scheduled for next Monday (4.24) and a meeting with the states next Wednesday (4.26). Below are the submitted agenda topics for each. Please send TPs by **COB Thursday**, and let me know if you have any comments on the current agenda items. Thanks!

Enviro Stakeholders Meeting Agenda

- **EPA Transition**

- **Budget Update**

- **Clean Water Rule**

States Stakeholder Meeting Agenda

- **EPA Transition**

- **Budget Update**

- **Cooperative Federalism (How is it going to be implemented by the states? Should the states be working on their priorities now?)**

•□□□□□□□□ **Status of Drinking Water Needs Survey**

•□□□□□□□□ **Proposed Status of National UIC Grants to States Funding for 2017/2018**

•□□□□□□□□ **Clean Water Rule/WOTUS (What are the plans for engaging with the states? What process will OW employ with regard to engaging the states as it implements EO 13771, Reducing Regulation and Controlling Regulatory Costs?)**

•□□□□□□□□ **Recommendations from stakeholders on rules OW should consider for repeal or revision, per EO 13777 on Enforcing the Regulatory Reform Agenda (1 Hour)**

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

Environmental Stakeholders Meeting Agenda

April 24, 2017

12-1PM

1-866-299-3188; Code: 2025640516

- **Budget Update**

FY17

Deliberative Process / Ex. 5

FY18

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- **Status of efforts to engage stakeholders on EO 13777 on Enforcing the Regulatory Reform Agenda**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- **Clean Water Rule/WOTUS**

Deliberative Process / Ex. 5

Since the E.O. was issued, EPA has taken several actions.

Deliberative Process / Ex. 5

- **Update on Steam Electric Effluent Limitations & Guidelines - next steps for Agency**

- **Water Quality Criteria for Cyanotoxins (When can we expect the final rule?)**

- **Lead & Copper Rule Update/Other SDWA Rulemaking Activities (What should our community know about?)**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- **Other SDWA Rulemaking Activities (What should our community should know about?)**
- **Latest Clean Water Action Report on Aquifer Exemptions/UIC**

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Ruf, Christine
Sent: Fri 4/21/2017 3:02:30 PM
Subject: Items of OW interest, weekly report
Weekly Report 4 14 2017.docx

Hi Benita, see below, apologies I forgot to cc you. Christine

From: Ruf, Christine
Sent: Friday, April 21, 2017 10:27 AM
To: Mike Shapiro (shapiro.mike@epa.gov) <shapiro.mike@epa.gov>
Cc: 'Lousberg.Macara@epamail.epa.gov' <Lousberg.Macara@epamail.epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Items of OW interest, weekly report

Hi Mike, Here are some items of interest to OW culled from the weekly report. They are in the order listed in the document. (Regions 1, 5, 9; OITA; OCIR; ORD; OAR)

REGION 1 (p 2, 3)

Update: Conservation Law Foundation appeals dismissal of Massachusetts stormwater suit

•□□□□□□ On April 7, the Conservation Law Foundation (CLF) filed a notice of appeal with the 1st Circuit. The appeal challenges the District Court's dismissal of a mandatory duty suit, which had sought a ruling that certain categories of stormwater were required to obtain NPDES permits.

•□□□□□□□ CLF argued that EPA's approval of TMDLs identifying these sources as contributors to violations of water quality standards requires these properties to obtain NPDES permits (i.e., "residual designation").

Deliberative Process / Ex. 5

Order on Consent Entered into to Resolve Bridgewater, MA NPDES Permit Appeal

Deliberative Process / Ex. 5

American Public Health Laboratories journal highlights methods developed by Region 1 lab to detect human sources of bacteria

Deliberative Process / Ex. 5

R5 (p 10)

Deliberative Process / Ex. 5

OITA (p18)

Last Week Highlights

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

ORD (p 32)

ORD Webinar on Nutrients

Deliberative Process / Ex. 5

OAR (p 37)

Deliberative Process / Ex. 5

R9 (p 38)

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Shapiro, Mike
Sent: Sunday, April 16, 2017 9:22 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>
Subject: FW: Weekly Reports

This is the new consolidated collection of weekly reports.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Reeder, John
Sent: Friday, April 14, 2017 2:39 PM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Knapp, Kristien <Knapp.Kristien@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Weekly Reports

Here are the Weekly Reports.

Enjoy your weekend everyone.

JReeder

Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Thomas, Latosha
Sent: Fri 4/21/2017 12:44:10 PM
Subject: RE: ECOS

Hi Benita,

I also mentioned to you that ECOS had some late additions to the agenda. Since the meeting is on Wednesday, it's possible that I can get TPs if I send out to the programs now. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Cooperative Federalism and Enforcement/Oversight:

Effect of reduced federal enforcement resources on federally-led CSO cases

Effect of a reduction in Public Water System Supervision program funding on EPA's infrastructure priorities

Update on state drinking water program oversight activities post Flint

Update on plans to develop Health Advisory Levels (HALs) and how HALs will be used to engage with states

Quick Rule and Scheduling Updates:

Schedule for EPA:

to complete its review and discuss next steps for regulating lead in drinking water

for implementing the SDWIS nationwide reporting system

for revisions to the lead and copper rule and whether there will be a health based household threshold level this year

Nutrients:

Update on any plans to develop nutrient criteria, either as Technology Limits or Water Quality Criteria

Updates on research or recommendations on WTP HAB residuals

Other:

Update on integrated water resource planning for stormwater, drinking water, and wastewater

From: Thomas, Latosha
Sent: Friday, April 21, 2017 8:33 AM
To: Lousberg, Macara <Lousberg.Macara@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: RE: ECOS

Thanks!

From: Lousberg, Macara
Sent: Thursday, April 20, 2017 5:24 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: RE: ECOS

Yes, good revisions. Thanks Benita.

From: Best-Wong, Benita
Sent: Thursday, April 20, 2017 5:02 PM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>

Subject: RE: ECOS

Hi Latosha – Thanks for asking for clarification. I confused the two executive orders. So, I figured it was probably best if I modified the list of topics you provided for each meeting – copied below. I have copied Macara to confirm that she is okay with the way I have reframed the topics related to EO13777.

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- **Budget Update**
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- Deliberative Process / Ex. 5

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Personal Phone / Ex. 6

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Subject: RE: ECOS

Hi,

So just for clarity…

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Best-Wong, Benita
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To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: Fwd: ECOS

Sent from my iPhone

Begin forwarded message:

> **From:** "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
> **Date:** April 19, 2017 at 4:34:40 PM EDT
> **To:** "Hill, Glynis" <Hill.Glynis@epa.gov>
> **Subject: Re: ECOS**
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If you're interested in hearing what rules are recommended for reg reform, it's probably best for you to attend our webinar on May 2.

On Apr 19, 2017, at 3:53 PM, Hill, Glynis <Hill.Glynis@epa.gov> wrote:

Thanks for getting back to me so quickly! So does that mean I cannot attend?

Glynis Hill – Environmental Scientist | Office of the Administrator | Office of Policy | Office of Regulatory Policy & Management

(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

From: Best-Wong, Benita
Sent: Wednesday, April 19, 2017 3:40 PM
To: Hill, Glynis <Hill.Glynis@epa.gov>
Subject: Re: ECOS

Hi Glynis - the meeting we are having with our state associations is not a public meeting to exclusively discuss the reg reform executive order. We hold quarterly meetings with our state associations. One of the agenda items is to provide an update on the executive order. This meeting was inadvertently added to the website as one of our public meetings. We're working with OP to get that meeting removed from the website.

Sorry for the confusion,

Benita

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On Apr 19, 2017, at 1:22 PM, Hill, Glynis <Hill.Glynis@epa.gov> wrote:

Good afternoon Benita:

Who can I contact to get an invite to the trade association public meeting on April 26, 2017? I left you a voice mail about the same topic, as well. Thanks in advance.

Humbly requested,

Glynis Hill – Environmental Scientist | Office of the Administrator | Office of Policy | Office of Regulatory Policy & Management

(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

To: Brown, Byron[brown.byron@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Shapiro, Mike
Sent: Fri 4/21/2017 12:34:07 PM
Subject: Upcoming Tribal Consultation Meetings on Waters of the US

Sarah and Byron,

Thank you so much for your participation in the April 19 federalism meeting for the WOTUS proposed rule. We have heard positive feedback from the participants at the meeting. We want to make sure that you have the same opportunity to participate in the agency's upcoming efforts as we initiate consultation and coordination with federally-recognized Indian tribes under Executive Order 13175. The Administrator signed the tribal consultation letter on April 20.

We have scheduled two tribal consultation informational webinars, the first on April 27, 2017, from 2-3:30pm and the second on May 18, 2017, from 1:30-3:30pm. We will be meeting in my conference room at 3233 WJC East. We anticipate that most of the tribal participants will be participating over the telephone and via the webinar and will not be attending in person. The Department of Army plans to participate in this consultation--Douglas Lamont will be attending the May 18th webinar and will send a delegate for the April 27th webinar.

Let me know if you would like any additional information.

Thanks,

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Lousberg, Macara[Lousberg.Macara@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Thomas, Latosha
Sent: Fri 4/21/2017 12:32:32 PM
Subject: RE: ECOS

Thanks!

From: Lousberg, Macara
Sent: Thursday, April 20, 2017 5:24 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: RE: ECOS

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- Deliberative Process / Ex. 5

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Personal Phone / Ex. 6

From: Thomas, Latosha
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To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: RE: ECOS

Hi,

So just for clarity…

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Glynis Hill – Environmental Scientist | Office of the Administrator | Office of Policy | Office of Regulatory Policy & Management

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(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Goodin, John
Sent: Fri 4/21/2017 12:24:20 PM
Subject: Two Requests: Tribal Webinar Meeting and Email to OA

Morning, Mike-- we've sent forward to Crystal a meeting request for you or Benita to attend the two upcoming tribal consultation webinars on April 27, 2017, from 2-3:30 PM and May 18, 2017, from 1:30-3:30 PM as we initiate consultation and coordination with federally-recognized Indian tribes on step 2 of the forthcoming WOTUS proposed rule. We are hoping that either you or Benita will be present for both webinars to give the welcoming remarks and kick-off the consultation process.

We also ask that you invite Sarah Greenwalt and Byron Brown to attend these webinars to give them the same opportunity to participate as they did for the federalism meeting this week—feel free to use the draft email below.

Doug Lamont has already confirmed for the May webinar and other Army/Corps leadership and staff are expected at both webinars.

We anticipate that the May webinar will be more heavily attended than the April meeting because tribes will have had more notice after receipt of the consultation letter. We also anticipate that the tribes will be calling in and participating via the webinar rather than in person. Thanks to Karen Gude for her help with getting the tribal consultation process underway.

Thanks again,

John

- - - - - - - - -

Hello, Sarah and Byron-- thank you so much for your participation in the April 19 federalism meeting for the WOTUS proposed rule. We have heard positive feedback from the participants at the meeting. We want to make sure that you have the same opportunity to participate in the agency's upcoming efforts as we initiate consultation and coordination with federally-recognized

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Let me know if you would like any additional information.

Thanks,

Mike

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]
From: Shapiro, Mike
Sent: Fri 4/21/2017 1:16:47 AM
Subject: OW Weekly Report
OW Weekly Report_04 21 17.docx

Attached is OW's weekly report

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Lousberg, Macara
Sent: Thur 4/20/2017 9:24:28 PM
Subject: RE: ECOS

Yes, good revisions. Thanks Benita.

From: Best-Wong, Benita
Sent: Thursday, April 20, 2017 5:02 PM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>
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Deliberative Process / Ex. 5

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

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Personal Phone / Ex. 6

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Thomas, Latosha
Sent: Thur 4/20/2017 8:52:08 PM
Subject: RE: ECOS

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

To: Goodin, John[Goodin.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rosenblum, Zoe[Rosenblum.Zoe@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Bravo, Antonio[Bravo.Antonio@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Fuld, John
Sent: Thur 4/20/2017 7:02:00 PM
Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Thanks all.

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

From: Goodin, John
Sent: Thursday, April 20, 2017 3:01 PM
To: Fuld, John <Fuld.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Rosenblum, Zoe <Rosenblum.Zoe@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Thanks, Damaris and John—I think Damaris's recommendations look good.

John

From: Fuld, John
Sent: Thursday, April 20, 2017 2:56 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Rosenblum, Zoe <Rosenblum.Zoe@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>
Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Looks good on my end …we good

From: Christensen, Damaris
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To: Fuld, John <Fuld.John@epa.gov>; Rosenblum, Zoe <Rosenblum.Zoe@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
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Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

All, thoughts on the following –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

OPA statement:

Deliberative Process / Ex. 5

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Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

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To: Rosenblum, Zoe <Rosenblum.Zoe@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

From: Rosenblum, Zoe
Sent: Thursday, April 20, 2017 1:45 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Rose / Donna / Damaris-

Do you know if we have a document soliciting public comment for the Waters of the US rulemaking?

Please see media inquiry below.

Many thanks!

From: Fuld, John
Sent: Thursday, April 20, 2017 1:36 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Rosenblum, Zoe <Rosenblum.Zoe@epa.gov>
Subject: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: April 20, 2017

OUTLET: CQ Roll Call

REPORTER: Jeremy Dillon

TOPIC: RE: WOTUS rulemaking

DEADLINE: 3:30 pm

OW PROGRAM OFFICE

PERTINENT INFORMATION:

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Deliberative Process / Ex. 5

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John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Fuld, John[Fuld.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rosenblum, Zoe[Rosenblum.Zoe@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Bravo, Antonio[Bravo.Antonio@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Goodin, John
Sent: Thur 4/20/2017 7:01:01 PM
Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

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Subject: RE: MEDIA INQUIRY -CQ Roll Call RE: WOTUS Rulemaking DL 3:30

Deliberative Process / Ex. 5

I will see if I can pull together and clear a desk statement for you guys and maybe for the front office.

Damaris

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Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: April 20, 2017

OUTLET: CQ Roll Call

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Fuld.john@epa.gov

To: Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
From: Lousberg, Macara
Sent: Thur 4/20/2017 6:41:09 PM
Subject: Notes from weekly meeting with Sarah G.
OA Weekly Agenda_Annotated_4 19 17.docx

See red text for next steps/follow up from yesterday's meeting with Mike, Benita and Sarah. If you have any questions please let me know.

Macara

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Lousberg, Macara
Sent: Thur 4/20/2017 6:35:33 PM
Subject: OW Weekly Report_04 21 17.docx
OW Weekly Report_04 21 17.docx

Mike – I've attached the draft OW weekly report for your review. I've also included some additional items below that don't rise to the level of the weekly note but that the program offices wanted you to be aware of:

•□□□□□□□□ **Council of Infrastructure Financing Authorities Meeting**: This week OW staff participated in the 29th Annual CIFA Federal Policy Conference in DC. The conference focused on developments in Congress and the Executive Branch concerning State Revolving Funds, infrastructure financing, budget and appropriations, and tax and environmental policy.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Macara

OW Weekly Report

Administrator and company, here is the OW report.

Hot Issues

Waters of the US (WOTUS) Federalism and Tribal Consultations: EPA hosted a federalism meeting on April 19 to initiate the consultation process with state and local officials and their representative associations on the rulemaking to define "waters of the U.S." Also in attendance were representatives from the Department of the Army and Army Corps of Engineers. EPA presented the two-step rulemaking approach, whereby the agencies intend to first rescind the 2015 Clean Water Rule and replace it with regulations in effect prior to that rule, and then second, to develop a new regulation to define waters of the U.S. During the presentation, EPA also provided questions for state and local governments to consider as they provide the agency with comments during this process. Comments will be due by June 19. Attendees expressed their appreciation for EPA initiating consultation and are looking forward to continuing to engage in discussions with us throughout the process.

EPA also initiated formal consultation with federally-recognized Indian tribes on April 20. The consultation period will extend through June 20.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Upcoming Public Events

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Last Week Highlights

Deliberative Process / Ex. 5

Campus Rainworks Challenge Winners: On Friday, April 21, EPA announced the winners of the fifth annual Campus RainWorks Challenge, the only national college competition to engage the next generation to design solutions for stormwater pollution using green infrastructure. Interdisciplinary Teams of undergraduate and graduate students, working with a faculty advisor, developed innovative green infrastructure designs in one of two categories, showing how managing stormwater at its source can provide benefits for both the campus community and the environment. The 2016 challenge winners are: Kansas State University (1st Place Demonstration Project Category), City of College of New York (1st Place Master Plan Category, University of Maryland (2nd Place Demonstration Project Category), University of Cincinnati (2nd Place Master Plan Category).

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Thomas, Latosha
Sent: Thur 4/20/2017 4:14:27 PM
Subject: OW Comms Duties

Hi Benita,

Here's a list of all of the things that I can think of regarding OW Comms' main duties. Also, we should probably think of who can cover some of this stuff when I'm out (May 8-17).

Latosha

Correspondence Management System

FOIA

Speeches/Talking points

WIFIA

CWR/WOTUS
Rollouts

OPA Calendar

PROTRAC

Managing LMD Contract

Stakeholder Outreach

Meetings - Senior Staff, OW Communications Meeting, PADs/Comms Meeting

Review of communications content

ORISE Mentor for Nia Duke

Rest of Communications Staff/Programs

Social Media

Gov Delivery

Media Inquiries

Web - Web Council Calls

Messaging (?)

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Frace, Sheila[Frace.Sheila@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Lape, Jeff[lape.jeff@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Mclain, Jennifer[Mclain.Jennifer@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
Cc: Lousberg, Macara[Lousberg.Macara@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Gebhardt, Jim[Gebhardt.Jim@epa.gov]
From: Gorke, Roger
Sent: Thur 4/20/2017 2:36:57 PM
Subject: WSWC Spring Meeting Read Out
WSWC DeBrief 4.2017.docx

All,

Attached is a brief summary of the WSWC meeting last week that included several specific EPA related discussions.

Let me know if you have any comments or questions.

Thanks,

Roger

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

213-244-1853

gorke.roger@epa.gov

Western States Water Council (WSWC)
Spring Meeting
Nebraska City, NE
April 12-14, 2017
Read Out

1) South West Oklahoma NDPR Drought Collaboration – On Wednesday April 12, the WSWC, WestFAST, and the NDRP hosted a session with stakeholders from Altus, OK and surrounding areas to discuss building long-term resilience to drought in SW OK. In attendance were representatives from several others states including WY, NE, KS, MT and others.

   The discussion centered around how to capitalize on having a willing and engaged local communities working together and bring federal and state resources (both technical and financial) to bear to support long-term drought resilience work identified by the locals. Representatives from MT provided input on the NDRP Demonstration work underway in the Upper MO River Watershed and what lessons could be learned from their efforts and be seen as a resource for OK. There are a number of specific issues that relate directly to EPA programs, including, but not limited to, aquifer storage and recovery, water recycling and reuse, conservation, and water quality issues i.e. THMs. A key realization and statement from the western states is that drought resilience work serves as a microcosm of robust and sustainable management of water resources and should not be seen as "just for drought."

   In terms of next steps, the SW OK representatives have proposed a meeting in early June in Altus, OK to discuss specific next steps. A critical aspect of this effort is to ensure that there is robust communication and collaboration between the locals on the ground, the state of OK (OWRB and DEQ), and the federal family.

2) Ground water (GW) protection in Nebraska: Usually, the host state for the WSWC provides an in-depth briefing of water issues in the state. Nebraska Department of Environmental Quality presented on how the state protects GW quality. GW provides the vast majority of the water for the state. NE sits on top of one of the most recharged areas of the Ogallala aquifer. With such high GW recharge rates, nitrate contamination can be a significant issue. Many areas across the state were seeing nitrate levels above drinking water standards. To combat this, the state partnered with local Conservation Districts that work directly with farmers to help educate them on how best to protect GW quality. A number of farmers participated in a study comparing crop yields between acreage that had fertilizer applied vs those that did not. The fertilizer free acreage yielded over 30% more than the fertilized areas so much so that the farmers that were fertilizer wanted out of the study so they could quit using fertilizer and save money.

   Working with EPA Region 7 staff, NE used 319 funds to implement best practices to protect public health from non-point source pollution. Moreover, several of the other states asked if NE could be a resource for them as they deal with GW contamination issues, particularly OK as we begin work in SW OK on long-term drought resilience and CA as they implement their Water Action Plan.

3) WGA – WOTUS and beyond: Ward Scott is a new member of the Western Governors' Association (WGA) staff focusing on water resource issues. Ward approached me about how WGA could be used as a resource for helping build collaboration between EPA and the western states. He brought this up in the context of the WOTUS rule rewrite but was also specifically interested in how he could help facilitate engagement with the western states on any number of issues, not just WOTUS.

4) Water Finance Center: The Finance Center participated both in the SW OK discussion, as well as providing an update for the WSWC Water Quality Committee. The states were particularly interested in the review of western states related to use of the SRFs for drought work as well as WIFIA and the possibilities of using WIFIA in conjunction with the SRFs.

For more information and/or clarification, please contact Roger Gorke, gorke.roger@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Spraul, Greg[Spraul.Greg@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]
From: Thomas, Latosha
Sent: Thur 4/20/2017 1:15:28 PM
Subject: RE: Call for Agenda Topics: Enviro (4.24) and States (4.26) Stakeholder Meetings

Hi All,

Just a reminder that talking points are due at COB today. Thanks!

From: Thomas, Latosha
Sent: Monday, April 17, 2017 10:16 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: Call for Agenda Topics: Enviro (4.24) and States (4.26) Stakeholder Meetings

Hi All,

We have an enviro stakeholder meeting scheduled for next Monday (4.24) and a meeting with the states next Wednesday (4.26). Below are the submitted agenda topics for each. Please send TPs by **COB Thursday**, and let me know if you have any comments on the current agenda items. Thanks!

Enviro Stakeholders Meeting Agenda

•□□□□□□□□ **EPA Transition**

•□□□□□□□□ **Budget Update**

•□□□□□□□□ **Clean Water Rule**

<u>States Stakeholder Meeting Agenda</u>

•□□□□□□□□ **EPA Transition**

•□□□□□□□□ **Budget Update**

•□□□□□□□□ **Cooperative Federalism (How is it going to be implemented by the states? Should the states be working on their priorities now?)**

•□□□□□□□□ **Status of Drinking Water Needs Survey**

•□□□□□□□□ **Proposed Status of National UIC Grants to States Funding for 2017/2018**

•□□□□□□□□ **Clean Water Rule/WOTUS (What are the plans for engaging with the states? What process will OW employ with regard to engaging the states as it implements EO 13771, Reducing Regulation and Controlling Regulatory Costs?)**

Deliberative Process / Ex. 5

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Devine, Jon
Sent: Wed 4/19/2017 5:30:58 PM
Subject: Letter to Administrator Pruitt concerning rulemaking about Clean Water Rule
Letter to Administrator Pruitt re clean water rollback rulemaking process Final.pdf

Dear Mr. Shapiro, Ms. Best-Wong, and Mr. Goodin –

Please find attached a letter from 26 organizations concerned about EPA's planned reconsideration of the Clean Water Rule. We will mail this as well, but I would appreciate it if you can pass it on to others at EPA involved in this rulemaking, including in the Administrator's office.

Thank you,

Jon Devine

Senior Attorney

Natural Resources Defense Council

1152 15th Street NW, Suite 300

Washington, DC 20005

T 202.289.2361
F 202.289.1060
M 202.236.1605
jdevine@nrdc.org
@NRDCWater
NRDC.ORG

Admitted in Massachusetts and the District of Columbia only

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Natural Resources Defense Council · Earthjustice · Sierra Club · Environment America · National Parks Conservation Association · GreenLatinos · Southern Environmental Law Center · League of United Latin American Citizens · Clean Water Action · American Rivers · National Audubon Society · League of Conservation Voters · Gulf Restoration Network · Save The River · Kentucky Waterways Alliance · Tennessee Clean Water Network · Prairie Rivers Network · Cahaba River Society · Alliance of Nurses for Healthy Environments · Healing Our Waters-Great Lakes Coalition · Voces Verdes · River Network · BlueGreen Alliance · Ohio Environmental Council · Midwest Environmental Advocates

Administrator Scott Pruitt
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

April 19, 2017

Dear Administrator Pruitt:

On behalf of our millions of supporters, we write to provide our perspective on your avowed intention to eliminate the important federal safeguards included in the 2015 Clean Water Rule -- a process initiated when President Trump signed Executive Order 13,778 on February 28. We seek your commitment to carry out any such rulemaking in a way that is at least as deliberate, inclusive, and protective of vital waterways as the Clean Water Rule process was and that is based in sound science.

In contrast to the extensive and inclusive process that led to the Clean Water Rule, the administration reportedly plans a hasty rulemaking without meaningful public participation. We are dismayed by reports that the agency intends to provide very little time for stakeholder engagement before proposing to undermine the Clean Water Rule's protections and for official public comment on the proposal. And we especially fear the damage that a final rule would inflict on the nation's waterways if, as Executive Order 13,778 forecasts, it relies on a legal test that a majority of the justices on the Supreme Court rejected and that would weaken the federal rules so that they protect fewer resources than they have in several decades.

The water bodies that could be endangered by a rollback rulemaking serve numerous critical functions. Most notably, more than 117 million Americans receive drinking water from public water systems that draw supply from headwater, seasonal, or rain-dependent streams. Wetlands cover roughly 110 million acres in the continental U.S., and those waters perform numerous functions; for example, wetlands filter pollution from contaminated runoff, recharge groundwater supplies, and an acre of wetlands can store upwards of a million gallons of flood water. Regulatory changes interpreting the scope of the Clean Water Act's pollution control programs must therefore not be taken lightly.

Accordingly, EPA and the Army Corps of Engineers developed the Clean Water Rule over a period of several years, providing ample opportunities for stakeholders to evaluate the technical and legal basis for the rule and express their views. The rulemaking process started in 2011,[i] which itself followed many years of public debate about the proper scope of the Clean Water Act after the Supreme Court's ruling

in *Rapanos v. U.S.*[ii] The agencies took comment on the proposal from April 21-November 14, 2014, receiving more than 1.1 million comments. In parallel, EPA produced an extensively peer-reviewed scientific report confirming that the physical, chemical, and biological integrity of water bodies depend significantly on upstream streams, wetlands, and other waters;[iii] this process included a peer review by the independent Science Advisory Board, during which the agency received more than 130,000 comments. During the comment period on the proposed rule, EPA met with more than 400 stakeholders.[iv] The agencies then developed a rule that relied on the public input, on a strong scientific record, and on the Supreme Court's direction about the kinds of waters the Clean Water Act protects.

For any planned rulemaking, the agencies should provide ample opportunity for affected communities to express their views about any proposal and should base any rule on the Act's purpose, history, and text, and on the best scientific evidence available about water bodies' functions. Any attempt to revise or rescind the Clean Water Rule should be as inclusive of diverse stakeholder opinions as the Clean Water Rule rulemaking. Any rollback initiative should also provide as much time to evaluate rule options prior to proposal, and to receive public input on any proposal, as the Clean Water Rule process did. The planned repeal rule should be built on a scientific foundation that is as robust as the Clean Water Rule's is. Finally, any new action should ensure that water bodies would receive at least as much protection from pollution as they would under the Clean Water Rule.

Thank you in advance for your consideration of this request.

Sincerely,

Rhea Suh
President
Natural Resources Defense Council

Trip Van Noppen
President
Earthjustice

Michael Brune
Executive Director
Sierra Club

Margie Alt
Executive Director
Environment America

Theresa Pierno
President and Chief Executive Officer
National Parks Conservation Association

Mark Magaña
President and Chief Executive Officer
GreenLatinos

Frederick S. Middleton III
Executive Director
Southern Environmental Law Center

Brent Wilkes
Chief Executive Officer
League of United Latin American Citizens

Robert Wendelgass
President and Chief Executive Officer
Clean Water Action

Wm. Robert Irvin
President and Chief Executive Officer
American Rivers

David Yarnold
President and Chief Executive Officer
National Audubon Society

Gene Karpinski
President
League of Conservation Voters

Cynthia Sarthou
Executive Director
Gulf Restoration Network

Lee Willbanks
Upper St. Lawrence Riverkeeper
Executive Director, Save The River

Ward Wilson
Executive Director
Kentucky Waterways Alliance

Renee Hoyos
Executive Director
Tennessee Clean Water Network

Carol Hays
Executive Director
Prairie Rivers Network

Kimberlee Wright
Executive Director
Midwest Environmental Advocates

Beth Stewart
Executive Director
Cahaba River Society

Katie Huffling, RN, MS, CNM
Executive Director
Alliance of Nurses for Healthy Environments

Todd Ambs
Campaign Director
Healing Our Waters-Great Lakes Coalition

Adrianna Quintero
Executive Director
Voces Verdes

Nicole Silk
President
River Network

Kim Glas
Executive Director
BlueGreen Alliance

Kristy Meyer, MS
Managing Director, Natural Resources
Ohio Environmental Council

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[i] *See* 80 Fed. Reg. 37,054, 37,102-03 (June 29, 2015) (describing consultation with states, local governments, and Indian tribes at the "onset of rule development in 2011"); Definition of "Waters of the United States" Under the Clean Water Act; Proposed Rule, 79 Fed. Reg. 22,188, 22,196 (Apr. 21, 2014) (stating that a draft of EPA's report on the connectivity of streams, wetlands, and downstream waters, which provides much of the scientific basis for the Rule, was completed in October 2011).

[ii] *See, e.g.*, EPA and Army Corps of Engineers Guidance Regarding Clean Water Act Jurisdiction after Rapanos, Notice of Availability, 72 Fed. Reg. 31,824 (June 8, 2007) (issuing immediately effective guidance for agencies' staff & soliciting public comment); EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act, Notice of Availability & Request for Comments, 76 Fed. Reg. 24,479 (May 2, 2011) (making draft guidance available for public comment without making it effective; agencies received more than 230,000 comments on this document).

[iii] *See generally* 80 Fed. Reg. 37,054, 37,061-65 (June 29, 2015) (final Clean Water Rule summary of science report findings).

[iv] *See* EPA Headquarters Proposed Rule Meetings/Events For Docket EPA-HQ-OW-2011-0880 (following the release of the proposed rule), available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13183; 2014 EPA Regional Proposed Rule Meetings/Events for Docket EPA-HQ-OW-2011-0880, available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13182; EPA Headquarters Stakeholder Meetings for Docket EPA-HQ-OW-2011-0880 Occurring After the Close of the Comment Period (November 14, 2014), available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-20870.

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Personal Email / Ex. 6
From: allison.mallick@bakerbotts.com
Sent: Wed 4/19/2017 1:00:18 PM
Subject: RE: Invitation to speak on DC Bar panel on WOTUS Rule

Hi Benita,

Thanks so much for following up. I appreciate your efforts to reach out to your colleagues and look forward to hearing from you later this week.

Best,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA

BAKER BOTTS

From: Best-Wong, Benita [mailto:Best-Wong.Benita@epa.gov]
Sent: Wednesday, April 19, 2017 8:46 AM
To: Mallick, Allison Watkins
Cc: Personal Email / Ex. 6
Subject: RE: Invitation to speak on DC Bar panel on WOTUS Rule

Hi Alison – I received your voice message. I am not available to participate on the panel. I am checking with others on their availability but have been unable to get a firm commitment since many are out of the office on spring break. I hope to have a response to you before the end of week.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: allison.mallick@bakerbotts.com [mailto:allison.mallick@bakerbotts.com]
Sent: Monday, April 10, 2017 10:44 AM

To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Personal Email / Ex. 6 allison.mallick@bakerbotts.com
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

We plan to focus on what the future has in store for the WOTUS Rule reconsideration, along with a Rapanos "refresher" in light of the Administration's reference to Justice Scalia's proposed test for determining jurisdictional waters. The panel will address WOTUS from diverse perspectives, and we have secured the following speakers:

- Steve Samuels, recently retired from DOJ ENRD
- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition
- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

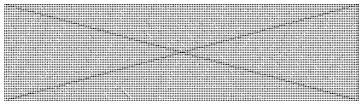
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



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To: Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Neugeboren, Steven
Sent: Wed 4/19/2017 12:40:23 PM
Subject: Re: Invitation to speak on DC Bar panel on WOTUS Rule

Benita - I'm inclined to participate and would like to mention briefly to the group at this morning's meeting

Sent from my iPhone
Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

On Apr 14, 2017, at 9:11 AM, Wehling, Carrie <Wehling.Carrie@epa.gov> wrote:

Thanks, Benita. We'll discuss and let you know next week after Steve is back.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Best-Wong, Benita
Sent: Tuesday, April 11, 2017 2:56 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Subject: Fwd: Invitation to speak on DC Bar panel on WOTUS Rule

Steve/Carrie,

Are you interested in participating on this panel? If so, I can let Allison know that someone is available. I have no takers in OW.

Thanks,

Benita

Sent from my iPhone

Begin forwarded message:

From: <allison.mallick@bakerbotts.com>
Date: April 10, 2017 at 10:44:04 AM EDT
To: <Best-Wong.benita@Epa.gov>
Cc: Personal Email / Ex. 6 <allison.mallick@bakerbotts.com>
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

We plan to focus on what the future has in store for the WOTUS Rule reconsideration, along with a Rapanos "refresher" in light of the Administration's reference to Justice Scalia's proposed test for determining jurisdictional waters. The panel will address WOTUS from diverse perspectives, and we have secured the following speakers:

- Steve Samuels, recently retired from DOJ ENRD
- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy

Coalition

- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

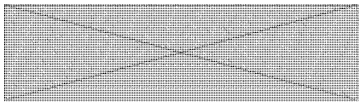
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



<image001.png><image002.png><image003.png><image004.png><image005.png>

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The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Lousberg, Macara
Sent: Tue 4/18/2017 5:53:13 PM
Subject: FW: CMS OW 17-000-7252 WOTUS created
WOTUS Federalism_04-10-17.pdf

From: Jones-Coleman, Diane
Sent: Monday, April 10, 2017 11:42 AM
To: Ruf, Christine <Ruf.Christine@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: RE: CMS OW 17-000-7252 WOTUS created

Signed letter attached.

Diane

Diane C. Coleman

OW Correspondence Team Leader
(202) 564-0379
(202) 564-0500 FAX
E-mail: Jones-Coleman.Diane@epa.gov

From: Ruf, Christine
Sent: Friday, April 07, 2017 7:57 AM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;

Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>
Subject: CMS OW 17-000-7252 WOTUS created

Good morning John, see below. Christine

Christine Ruf

Associate Director, Water Policy Staff

Office of Water US EPA 20460

202.566.1220

http://water.epa.gov
´¯`·.¸¸.·´¯`·.´¯`·.¸¸.·´¯`·.¸ ><((((º>

From: Jones-Coleman, Diane
Sent: Friday, April 07, 2017 7:48 AM
To: Lousberg, Macara <Lousberg.Macara@epa.gov>; WigginsLewis, Miriam <WigginsLewis.Miriam@epa.gov>
Cc: Ruf, Christine <Ruf.Christine@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>
Subject: RE: ACTION: create CMS for Federalism invite letter

Good morning all,

A CMS assignment (OW-17-000-7252) has been created re WOTUS Federalism and forwarded to OEX this morning. Cynthia Gaines is aware.

From: Hanson, Andrew
Sent: Thursday, April 06, 2017 10:08 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: WOTUS letter - signature process

Hi John,

Please keep in mind that the scanned digital version we (OCIR) send to our targeted Big 10 reps -- attached to an electronic scheduler -- will be the primary (most effective and expedient) means of ensuring the invitation letter gets to the right intergov association participants, incl. the water association reps. The greeting should be "Dear Intergovernmental Association Colleague".

The signed/mailed hard copy letters referred to below will be, as a practical matter, a superfluous part of the actual notification process.

EOn Apr 6, 2017, at 5:41 PM, Goodin, John <Goodin.John@epa.gov> wrote:

> Folks—below is where the process stands for sending out the Federalism invite letter tomorrow.
>
> Jack—Brian Hope indicated he'd circulate the pdf since you'll want to send digitally as well. He also mentioned that Lincoln said the Administrator may have thoughts on the recipient list (now dropped from the letter itself).

Andrew and Damaris are taking a first cut at drafting presentation materials for the 19th, including **Deliberative Process / Ex. 5**

Thanks

John

From: Knapp, Kristien
Sent: Thursday, April 06, 2017 5:28 PM
To: Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: WOTUS letter - signature process

Because we all have a part to play and this is urgent, I am setting out the plan we've all just talked about for getting the WOTUS letter signed tomorrow morning.

1. Tonight or first thing tomorrow morning, OW will create a control in CMS for the letter, and then forward to OEX.

2. At some point tonight or tomorrow morning, Lincoln will send us all a final version of the letter, once it has been approved by the Administrator.

3. Once we have the final letter, OEX (Brian and Cynthia) will prepare the letter for the Administrator's signature.

4. OEX will deliver the letters to Susan Burden, who will take them to the Administrator to sign.

5. Once signed, Susan will PDF, and send to Lincoln for OPA purposes.

6. Susan will return the signed letters to OEX for recordkeeping, close out, and mailing.

Lincoln, please keep us all posted on your end, especially if you have timing needs so that

we can help you meet them. Susan Burden will be your main point of contact in the Administrator's Office tomorrow. She will make sure this gets signed and follows all the necessary process points.

Please flag any missing points or questions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 10, 2017

THE ADMINISTRATOR

Dear Intergovernmental Association Colleague:

I am writing to solicit your input and wisdom on a forthcoming proposal to rescind and revise the definition of waters of the United States (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)).

This action follows the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The order states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of Congress and the States under the Constitution. It also directs the U.S. Environmental Protection Agency and the Department of the Army to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with the law. Further, the order directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Consulting with state and local government officials, or their representative national organizations, is a priority to both myself and President Trump. We believe this is an important step in the process prior to proposing regulations that may have implications on federalism as defined by the EPA's policy for implementing the order.

We greatly look forward to the opportunity to sit at the table with our state and local partners from across the country to discuss the rule and develop an approach to address this significant issue while keeping the States at the forefront of our mission.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the 6th Circuit stay of that rule, has been the law in place since 1986, and thus maintains the status quo, and 2) promulgation of a revised definition of waters of the U.S. consistent with direction in the February 28, 2017, E.O. At the upcoming meeting, the EPA will provide brief background information on our process, and you will have the opportunity to provide input, particularly with regard to the charge in the E.O. You and your organizations' members are vital to this process and may also provide written comments after the meeting. I am hopeful you will be able to attend this important discussion and look forward to hearing your thoughts.

Internet Address (URL) • http://www.epa.gov
Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

The meeting will be on April 19, 2017, from 2:00 – 4:00 pm EDT in Room 3233 of the William Jefferson Clinton East Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. The entrance to the Clinton East (formerly EPA East) building is near the intersection of 12th and Constitution.

Please let us know if you will be able to attend by contacting Andrew Hanson in the EPA's Office of Congressional and Intergovernmental Relations at hanson.andrew@epa.gov or (202) 564-3664. If you have questions regarding the rule, you may contact Donna Downing of the Office of Wetlands, Oceans and Watersheds at downing.donna@epa.gov or (202) 566-1367.

Respectfully yours,

E. Scott Pruitt

cc: Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works

From: Balasa, Kate
Location: Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Waters of the U.S. Rulemaking Hot Issue Call
Start Date/Time: Thur 4/20/2017 7:30:00 PM
End Date/Time: Thur 4/20/2017 8:30:00 PM
WDD Call - 2017 April 20 - WOTUS-2 Update v2.docx

Purpose: to update the WDDs on the status and current process for developing a proposed rule to revise/replace the existing definition of waters of the US.

Hot Topics Call

Waters of the U.S. Rulemaking

April 20, 2017

2:30-3:30pm Central, 3:30-4:30pm Eastern

Call in number: Nonresponsive Conference Code/ Ex. 6

2:00 – 2:10	**Roll Call**	Regions/HQ Offices
2:10 – 2:30	**Background and Presentation**	Mindy Eisenberg, Donna Downing
2:30-2:45	**Discussion Questions**	Mindy Eisenberg/All

From: Penman, Crystal
Location: 3219A WJCE
Importance: Normal
Subject: Pre-brief WOTUS Federalism Meeting
Start Date/Time: Mon 4/17/2017 7:00:00 PM
End Date/Time: Mon 4/17/2017 7:30:00 PM

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Shapiro, Mike
Sent: Mon 4/17/2017 1:21:40 AM
Subject: FW: Weekly Reports
Weekly Report 4 14 2017.docx

This is the new consolidated collection of weekly reports.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Reeder, John
Sent: Friday, April 14, 2017 2:39 PM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Knapp, Kristien <Knapp.Kristien@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Weekly Reports

Here are the Weekly Reports.

Enjoy your weekend everyone.

JReeder

202 564 6082 (direct)

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Shapiro, Mike
Sent: Mon 4/17/2017 12:22:50 AM
Subject: Fwd: WOTUS Mtg on 19th

I'm just catching up to this email. What's the answer to the press question?

Mike

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

Begin forwarded message:

From: "Lyons, Troy" <lyons.troy@epa.gov>
Date: April 13, 2017 at 12:42:55 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Cc: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Subject: Re: WOTUS Mtg on 19th

Was not aware of this. Can find out more

Sent from my iPhone

On Apr 13, 2017, at 12:37 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Mike,

The is the federalism meeting open to the press? I would say no, but want to be sure.

Troy, have you been looped in on this? I've been told OCIR facilitates this meeting. Let me know if we need to discuss.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: Personal Phone / Ex. 6

Greenwalt.Sarah@epa.gov

From: Bowman, Liz
Sent: Thursday, April 13, 2017 12:27 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: WOTUS Mtg on 19th

I am getting a lot of press interest in this meeting; is it going to be open to the press? I would assume yes…also, we may need a bigger room?

Liz Bowman

U.S. Environmental Protection Agency (EPA)

Deputy Associate Administrator for Public Affairs

Office: 202-564-3293

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Wehling, Carrie
Sent: Fri 4/14/2017 1:11:40 PM
Subject: RE: Invitation to speak on DC Bar panel on WOTUS Rule

Thanks, Benita. We'll discuss and let you know next week after Steve is back.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Best-Wong, Benita
Sent: Tuesday, April 11, 2017 2:56 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Fwd: Invitation to speak on DC Bar panel on WOTUS Rule

Steve/Carrie,

Are you interested in participating on this panel? If so, I can let Allison know that someone is available. I have no takers in OW.

Thanks,

Benita

Sent from my iPhone

Begin forwarded message:

From: <allison.mallick@bakerbotts.com>
Date: April 10, 2017 at 10:44:04 AM EDT
To: <Best-Wong.benita@Epa.gov>
Cc: Personal Email / Ex. 6, <allison.mallick@bakerbotts.com>
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

We plan to focus on what the future has in store for the WOTUS Rule reconsideration, along with a Rapanos "refresher" in light of the Administration's reference to Justice Scalia's proposed test for determining jurisdictional waters. The panel will address WOTUS from diverse perspectives, and we have secured the following speakers:

- Steve Samuels, recently retired from DOJ ENRD
- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition
- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

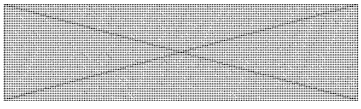
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



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than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Shapiro, Mike
Sent: Fri 4/14/2017 2:33:27 AM
Subject: Office of Water Weekly Report
OW Weekly Report_041317.docx

The Office of Water Weekly Report is attached.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Reid, Darren[Reid.Darren@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]
From: Campbell, Ann
Sent: Thur 4/13/2017 7:17:06 PM
Subject: Biweekly agenda with Sarah
OA Biweekly Agenda_Annotated_041317.docx
ATT00001.htm

All, I appreciate your input into the development of the agenda for today's general between Mike, Benita and Sarah. I thought it might be helpful to send you the agenda so you know what was discussed/teed up. I will send out follow-up/notes soon.

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Edwards, Crystal[Edwards.Crystal@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Campbell, Ann
Sent: Wed 4/12/2017 8:24:13 PM
Subject: FOR YOUR REVIEW: Agenda for Biweekly with Sarah
OA Biweekly Agenda_Annotated_041317.docx

Mike, as discussed, please find attached the agenda for the biweekly with Sarah tomorrow for your review.

Ann

To: Ruf, Christine[Ruf.Christine@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Thomas, Latosha
Sent: Wed 4/12/2017 1:40:10 PM
Subject: Re: URGENT Fwd: WOTUS plans -- E&E News

Thanks!

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)
(202) 568-0851 (cell)
thomas.latosha@epa.gov

On Apr 12, 2017, at 9:37 AM, Ruf, Christine <Ruf.Christine@epa.gov> wrote:

Mindy Eisenberg, Wetlands went.

From: Thomas, Latosha
Sent: Wednesday, April 12, 2017 9:37 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: URGENT Fwd: WOTUS plans -- E&E News
Importance: High

Hi!

Do any of you know who spoke at ASWM yesterday? OPA is looking for an answer ASAP! Thanks!

From: Valentine, Julia
Sent: Wednesday, April 12, 2017 9:34 AM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: TOSHA URGENT Fwd: WOTUS plans -- E&E News

Good morning, Tosha,

Are you able to chase this down right now? Please and thank you!

Julia P. Valentine

Office of Media Relations

202.564.2663

Sent from USEPA iPhone

Begin forwarded message:

From: "Bowman, Liz" <Bowman.Liz@epa.gov>
Date: April 12, 2017 at 9:26:44 AM EDT
To: "Valentine, Julia" <Valentine.Julia@epa.gov>
Cc: "Freire, JP" <Freire.JP@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>
Subject: FW: WOTUS plans -- E&E News

Please figure out went to this meeting and let us know as soon as possible. We need to know what they said and why they said it, so that we can respond. Thank you – Liz

From: Ariel Wittenberg [mailto:awittenberg@eenews.net]
Sent: Wednesday, April 12, 2017 8:20 AM
To: Press <Press@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: WOTUS plans -- E&E News

Hi John and Nancy,

Was hoping to confirm something I've been hearing from a few people that someone from the EPA spoke at a meeting of the Association of State Wetland Managers yesterday and discussed plans to repeal and revise WOTUS. What I've heard is that someone from EPA Headquarters (It was scheduled to be Benita Best-Wong but someone else came instead) said that the EPA intends to hold two separate rulemaking processes to fulfill President Trump's Executive Order. The first would issue a proposal to rescind WOTUS and replace it with the 1986 regulations. The second would begin a new rulemaking to issue a new definition of "Waters of the U.S.". I was hoping you could please confirm this and also tell me who it was that replaced Benita at the meeting. Also, any further comment would be appreciated. My deadline is 11:30 today,

Thanks,

Ariel

Ariel Wittenberg

E&E News reporter

awittenberg@eenews.net

202-737-4557

@arielwittenberg

E&E NEWS

122 C Street NW 7th Floor Washington, DC 20001

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Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM, E&ETV

To: Thomas, Latosha[Thomas.Latosha@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Ruf, Christine
Sent: Wed 4/12/2017 1:37:31 PM
Subject: RE: URGENT Fwd: WOTUS plans -- E&E News

Mindy Eisenberg, Wetlands went.

From: Thomas, Latosha
Sent: Wednesday, April 12, 2017 9:37 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
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Office of Media Relations

202.564.2663

Sent from USEPA iPhone

Begin forwarded message:

From: "Bowman, Liz" <Bowman.Liz@epa.gov>
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To: "Valentine, Julia" <Valentine.Julia@epa.gov>
Cc: "Freire, JP" <Freire.JP@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>
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Ariel Wittenberg

E&E News reporter

awittenberg@eenews.net

202-737-4557

@arielwittenberg

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To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Thomas, Latosha
Sent: Wed 4/12/2017 1:36:47 PM
Subject: URGENT Fwd: WOTUS plans -- E&E News

Hi!

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From: Valentine, Julia
Sent: Wednesday, April 12, 2017 9:34 AM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: TOSHA URGENT Fwd: WOTUS plans -- E&E News

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Julia P. Valentine

Office of Media Relations

202.564.2663

Sent from USEPA iPhone

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From: "Bowman, Liz" <Bowman.Liz@epa.gov>
Date: April 12, 2017 at 9:26:44 AM EDT
To: "Valentine, Julia" <Valentine.Julia@epa.gov>
Cc: "Freire, JP" <Freire.JP@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Fotouhi,

David" <fotouhi.david@epa.gov>
Subject: FW: WOTUS plans -- E&E News

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Sent: Wednesday, April 12, 2017 8:20 AM
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Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>
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Ariel

Ariel Wittenberg

E&E News reporter

awittenberg@eenews.net

202-737-4557

@arielwittenberg

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Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM, E&ETV

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Shapiro, Mike
Sent: Wed 4/12/2017 1:36:39 AM
Subject: RE: For Review - draft materials for 10:00 WOTUS

Mindy,

Thanks to you and the team for getting this together. Since Sarah asked to get a copy of any papers to her tonight, so I will forward these to her now.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Eisenberg, Mindy
Sent: Tuesday, April 11, 2017 7:14 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: For Review - draft materials for 10:00 WOTUS

Mike and Benita,

Sorry for the late hour. Attached are the latest drafts of the step 1 rule and comms/outreach considerations. We plan to discuss both during the meeting tomorrow, as well as touch on the draft step 1 preamble that we're not quite ready to hand out. Please let me know if you have any comments or concerns, and we will circulate updated versions to the invitees before the meeting.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/11/2017 11:13:48 PM
Subject: For Review - draft materials for 10:00 WOTUS
Step 1 Rule Draft - 4-11-2017.docx
WOTUS2 Comms One-Pager 4-11-17.docx

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Sorry for the late hour. Attached are the latest drafts of the step 1 rule and comms/outreach considerations. We plan to discuss both during the meeting tomorrow, as well as touch on the draft step 1 preamble that we're not quite ready to hand out. Please let me know if you have any comments or concerns, and we will circulate updated versions to the invitees before the meeting.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

AGENDA

WATER QUALITY COMMITTEE MEETING
Lied Lodge & Conference Center
Nebraska City, Nebraska
April 13, 2017

Call to Order at: 1:30 pm (Central Time) Room: Rosenow C&D
Conducting: Kent Woodmansey, Chair

TAB

1. **Welcome and Introductions**

2. **Approval of Minutes**

C 3. **Sunsetting Position - #364**
Regarding the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund

M a. WSWC Support Letters

N 4. **Discussion: EPA Tribal Baseline Water Quality Standards**

a. WSWC Comment Letter – Michelle Bushman

5. **Discussion: Waters of the United States – Now What?**

6. **EPA Update** – Roger Gorke

a. Office of Water Leadership Changes
b. Budget Outlook
c. Future Priorities
d. EPA Infrastructure Finance Center

7. **Gold King Mine Update and Abandoned Mine Regulation & Legislation** –
Dennis McQuillan, Chief Scientist, New Mexico
Skip Feeney, Mine Impacted Stream Expert, Colorado Water Quality Control Division
Walt Baker, Director, Utah Division of Water Quality

8. **National Academies of Sciences Proceedings on Flowback and Produced Waters** –
Michelle Bushman

I 9. **FY2016-2017 Committee Work Plan** – Kent Woodmansey

XYZ 10. **Sunsetting Positions for 2017 Summer Meeting - #369-370**

11. **Other Matters**

To: Bennett, Brittany[bennett.brittany@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Hanson, Andrew
Sent: Mon 4/10/2017 6:15:26 PM
Subject: FW: WOTUS Federalism Meeting

Hi Brittany –

Considering the problems we've seen first-hand with changing BUILDINGS after initial information is sent (re-herding people), not to mention the fact that this issue was raised weeks ago, I'm inclined to agree with Damaris (below). Plus, as previously noted, we're likely to get bumped from 3530, as it is DA Mike Flynn's conference room and they bring people down there – scheduled and otherwise – throughout the day. Again, we're expecting roughly 15 association reps, tops.

Are the large conference rooms on the FIRST FLOOR, mere steps from the entrance at 1201 Constitution Ave, usable?

From: Christensen, Damaris
Sent: Monday, April 10, 2017 2:01 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>
Subject: Fwd: WOTUS Federalism Meeting

Just FYI although I'm recommending sticking to what we sent.

Damaris

Sent from my iPhone

Begin forwarded message:

> **From:** "Bennett, Brittany" <bennett.brittany@epa.gov>
> **Date:** April 10, 2017 at 1:45:30 PM EDT
> **To:** "Downing, Donna" <Downing.Donna@epa.gov>, "Eisenberg, Mindy"

<Eisenberg.Mindy@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: RE: WOTUS Federalism Meeting

Hi All – I have room 3530N (the large conference room) reserved on 4/19 from 2-4pm.

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: **Deliberative Process / Ex. 5**
allison.mallick@bakerbotts.com[allison.mallick@bakerbotts.com]
From: allison.mallick@bakerbotts.com
Sent: Mon 4/10/2017 2:44:04 PM
Subject: Invitation to speak on DC Bar panel on WOTUS Rule
removed.txt

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

We plan to focus on what the future has in store for the WOTUS Rule reconsideration, along with a Rapanos "refresher" in light of the Administration's reference to Justice Scalia's proposed test for determining jurisdictional waters. The panel will address WOTUS from diverse perspectives, and we have secured the following speakers:

- Steve Samuels, recently retired from DOJ ENRD
- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition
- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

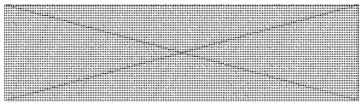
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



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To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Goodin, John
Sent: Fri 4/7/2017 9:40:21 PM
Subject: FW: Monday opportunity to talk about WOTUS schedule considerations

Mike— just noticing you are scheduled to be out all Monday. Mindy is out after 330p Monday and presenting for Benita at ASWM for the day Tuesday. Although there is much value in having the conversation with Sarah sooner rather than later, we could seek to have it Wednesday to take advantage of both you and Mindy, in addition to the rest of the group.

Let me know if you'd like me to respond (and how) or if you prefer to respond directly.

Thanks

John

From: Greenwalt, Sarah
Sent: Friday, April 07, 2017 5:03 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Re: Monday opportunity to talk about WOTUS schedule considerations

Thanks John. I'm available after 3:30 on Monday.

Sent from my iPhone

On Apr 7, 2017, at 3:51 PM, Goodin, John <Goodin.John@epa.gov> wrote:

> Afternoon, Sarah—as a follow-up to our conversation yesterday, we are preparing to sit down with you as early as Monday 1130a-1230a (if that still works for you) to talk about

schedule considerations and potential Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Staff from OW, OGC, and OP met this afternoon to discuss past experience with key aspects of the rulemaking process, legal and practical considerations, and some ideas relevant to this undertaking. As Steve and I are out of the office next week, Mindy, Carrie, Greg, and Bill are preparing to discuss those considerations. If Monday doesn't work, we can look to arrange another time later in the week.

Ann—looking to you for logistical help in identifying a room that works (I've attached a meeting request form in case you need it).

Thanks

John

<Sarah OW Meeting Request Form.docx>

To: Goodin, John[Goodin.John@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Greenwalt, Sarah
Sent: Fri 4/7/2017 9:03:28 PM
Subject: Re: Monday opportunity to talk about WOTUS schedule considerations

Thanks John. I'm available after 3:30 on Monday.

Sent from my iPhone

On Apr 7, 2017, at 3:51 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Afternoon, Sarah—as a follow-up to our conversation yesterday, we are preparing to sit down with you as early as Monday 1130a-1230a (if that still works for you) to talk about schedule considerations and potential **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 Staff from OW, OGC, and OP met this afternoon to discuss past experience with key aspects of the rulemaking process, legal and practical considerations, and some ideas relevant to this undertaking. As Steve and I are out of the office next week, Mindy, Carrie, Greg, and Bill are preparing to discuss those considerations. If Monday doesn't work, we can look to arrange another time later in the week.

Ann—looking to you for logistical help in identifying a room that works (I've attached a meeting request form in case you need it).

Thanks

John

<Sarah OW Meeting Request Form.docx>

From: Penman, Crystal
Location: EPA 1201 Constiution Ave NW. Washington DC 20004 3233 WJCE Please call 202-564-5700 for escort
Importance: High
Subject: Canceled: HOLD - Building on Partnerships with the National Association of State Departments of Agriculture (NASDA)
Start Date/Time: Wed 4/12/2017 6:00:00 PM
End Date/Time: Wed 4/12/2017 6:45:00 PM
EPA_Administrator Pruitt Cooperative FederalismMeeting Request_03 13 17.pdf
Federalism One Pager_09212016.pdf
NASDABrochure_01232017.pdf
Administrator Meeting Request Form NASDA.DOCX
Real ID Information.pdf

Megan McDonald

Director, Meetings and Events & Executive Assistant to the CEO

National Association of State Departments of Agriculture

(202) 296-9680 office

(571) 447-5320 direct

www.nasda.org

tradeshows.nasda.org

megan@nasda.org

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Hull, George[Hull.George@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]
From: Shapiro, Mike
Sent: Fri 4/7/2017 3:04:10 AM
Subject: OW Weekly Report, April 6, 2017
OW Weekly Report_040617.docx

OW's weekly report is attached.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Thur 4/6/2017 9:28:18 PM
Subject: REVISED, FOR YOUR REVIEW: OW Weekly Report
OW Weekly Report_040617.docx

Mike, here is the revised report reflecting edits to the WOTUS entry (the federalism invitation letter has moved along quickly this afternoon) and the DWMAPS award.

To: Grevatt, Peter[Grevatt.Peter@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]
Cc: Reid, Darren[Reid.Darren@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Thur 4/6/2017 5:03:32 PM
Subject: Action: Agenda topics for biweekly between Mike and Sarah
OA Biweekly Agenda_Annotated_032917.docx

Folks, I think some of you may be out of the office next week on spring break so I'm getting this request out a bit early. I'm looking for agenda topics for next week's biweekly meeting with Sarah. Attached is the agenda I prepared for last week's meeting for reference. Please provide any submissions by noon Tuesday. Thank you.

Ann

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Lousberg, Macara
Sent: Thur 4/6/2017 12:11:02 PM
Subject: FW: Weekly check-in

FYI Benita. Sharing a note from Roger on the work he does and how its appreciated by outside partners. He mentions WOTUS specifically and I remember you mentioned that too in our general earlier this week.

From: Gorke, Roger
Sent: Wednesday, April 05, 2017 2:25 PM
To: Lousberg, Macara <Lousberg.Macara@epa.gov>
Subject: RE: Weekly check-in

Then I will just delete the other one…

Lots to talk about…I wish there were a way to really show the benefits to the NDRP collaboration…far far beyond just drought.

I also have some input from discussions with several western state folks vis a vis the WOTUS 2.0. Specifically on working collaboratively with them. It's an example of how many of them are ready, willing, and able to speak openly with me because of what Duane mentioned, having worked with me for 12-13 years and trust me.

Anyway…for tomorrow…

Oh, did you hear the conversation before the meeting started about the OK City bombing? I never knew that Duane was in the building when that happened. Puts a very real perspective on that even 22 years later. The anniversary is coming up in a couple weeks.

Anyway, talk to you tomorrow,

Roger

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

Personal Phone / Ex. 6

gorke.roger@epa.gov

From: Lousberg, Macara
Sent: Wednesday, April 05, 2017 10:59 AM
To: Gorke, Roger <Gorke.Roger@epa.gov>
Subject: RE: Weekly check-in

Sorry about the schedule snafu. I was trying to suggest a different time for our meeting tomorrow and accidentally deleted the whole series.

-----Original Appointment-----
From: Gorke, Roger
Sent: Wednesday, April 05, 2017 1:58 PM
To: Lousberg, Macara
Subject: Accepted: Weekly check-in
When: Occurs every Thursday effective 4/6/2017 until 12/28/2017 from 1:00 PM to 1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Skype meeting

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Tue 4/4/2017 5:07:14 PM
Subject: Fwd: Water Special Issue

Begin forwarded message:

From: "Threet, Derek" <Threet.Derek@epa.gov>
Date: March 29, 2017 at 10:31:00 AM EDT
To: "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: FW: Water Special Issue

FYI.

From: Burden, Susan
Sent: Wednesday, March 29, 2017 8:09 AM
To: Threet, Derek <Threet.Derek@epa.gov>
Subject: Water Special Issue

Hi Derek,

I thought this might be of interest to OW:

WED Scientist Guest Editor for *Water* Special Issue

Paul Mayer of the Western Ecology Division is one of the three Guest Editors and the co-author of two papers in the *Water* Special Issue, "Land Use, Climate, and Water Resources." This collection of 10 papers includes research on the effectiveness of the Clean Water Rule and on the various impacts to water because of climate extremes and land use change, urbanization and stream burial, dam removal, nitrogen and phosphorus pollution, sediment runoff, forestry and livestock grazing, infrastructure degradation, and salinization and alkalinization. All of the articles are open access, and a hardcover book will be published later this year.

The Western Ecology Division is part of ORD.

Thanks,

Susan

Susan Burden, Ph.D.

Special Assistant (ORD, OCSPP, OCHP, SAB)

Office of the Administrator

U.S. Environmental Protection Agency

Office: (202) 564-6308

Cell: Personal Phone / Ex. 6

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Goodin, John
Sent: Mon 4/3/2017 8:28:23 PM
Subject: WOTUS Update

Mike—for purposes of forwarding the information to Sarah that I mentioned in staff meeting this afternoon, Mindy or I will take care of getting Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 to the relevant folks, but think it may be best for you to transmit the draft rule text—we'll provide a cover email you can use/edit. I anticipate that we'd forward this on to you around 6p, and if you are good to go, you can forward it further. Feel free to call or email with any questions or if you prefer to handle another way.

Thanks

John

Personal Phone / Ex. 6 (c)

202-566-1373 (o)

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Edwards, Crystal[Edwards.Crystal@epa.gov]
From: Penman, Crystal
Sent: Mon 4/3/2017 6:19:45 PM
Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6

Fyi, just a reminder, John Goodin will be leading this meeting.

Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6
Location: 3233 WJCE

Start: Wed 4/5/2017 10:00 AM
End: Wed 4/5/2017 10:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Breen, Barry; Cheatham, Reggie; Donald.e.jackson@usace.army.mil
Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Andrew Hanson

To: Goodin, John[Goodin.John@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Balasa, Kate
Sent: Mon 4/3/2017 1:49:25 PM
Subject: RE: WOTUS for WDD Call

Good morning, John,

I would be happy to set up a time for the WDDs. I agree that it would be great to try to include them on this Thursday's call, but I will have to see how schedules look. I will reach out to Donna to get the specifics on timing. Additionally, if we were to include the WDDs on Thursday's call, I would like to be able to provide them with materials for their review prior to the call, if at all possible.

I'll be in touch.

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John
Sent: Monday, April 03, 2017 8:18 AM
To: Balasa, Kate <balasa.kate@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

To: Balasa, Kate[balasa.kate@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Goodin, John
Sent: Mon 4/3/2017 1:17:58 PM
Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Fontaine, Tim[Fontaine.Tim@epa.gov]
From: Spraul, Greg
Sent: Fri 3/31/2017 10:50:41 PM
Subject: Materials for Monday FY18 Budget Meeting
5 Main Messages with Examples.docx
FY18 Budget Request Overview Chart.docx
Attachment I-2 Eliminated Programs_OW.docx
Attachment I-1 Program Project_OW.docx

Mike and Benita,

Attached are materials to help you prepare for the 3pm meeting on Monday with David Bloom. We will send these to Crystal to be placed in your binder for Monday.

A big thanks to the Offices and RMS staff for putting these materials together.

Overview of attachments:

1. 5 Main Messages with Examples - the Offices added specific examples under each of our 5 high level bullets - 2 pages

2. FY18 Budget Request Overview Chart - summary tables showing FY18 budget numbers per account and program project compared to FY16 enacted levels - 2 pages

3. Attachment I-1 Program Project_OW - a consolidation of all write ups for our funded Program Projects listing the activities will plan to do and not do - 7 pages (OCFO has this)

4. Attachment I-2 Eliminated Programs_OW - a consolidation of all write ups for our eliminated Program Projects listing our statutory obligations and how those obligations will or won't be met in FY18 - 9 pages (OCFO has this)

Greg Spraul
Associate Director
Resource Management Staff
Office of Water
U.S. Environmental Protection Agency
Email: spraul.greg@epa.gov
Direct:(202) 564-0255

To: Campbell, Ann[Campbell.Ann@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Penman, Crystal
Sent: Fri 3/31/2017 3:09:11 PM
Subject: Fwd: FOR YOUR REVIEW: OW Weekly Report
OW Weekly Report_033017.docx

Crystal M. Penman

Program Specialist

Office of Water, Immediate Office

U.S. Environmental Protection Agency

Room 3219D WJC East (4101M)

Phone: (202) 564-3318

Email: penman.crystal@epa.gov

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Penman, Crystal
Sent: Thur 3/30/2017 3:26:57 PM
Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6

Fyi. I confirmed with John Goodin that he will be leading this meeting.

Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6
Location: 3233 WJCE

Start: Wed 4/5/2017 10:00 AM
End: Wed 4/5/2017 10:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Breen, Barry; Cheatham, Reggie; Donald.e.jackson@usace.army.mil
Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Andrew Hanson

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Campbell, Ann
Sent: Tue 3/28/2017 8:31:51 PM
Subject: Fwd: URGENT! Industry Coffee tomorrow morning

Mike, I think Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Begin forwarded message:

From: "Goodin, John" <Goodin.John@epa.gov>
Date: March 28, 2017 at 4:26:04 PM EDT
To: "Campbell, Ann" <Campbell.Ann@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Nandi, Romell" <Nandi.Romell@epa.gov>, "Thomas, Latosha" <Thomas.Latosha@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>
Subject: RE: URGENT! Industry Coffee tomorrow morning

Would this work for Mike?

Deliberative Process / Ex. 5

Adding Steve and Greg so that they are aware and can weigh in.

Thanks

John

From: Campbell, Ann
Sent: Tuesday, March 28, 2017 4:07 PM
To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: URGENT! Industry Coffee tomorrow morning

Folks, apologize for what might seem like a late hit, I think something may have gotten lost in translation. Mike was hoping to use a portion of tomorrow's time with the industry group to engage in a discussion around the direction of the WOTUS 2.0 efforts. He was hoping we'd have a few discussion questions to use for this meeting (and in future engagements with other groups) to conduct some early outreach and obtain initial reactions. The TPs I just saw are standard, which is good, but, Mike was hoping to use this meeting for some engagement. Can discussion questions be drafted quickly enough for use tomorrow? I think he'd be disappointed to lose this opportunity but I'll let him know if it can't be done.

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
From: Downing, Donna
Sent: Tue 3/28/2017 8:31:13 PM
Subject: For review & forwarding: draft agenda and latest draft WOTUS rule text
2017 WOTUS 2 Draft Proposed Rule Text for 3.29.17 meeting.docx
Agenda -- Wetlands General 29 Mar 2017 v1.docx

Hi Ann (with a cc to the Usuals) –

Attached please find a draft agenda for tomorrow morning's interagency Wetlands General meeting. Also attached is the latest draft rule, reflecting this morning's discussions with interagency staff. Could you review and see if the agenda and/or rule text need any tweaks before distributing to meeting attendees, and if not, pass onto Crystal?

Thanks! Please let me know if you have any questions or suggestions.

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Campbell, Ann
Sent: Tue 3/28/2017 5:43:15 PM
Subject: Prep for tomorrow's CWR meeting

Folks, Mike is interested in an update as to where things stand and an agenda/materials for tomorrow's meeting. He'll need to look these over in advance of the meeting with enough time to weigh in on those materials. When can you get him something?

Thanks,
Ann

From: Kupchan, Simma
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: FW: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6 Passcode Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Microsoft Outlook
Location: 3233 WJC East
Importance: Normal
Subject: Meeting Forward Notification: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6 Passcode Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

Your meeting was forwarded

Talty, Mark has forwarded your meeting request to additional recipients.

Meeting

WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6

Meeting Time

Monday, March 27, 2017 11:00 AM-11:45 AM.

Recipients

Kupchan, Simma

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Evalenko, Sandy
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: FW: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Lousberg, Macara
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Microsoft Outlook
Location: 3233 WJC East
Importance: Normal
Subject: Meeting Forward Notification: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

Your meeting was forwarded

Lousberg, Macara has forwarded your meeting request to additional recipients.

Meeting
WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6

Meeting Time
Monday, March 27, 2017 11:00 AM-11:45 AM.

Recipients
Evalenko, Sandy
Lousberg, Macara

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: 3233 WJC East
Importance: Normal
Subject: Meeting Forward Notification: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6
Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

Your meeting was forwarded

Eisenberg, Mindy has forwarded your meeting request to additional recipients.

Meeting
WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6

Meeting Time
Monday, March 27, 2017 11:00 AM-11:45 AM.

Recipients
Bachle, Laura

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Trombley, Michael[Trombley.Michael@epa.gov]; Corona, Joel[Corona.Joel@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Evalenko, Sandy
Sent: Fri 3/24/2017 6:47:53 PM
Subject: RE: Spring Reg Agenda materials
Spring Reg Agenda FY 2017 Summary List 3.24.2017.docx

Here's the revised Spring Regulatory Agenda chart with the one revision on the WQS for Federal Baseline Water Quality Standards for Indian Reservations. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sandy

From: Evalenko, Sandy
Sent: Wednesday, March 22, 2017 1:11 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Corona, Joel <Corona.Joel@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: Spring Reg Agenda materials
Importance: High

Mike and Benita: I'm attaching information for the Spring Regulatory Agenda:

- The final Summary Chart,
- The directions for the spreadsheet to provide information on the 2 for 1 issue,
- the spreadsheet for OST, 3 rules are included on the first tab, and
- the spreadsheet for OWM CSO rule.
-

The excel spreadsheet is cumbersome and was not intended to print easily. Mike Trombley worked on getting a good printout of the CSO spreadsheet. It didn't work for the OST sheet since their worksheet includes information for three rules. Please let us know if you have

questions. Mike Trombley worked with the programs on the spreadsheet if you have questions about these.

Sandy

From: Talty, Mark
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: FW: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Microsoft Outlook
Location: 3233 WJC East
Importance: Normal
Subject: Meeting Forward Notification: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6

Meeting Time

Monday, March 27, 2017 11:00 AM-11:45 AM.

Recipients

Talty, Mark

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Dravis, Samantha
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: WOTUS and Federalism Call in **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

To: Hall, Lynda[Hall.Lynda@epa.gov]; Wall, Tom[Wall.Tom@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Flahive, Katie
Sent: Thur 3/23/2017 8:18:17 PM
Subject: Ag Partnership Liaison in OCIR and WOTUS contacts

On the EPA Ag sector call today, Chad Nitsch was introduced as someone that has been at EPA for about 10 years and is now taking on a new position in OCIR as the "Ag Partnership Liaison". He works for Robin Richardson, I'm not sure what her role is there. I would like to reach out to him for a general meeting, but don't want to get ahead of the game if that may not be appropriate yet. He didn't say much about his role, so I have no idea, but if we need to coordinate with him through OCIR on state communication and work, we should figure that out soon. (On this note, I saw this on twitter today: http://www.fb.org/news/epa-chief-agency-will-be-states-partner-in-addressing-environmental-issues?utm_content=buffer0746d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

We also heard from Lena Ferris that when she joins the Administrator for meetings with ag stakeholders, the Administrator gives himself as the point of contact for the Waters of the US work but also has indicated that Shera Greenwald is a point person on his behalf. I don't see anyone in the locator by that name though, so I have a request in to Lena to clarify.

Thanks,

Katie

****
MAILING ADDRESS:
U.S. Environmental Protection Agency
Mail Code 4503T
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

OFFICE LOCATION:
Room 1113D
1301 Constitution Ave., NW
Washington, D.C. 20004
202-566-1206

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 3/23/2017 5:59:07 PM
Subject: RE: POLITICO:WOTUS FIGHT WON'T WAIT FOR NEXT YEAR

That would be ironic to be prohibited from developing our new rule.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Best-Wong, Benita
Sent: Friday, November 18, 2016 9:45 AM
To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Kaiser, Russell <Kaiser.Russell@epa.gov>
Subject: FW: POLITICO:WOTUS FIGHT WON'T WAIT FOR NEXT YEAR

Regards,

Benita

Benita Best-Wong

Director

Office of Wetlands, Oceans, and Watersheds

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

From: Dennis, Allison
Sent: Friday, November 18, 2016 9:10 AM
To: Fuld, John <Fuld.John@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Beauvais, Joel <Beauvais.Joel@epa.gov>; Gilinsky, Ellen <Gilinsky.Ellen@epa.gov>
Subject: POLITICO:WOTUS FIGHT WON'T WAIT FOR NEXT YEAR

WOTUS FIGHT WON'T WAIT FOR NEXT YEAR: The Obama administration's contentious water rule appears to be a top target for president-elect Donald Trump, after he vowed multiple times during the campaign to repeal it. But congressional opponents of the Waters of the U.S. rule aren't content to wait. More than 65 House members today urged <http://go.politicoemail.com/?qs=106ab88e1cf435400c026ea672163335b5621b7f2076aa71ffb263d0d5da786a> their chamber's leaders and appropriations heads to block the rule's implementation in their year-end spending bill.

From: Greenwalt, Sarah
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: Fwd: WOTUS and Federalism Call in # **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Hanson, Andrew
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: WOTUS and Federalism Call in # **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Eisenberg, Mindy
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Bowles, Jack
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: WOTUS and Federalism Call in # **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Mon 3/27/2017 3:00:00 PM
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From: Microsoft Outlook
Location: 3233 WJC East
Importance: Normal
Subject: Meeting Forward Notification: WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6
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Meeting
WOTUS and Federalism Call in # Nonresponsive Conference Code/ Ex. 6

Meeting Time
Monday, March 27, 2017 11:00 AM-11:45 AM.

Recipients
Greenwalt, Sarah

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Nickerson, William
Location: 3233 WJC East
Importance: Normal
Subject: Tentative: WOTUS and Federalism Call in # **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

From: Christensen, Damaris
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: WOTUS and Federalism Call in # **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Mon 3/27/2017 3:00:00 PM
End Date/Time: Mon 3/27/2017 3:45:00 PM

To: Nandi, Romell[Nandi.Romell@epa.gov]; OWOW Managers Group[OWOW_Managers_Group@epa.gov]
Cc: Bravo, Antonio[Bravo.Antonio@epa.gov]
From: Klos, Caroline
Sent: Wed 3/22/2017 8:47:58 PM
Subject: RE: info about OWOW small staff next week...
OWOW STAKEHOLDER QUOTES-March3.docx

Attached is the current draft of the OWOW Stakeholder Quotes document referenced in the staff meeting this morning. As noted in the footer, this document is draft and not for circulation. We hope to post this information where it is accessible to managers at a later date, and also where it can continue to have information added and available to extract for talking points, briefings, and other uses.

Please let me or Antonio Bravo know if you have any edits, additions or comments.

Thanks!

Caroline M. Klos

EPA Office of Wetlands, Oceans, & Watersheds

Office: 202-564-3029

Telework: 202-279-1377

From: Nandi, Romell
Sent: Friday, March 17, 2017 11:25 AM
To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>; Klos, Caroline <Klos.caroline@epa.gov>
Subject: info about OWOW small staff next week...
Importance: High

All:

You will have noticed that Darren moved the March 21 OWOW small staff meeting to **March 22 at 9am** (in Kenai). Most of that meeting will be used for managers' retreat follow-up (the BCs, Eric, and Caroline have been invited). We will start the meeting with some usual staff business, and then Antonio and Darren will be excused when we start talking about the retreat follow-up.

Romell

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Wed 3/22/2017 5:40:15 PM
Subject: Fwd: FYI - ECOS call tomorrow

Notes from the ECOS call .....not much was said in WOTUS 2.0.

Note the new advisor on cooperative federalism, Tate Bennett.

Begin forwarded message:

From: "Barbery, Andrea" <Barbery.Andrea@epa.gov>
Date: March 22, 2017 at 1:28:50 PM EDT
To: "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: RE: FYI - ECOS call tomorrow

Referenced the FRN as the beginning of the process and said we'd be sure to get states' comments as part of that process.

Any word on IMCC?

From: Campbell, Ann
Sent: Wednesday, March 22, 2017 1:27 PM
To: Barbery, Andrea <Barbery.Andrea@epa.gov>
Subject: Re: FYI - ECOS call tomorrow

Thanks Andrea. Nothing about CWR/WOTUS?

On Mar 22, 2017, at 1:24 PM, Barbery, Andrea <Barbery.Andrea@epa.gov> wrote:

Hi all – just wanted to circle back w/you all and LYK how this call shook out. The Administrator was very brief with remarks; he touched on:

- Air: ozone NAAQS, compliance & assistance, and monitoring over modeling

- Water: infrastructure, streamlining permitting, keeping the SRF levels in the budget

- Land: hinted at changes coming to superfund, brownfields

On cooperative federalism, he introduced Tate Bennett who joined OCIR staff on Monday as Senior Advisor; sounds like she'll be working both with Congress and Governors.

We did not really get to the questions – think it's too early for us to have substantive discussions about any of those issues. The Administrator did emphasize that we intend to work with the states on all these issues they were asking about but we did not go into any details.

Please keep this close – I'm around to chat if you have any questions.

Thanks,

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

From: Barbery, Andrea
Sent: Monday, March 20, 2017 2:37 PM
To: Kadish, Rochele <Kadish.Rochele@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Matthews, Lisa <Matthews.Lisa@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: FYI - ECOS call tomorrow

Friends of ECOS,

You may be aware but I wanted to be sure you know the Administrator is speaking tomorrow, via phone, with ECOS' full membership. The list of questions he's asked to address is attached. Please, not for further distro.

Thanks,

Andrea Barbery, OCIR

202-564-1397

Monthly All-Member Call

Tuesday, March 21, 2017

3:00 – 4:00 p.m. Eastern

I. Roll Call & Opening Remarks (300-305)

John Linc Stine, ECOS President & Commissioner, Minnesota Pollution Control Agency

II. Remarks from Administrator Pruitt (305-320)

Scott Pruitt, Administrator, U.S. Environmental Protection Agency

III. Discussion with Administrator Pruitt (320-330)

Moderated by ECOS Officers

Martha Rudolph, Director of Environmental Programs, Colorado Department of Environment & Public Health

Todd Parfitt, Director, Wyoming Department of Environmental Quality

Becky Keogh, Director, Arkansas Department of Environmental Quality

IV. Welcome and Introduction to Layne Bangerter (330-345)

Moderated by John Linc Stine

Layne Bangerter, Deputy Associate Administrator, Office of Intergovernmental Relations, U.S. Environmental Protection Agency

V. ECOS Business, Closing Remarks, & Adjourn (345-400), Stine

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/21/2017 8:55:09 PM
Subject: draft papers for Wed. rule meeting
overall Rule Timeline 3-21-17.xlsx
Rule Timeline short 3-21.xlsx
WOTUS2 proposed plan 3-21-17 draft.docx

All,

We have revised our draft 1-pager and schedules based on feedback from the Corps and Simma, and John's quick review. Please send me any edits you have by 8:30 tomorrow so that we can send the materials out to the meeting participants by 9. Our plan is to use the paper for our discussions.

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Thomas, Latosha
Sent: Tue 3/21/2017 8:47:43 PM
Subject: Question re: Industry Stakeholder Meeting (3/29)

Hi Benita,

OWOW asked if you want to talk about – or have OWOW talk about – CWR at this meeting. Is this something that we even need to discuss for this meeting? Thanks!

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

(202) 568-0851 (cell)

thomas.latosha@epa.gov

To: Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Edwards, Crystal
Sent: Tue 3/21/2017 4:43:06 PM
Subject: RE: World Water Partnership Speech - March 22

Transportation has been done!

From: Campbell, Ann
Sent: Tuesday, March 21, 2017 12:22 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: World Water Partnership Speech - March 22

Ok, folks. Benita will be speaking tomorrow. Christine has already pulled together TPs for the Admin to use and she and Latosha will polish that up into a speech for Benita.

Crystal P, can we push back the start time for the CWR Weekly by 15 minutes. Crystal E, Benita will need transportation. ☺

Thanks everyone!

From: Best-Wong, Benita
Sent: Tuesday, March 21, 2017 10:50 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>
Subject: Re: World Water Partnership Speech - March 22

I could do it with the schedule adjustment for the CWR meeting. We could also ask Peter to cover since he is participating in the panel discussion.

Sent from my iPhone

On Mar 21, 2017, at 10:25 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

Remarks are scheduled for 9:25-9:45a at the State Department. Your calendar shows as available at this time Benita. We can move the CWR Weekly back by 15 minutes to give you a cushion to get back. Please advise and we'll get going on all the details.

From: Shapiro, Mike
Sent: Tuesday, March 21, 2017 10:21 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Fwd: World Water Partnership Speech - March 22

Benita,

Any chance you can do this?

Mike

Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

Begin forwarded message:

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: March 21, 2017 at 10:13:52 AM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Cc: "Dravis, Samantha" <dravis.samantha@epa.gov>, "Hupp, Sydney" <hupp.sydney@epa.gov>, "Hupp, Millan" <hupp.millan@epa.gov>
Subject: Fwd: World Water Partnership Speech - March 22

Mike, the Administrator has an unexpected conflict for tomorrow's remarks. I know this is last notice but can you cover the remarks?

Syd will help you contact the organization. Samantha may accompany you as well.

Thank you for your help.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

Begin forwarded message:

From: "Hupp, Millan" <hupp.millan@epa.gov>
Date: March 20, 2017 at 7:05:58 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: World Water Partnership Speech - March 22

I have a hard copy of a much more detailed agenda if you'd like me to bring it over.

From: Bell, Esther F [mailto:BellEF@state.gov]
Sent: Wednesday, March 15, 2017 5:43 PM
To: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: World Water Partnership Speech - March 22

Millan,

Great chatting with you as well! Attached is the latest schedule I have for the March 22 event.

I emailed Lincoln with the notice to the press and hope to hear from him soon

with clearance.

Carol Lynn MacCurdy MacCurdyCL@state.gov is running the logistics for State and is on the water team here. She will need the names of everyone attending the walk through on Friday. She's putting together the list for security. I sent you and Lincoln the invite for the event as well.

Let me know if you have any other questions I can help answer before Friday.

Esther Bell

Public Diplomacy Officer

U.S. Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Office Phone: 202-647-1511

BB: Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Edwards, Crystal[Edwards.Crystal@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Campbell, Ann
Sent: Tue 3/21/2017 4:22:18 PM
Subject: RE: World Water Partnership Speech - March 22

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Thanks everyone!

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> **Sent:** Tuesday, March 21, 2017 10:21 AM

To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
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Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

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> **Cc:** "Dravis, Samantha" <dravis.samantha@epa.gov>, "Hupp, Sydney" <hupp.sydney@epa.gov>, "Hupp, Millan" <hupp.millan@epa.gov>
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>
> Chief of Staff

U.S. EPA

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Esther Bell

Public Diplomacy Officer

U.S. Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Office Phone: 202-647-1511

BB Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Tue 3/21/2017 4:18:59 PM
Subject: RE: World Water Partnership Speech - March 22

You do it so well though. ☺ We'll get you ready.

From: Best-Wong, Benita
Sent: Tuesday, March 21, 2017 12:14 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Re: World Water Partnership Speech - March 22

I guess so. Not looking forward to it but I guess it's character building.

Sent from my iPhone

On Mar 21, 2017, at 11:28 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

So, is this a yes, you'll speak?

From: Best-Wong, Benita
Sent: Tuesday, March 21, 2017 10:50 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>
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Chief of Staff

U.S. EPA

(202) 564-6999

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Esther Bell

Public Diplomacy Officer

U.S. Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Office Phone: 202-647-1511

BB: Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Tue 3/21/2017 3:28:49 PM
Subject: RE: World Water Partnership Speech - March 22

So, is this a yes, you'll speak?

From: Best-Wong, Benita
Sent: Tuesday, March 21, 2017 10:50 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>
Subject: Re: World Water Partnership Speech - March 22

I could do it with the schedule adjustment for the CWR meeting. We could also ask Peter to cover since he is participating in the panel discussion.

Sent from my iPhone

On Mar 21, 2017, at 10:25 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

> Remarks are scheduled for 9:25-9:45a at the State Department. Your calendar shows as available at this time Benita. We can move the CWR Weekly back by 15 minutes to give you a cushion to get back. Please advise and we'll get going on all the details.
>
> **From:** Shapiro, Mike
> **Sent:** Tuesday, March 21, 2017 10:21 AM
> **To:** Best-Wong, Benita <Best-Wong.Benita@epa.gov>
> **Cc:** Campbell, Ann <Campbell.Ann@epa.gov>
> **Subject:** Fwd: World Water Partnership Speech - March 22
>
> Benita,
>
> Any chance you can do this?

Mike

Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

Begin forwarded message:

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: March 21, 2017 at 10:13:52 AM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Cc: "Dravis, Samantha" <dravis.samantha@epa.gov>, "Hupp, Sydney" <hupp.sydney@epa.gov>, "Hupp, Millan" <hupp.millan@epa.gov>
Subject: Fwd: World Water Partnership Speech - March 22

Mike, the Administrator has an unexpected conflict for tomorrow's remarks. I know this is last notice but can you cover the remarks?

Syd will help you contact the organization. Samantha may accompany you as well.

Thank you for your help.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

Begin forwarded message:

From: "Hupp, Millan" <hupp.millan@epa.gov>
Date: March 20, 2017 at 7:05:58 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: World Water Partnership Speech - March 22

I have a hard copy of a much more detailed agenda if you'd like me to bring it over.

From: Bell, Esther F [mailto:BellEF@state.gov]
Sent: Wednesday, March 15, 2017 5:43 PM
To: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: World Water Partnership Speech - March 22

Millan,

Great chatting with you as well! Attached is the latest schedule I have for the March 22 event.

I emailed Lincoln with the notice to the press and hope to hear from him soon with clearance.

Carol Lynn MacCurdy MacCurdyCL@state.gov is running the logistics for State and is on the water team here. She will need the names of everyone attending the walk through on Friday. She's putting together the list for security. I sent you and Lincoln the invite for the event as well.

Let me know if you have any other questions I can help answer before Friday.

Esther Bell

Public Diplomacy Officer

U.S. Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Office Phone: 202-647-1511

BB: Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Edwards, Crystal
Sent: Tue 3/21/2017 2:53:28 PM
Subject: RE: World Water Partnership Speech - March 22

Ann,

Can you send me a copy of the agenda?

Crystal N. Edwards

United States Environmental Protection Agency

Office of Water

William Jefferson Clinton East Building

Room 3223B

(202)564-1661

From: Best-Wong, Benita
Sent: Tuesday, March 21, 2017 10:50 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>
Subject: Re: World Water Partnership Speech - March 22

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Mike

Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

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Date: March 21, 2017 at 10:13:52 AM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Cc: "Dravis, Samantha" <dravis.samantha@epa.gov>, "Hupp, Sydney" <hupp.sydney@epa.gov>, "Hupp, Millan" <hupp.millan@epa.gov>
Subject: Fwd: World Water Partnership Speech - March 22

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Chief of Staff

U.S. EPA

(202) 564-6999

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Let me know if you have any other questions I can help answer before Friday.

Esther Bell

Public Diplomacy Officer

U.S. Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Office Phone: 202-647-1511

BB Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Tue 3/21/2017 12:53:29 PM
Subject: RE: Meeting Sarah

Ok. Let me know if you need anything from me.

From: Best-Wong, Benita
Sent: Tuesday, March 21, 2017 8:43 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Re: Meeting Sarah

Mike asked me to run the meeting. I will spend a few minutes relaying the basic points from our meeting with the Administrator and then leave it to John and company to discuss the one pager. I'm hoping they will have a new one pager by this afternoon. Unfortunately, I am out of the office for most of today. I think John will be at NAWCA this afternoon. I will catch up with him then.

Sent from my iPhone

On Mar 21, 2017, at 8:38 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

> Benita, as you know Mike will not be available for tomorrow's CWR Weekly. How would you like to be prepped ahead of tomorrow's meeting?

> **From:** Best-Wong, Benita
> **Sent:** Tuesday, March 21, 2017 8:37 AM
> **To:** Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> **Cc:** Campbell, Ann <Campbell.Ann@epa.gov>
> **Subject:** Meeting Sarah

> I would encourage you reaching out to Sarah today to see if she has time to discuss Deliberative Process / Ex. 5
> Deliberative Process / Ex. 5
> Deliberative Process / Ex. 5 You may also want to include Byron in the discussion.

Sent from my iPhone

From: Penman, Crystal
Location: 3219A WJCE
Importance: Normal
Subject: Reg Agenda Call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 3/20/2017 8:30:00 PM
End Date/Time: Mon 3/20/2017 9:15:00 PM
Spring Reg Agenda FY 2017 Summary List 3.20.2017.docx

To: Campbell, Ann[Campbell.Ann@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Campbell, Ann
Sent: Mon 3/20/2017 4:50:09 PM
Subject: Re: CWR Briefing Follow up

Actually, use Nonresponsive Conference Code/ Ex. 6 It's open now.

On Mar 20, 2017, at 12:49 PM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

They have returned. Will open up the conference line Nonresponsive Conference Code/ Ex. 6

To: Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Campbell, Ann
Sent: Mon 3/20/2017 4:49:02 PM
Subject: CWR Briefing Follow up

They have returned. Will open up the conference line Nonresponsive Conference Code/ Ex. 6

From: Campbell, Ann
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6 3 passcode 2 Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: CWR Briefing Follow up
Start Date/Time: Mon 3/20/2017 3:30:00 PM
End Date/Time: Mon 3/20/2017 4:00:00 PM

Poc Ann Campbell

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Dravis, Samantha
Sent: Mon 3/20/2017 11:02:19 AM
Subject: Re: American Iron and Steel Waiver Request

I will be in the 11am, but have to leave by noon for another meeting. I'll try to catch you before 11 and just tell you the gist of my conversation with the Administrator and we can talk more later. Thank you!

Sent from my iPhone

On Mar 19, 2017, at 10:05 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

Samantha,

Yes, in fact I was getting ready to send you a follow up note on this issue. I will be at the ACWA meeting in the morning, then coming back for the meeting with the Administrator on Waters of the US. I will try to touch base with you after that meeting, or would you like me to set up a time for us to connect?

Mike

From: Dravis, Samantha
Sent: Sunday, March 19, 2017 6:15 PM
To: Shapiro, Mike
Cc: Flynn, Mike; Jackson, Ryan; Campbell, Ann; Best-Wong, Benita
Subject: Re: American Iron and Steel Waiver Request

Mike,

Could we chat about this tomorrow?

Thanks!
Samantha

Sent from my iPhone

On Mar 10, 2017, at 4:59 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

All,

Deliberative Process / Ex. 5

Thanks,

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

Deliberative Process / Ex. 5

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Shapiro, Mike
Sent: Mon 3/20/2017 2:05:25 AM
Subject: Re: American Iron and Steel Waiver Request

Samantha,

Yes, in fact I was getting ready to send you a follow up note on this issue. I will be at the ACWA meeting in the morning, then coming back for the meeting with the Administrator on Waters of the US. I will try to touch base with you after that meeting, or would you like me to set up a time for us to connect?

Mike

From: Dravis, Samantha
Sent: Sunday, March 19, 2017 6:15 PM
To: Shapiro, Mike
Cc: Flynn, Mike; Jackson, Ryan; Campbell, Ann; Best-Wong, Benita
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Mike,

Could we chat about this tomorrow?

Thanks!
Samantha

Sent from my iPhone

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All,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

Deliberative Process / Ex. 5

From: Hale, Michelle
Location: Administrator's Office
Importance: Normal
Subject: WOTUS Rules Options
Start Date/Time: Mon 3/20/2017 3:00:00 PM
End Date/Time: Mon 3/20/2017 3:30:00 PM

To: Ruf, Christine[Ruf.Christine@epa.gov]; Barbery, Andrea[Barbery.Andrea@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Hupp, Millan
Sent: Fri 3/17/2017 6:12:21 PM
Subject: RE: adding pdf WOUS Fed Reg notice Re: URGENT, Quick response: ECOS Questions for Administrator call - OW

Thank you!

From: Ruf, Christine
Sent: Friday, March 17, 2017 1:21 PM
To: Barbery, Andrea <Barbery.Andrea@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: adding pdf WOUS Fed Reg notice Re: URGENT, Quick response: ECOS Questions for Administrator call - OW

Also included WOTUS FR notice (pdf). Thanks.

From: Ruf, Christine
Sent: Friday, March 17, 2017 1:08 PM
To: Barbery, Andrea; Threet, Derek; Hupp, Millan; Ferguson, Lincoln
Cc: Campbell, Ann; Goodin, John; Grevatt, Peter; Sawyers, Andrew; Lousberg, Macara; Christensen, Christina; Nandi, Romell; Farris, Erika D.; Gonzalez, Yvonne V.; Shapiro, Mike; Best-Wong, Benita; Thomas, Latosha; Ruf, Christine
Subject: Re: URGENT, Quick response: ECOS Questions for Administrator call - OW

Good afternoon everyone, please find attached Office of Water's response to Q's for the Administrator's Call with ECOS next Tuesday March 21. Thanks to all the folks that

contributed to this to get this done today.

Christine

Associate Director, Water Policy Staff

Office of Water

202-566-1220

Begin forwarded message:

From: "Barbery, Andrea" <Barbery.Andrea@epa.gov>
Date: March 15, 2017 at 5:54:29 PM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Grevatt, Peter" <Grevatt.Peter@epa.gov>
Cc: "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Thomas, Latosha" <Thomas.Latosha@epa.gov>, "Cheatham-Strickland, Latonia" <Cheatham-Strickland.Latonia@epa.gov>
Subject: ECOS Questions for Administrator call - OW

Hi Mike and Peter,

Per John's request, below, I'm reaching out to see if you can help provide some talking points the Administrator can use for a call next Tuesday with ECOS' full membership. He's asked to address questions on the CWR, wetlands, and infrastructure (copied, below). I know the agency's direction is still being formulated, but any technical points / data you have to offer on -- or around – these topics will be helpful for Lincoln and his team.

Apologies for the short turnaround on this; your input by noon on Friday is appreciated.

Thanks,

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

State Authority & Consultation:

1. What steps will you take to make delegation of primacy to states for programs like Underground Injection Control and assumption of the Clean Water Act Section 404 program (where there has been a difference of opinion between the Corps and EPA on assumption, with EPA favoring and the Corps putting up roadblocks).

2. How do you plan to consult with states on next steps for the Waters of the U.S. Rule?

Infrastructure:

3. Environmental infrastructure spending is an abundantly obvious solution to much of our environmental challenges. What steps will the Administrator take to improve our infrastructure?

4. The federal permitting process for environmental and infrastructure improvement projects has a poor reputation. What role can EPA play to reduce the frustration of trying to obtain these permits?

To: Ruf, Christine[Ruf.Christine@epa.gov]
Cc: Threet, Derek[Threet.Derek@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Barbery, Andrea
Sent: Fri 3/17/2017 5:31:42 PM
Subject: Re: URGENT, Quick response: ECOS Questions for Administrator call - OW

Thank you, all!

Sent from my iPhone

On Mar 17, 2017, at 1:08 PM, Ruf, Christine <Ruf.Christine@epa.gov> wrote:

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Associate Director, Water Policy Staff

Office of Water

202-566-1220

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<OW march 17 2017 ECOS call Admin Q A Infrastructure Permits etc.docx>

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Campbell, Ann
Sent: Fri 3/17/2017 4:23:57 PM
Subject: Re: FYI -- About to send the "clean" email with reviewed materials for the Monday Administrator briefing on WOTUS-2, except for Attachment 3 legal issues

If I don't get the final paper before 12:45 the administrator won't get it. The book closes at 12:45 and he departs at 1.

On Mar 17, 2017, at 12:13 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Ann:

I am about to send a second email that includes the documents for Monday's briefing on WOTUS-2 for the Administrator, and as requested with nothing in the body. These reflect review yesterday evening and this morning, and include

- Briefing one-pager
- Attachment 1: Timeline
- Attachment 2: Options
- Attachment 4: Impacts to CWA Programs

Please note -- the email won't include Attachment 3 on legal arguments. Steve's still giving it one last read, and may be out of pocket for a bit because he hasn't been able to respond to my email or voicemail inquiries about timing. At this point I presume OGC will send it to you directly with a cc to those on this email.

Please let John, Mindy, or me know if you have any questions or additional requests.
Thanks!

-- Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Downing, Donna
Sent: Fri 3/17/2017 4:13:07 PM
Subject: FYI -- About to send the "clean" email with reviewed materials for the Monday Administrator briefing on WOTUS-2, except for Attachment 3 legal issues

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-- Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Peck, Gregory
Sent: Fri 3/17/2017 2:45:21 PM
Subject: RE: Pre brief for WOUS briefing Call in **Nonresponsive Conference Code/ Ex. 6**

I can't do 1pm – 2pm. Thanks

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven
Sent: Friday, March 17, 2017 10:44 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Pre brief for WOUS briefing Call in **Nonresponsive Conference Code/ Ex. 6**

As I mentioned in my last email, we are going to DOJ at 3 to discuss WOTUS so I couldn't attend our meeting at this time. Any others available?

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

-----Original Appointment-----
From: Penman, Crystal **On Behalf Of** Shapiro, Mike
Sent: Friday, March 17, 2017 10:37 AM
To: Best-Wong, Benita; Minoli, Kevin; Neugeboren, Steven; Peck, Gregory; Goodin, John
Subject: Pre brief for WOUS briefing Call in [Nonresponsive Conference Code/ Ex. 6
When: Friday, March 17, 2017 3:15 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3219A WJCE

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Neugeboren, Steven
Sent: Fri 3/17/2017 2:44:21 PM
Subject: RE: Pre brief for WOUS briefing Call in Nonresponsive Conference Code/ Ex. 6

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To: OWOW Managers Group[OWOW_Managers_Group@epa.gov]
From: Nandi, Romell
Sent: Fri 3/17/2017 1:52:15 PM
Subject: Office of Water Weekly Report to Administrator

Below is Shapiro's report to Pruitt this week.

Romell

From: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Date: March 16, 2017 at 10:23:46 PM EDT
To: Weekly Report Group <Weekly_Report_Group@epa.gov>
Cc: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, OW Office Directors <OWOfficeDirectors@epa.gov>
Subject: Office of Water Weekly Report

Administrator and company, Here is the OW report. Please note that I will be in training Tuesday through Thursday of next week but will be checking email. Benita Best Wong will be participating in several Water Week engagements but similarly will be checking email and generally available as well.

Upcoming Hot Issues and Important Deadlines

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Deliberative Process / Ex. 5

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Upcoming Major Public Events

Water Week 2017: Next week, water sector organizations with members nationwide will gather in DC to discuss national policies for the advancement of clean, safe and affordable water. OW will participate extensively in the policy forums sponsored by the Association for Clean Water Administrators, (ACWA), where I understand you are confirmed to speak, and the National Association of Clean Water Agencies (NACWA). I will also meet with the Clean Water Network, a nationwide coalition of local, regional, and national groups. In addition, senior officials in OW will participate in the 44th Annual Water and Wastewater Equipment Manufacturers Association (WWEMA) Forum, US Water Partnership All Partners Meeting, where I understand you are confirmed to speak also, and the American Water Works Association (AWWA) Water Utility Council Meeting.

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Mike Shapiro

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]
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Mike Shapiro

SM
Reply all

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Thur 3/16/2017 8:16:49 PM
Subject: FOR YOUR REVIEW: OW Weekly Report

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From: Neugeboren, Steven
Sent: Thur 3/16/2017 8:05:27 PM
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

I have finished my revisions to the briefing paper in sharepoint. I put in most of Greg's suggested changes to the Attorney Client / Ex. 5

Attorney Client / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Thursday, March 16, 2017 3:35 PM
To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
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Donnha

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To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Goodin, John
Sent: Thur 3/16/2017 7:32:42 PM
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

Just spoke to Ann and she'll make the connection with Sarah before 1p tomorrow. Let's plan to send a complete packet to Mike NLT COB today for a final look, recognizing that there may be some additional edits underway this evening, pending the discussion with Kevin, etc.

Donna will continue to serve as the point of collection for the documents and their edits this afternoon—thanks!

John

From: Neugeboren, Steven
Sent: Thursday, March 16, 2017 2:15 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
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Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

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From: Downing, Donna
Sent: Thur 3/16/2017 7:12:08 PM
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

We'll take a look here in WD.

Deliberative Process / Ex. 5

Donna

From: Neugeboren, Steven
Sent: Thursday, March 16, 2017 3:06 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
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Attorney Client / Ex. 5

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Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

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Sent: Thursday, March 16, 2017 1:46 PM
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From: Neugeboren, Steven
Sent: Thur 3/16/2017 7:06:17 PM
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

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Associate General Counsel

Water Law Office

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From: Neugeboren, Steven
Sent: Thur 3/16/2017 6:15:14 PM
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

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From: Downing, Donna
Sent: Thur 3/16/2017 5:46:05 PM
Subject: Attachment 2 plus comments on latest draft briefing paper

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To: Sawyers, Andrew[Sawyers.Andrew@epa.gov]
Cc: Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Mclain, Jennifer[Mclain.Jennifer@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Stein, Raffael[Stein.Raffael@epa.gov]; Gueriguian, Leo[Gueriguian.Leo@epa.gov]; Nagle, Deborah[Nagle.Deborah@epa.gov]
From: Thompkins, Anita
Sent: Thur 3/16/2017 1:28:22 PM
Subject: Re: ECOS Questions for Administrator call - OW

We will work with Raffael.
Thanks

Sent from my iPhone

On Mar 16, 2017, at 8:37 AM, Sawyers, Andrew <Sawyers.Andrew@epa.gov> wrote:

Thanks Peter, Raffael, please work with Peter's team to provide talking points on infrastructure. Deborah, probably has some ideas concerning the permitting process. Thanks

From: Grevatt, Peter
Sent: Thursday, March 16, 2017 7:38 AM
To: Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Thompkins, Anita <Thompkins.Anita@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Mclain, Jennifer <Mclain.Jennifer@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Fwd: ECOS Questions for Administrator call - OW

John, FYI. Andrew, please let us know who you would like us to work with on infrastructure.

Sent from my iPhone

Begin forwarded message:

From: "Barbery, Andrea" <Barbery.Andrea@epa.gov>
Date: March 15, 2017 at 5:54:29 PM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Grevatt, Peter" <Grevatt.Peter@epa.gov>
Cc: "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Thomas, Latosha" <Thomas.Latosha@epa.gov>,

"Cheatham-Strickland, Latonia" <Cheatham-Strickland.Latonia@epa.gov>
Subject: ECOS Questions for Administrator call - OW

Hi Mike and Peter,

Per John's request, below, I'm reaching out to see if you can help provide some talking points the Administrator can use for a call next Tuesday with ECOS' full membership. He's asked to address questions on the CWR, wetlands, and infrastructure (copied, below). I know the agency's direction is still being formulated, but any technical points / data you have to offer on -- or around – these topics will be helpful for Lincoln and his team.

Apologies for the short turnaround on this; your input by noon on Friday is appreciated.

Thanks,

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

State Authority & Consultation:

1. What steps will you take to make delegation of primacy to states for programs like Underground Injection Control and assumption of the Clean Water Act Section 404 program (where there has been a difference of opinion between the Corps and EPA on assumption, with EPA favoring and the Corps putting up roadblocks).

2. How do you plan to consult with states on next steps for the Waters of the U.S.

Rule?

Infrastructure:

3. Environmental infrastructure spending is an abundantly obvious solution to much of our environmental challenges. What steps will the Administrator take to improve our infrastructure?

4. The federal permitting process for environmental and infrastructure improvement projects has a poor reputation. What role can EPA play to reduce the frustration of trying to obtain these permits?

From: Konkus, John
Sent: Wednesday, March 15, 2017 2:54 PM
To: Barbery, Andrea <Barbery.Andrea@epa.gov>
Cc: Richardson, RobinH <Richardson.RobinH@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: RE: ECOS Questions for Tues. Mar. 21

Thank you Andrea. Copied on this email is Lincoln. What I suggest is if you and the appropriate program offices provide a first draft for each question and then send that to Lincoln for refinement. That way Lincoln can work from a starting point that has technical answers built in so he doesn't have to go around and find that info.

Does that makes sense to everyone?

From: Barbery, Andrea
Sent: Wednesday, March 15, 2017 2:42 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Richardson, RobinH <Richardson.RobinH@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>

Subject: ECOS Questions for Tues. Mar. 21

Hi John,

A pleasure to meet you today!

As we discussed, here are the questions ECOS gathered from its members (state environmental commissioners) in preparation for the Administrator's engagement next Tuesday, March 21. He has 30 minutes with this group (via phone) – typically, 20 of those are spent delivering remarks and 10 are open for Q&A (states only on the line).

Thank you for taking care of the talking points on this! If you need anything more (background, logistics, etc), please let me know.

Thanks,

Andrea Barbery (ECOS liaison)

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

To: Grevatt, Peter[Grevatt.Peter@epa.gov]; Thompkins, Anita[Thompkins.Anita@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Mclain, Jennifer[Mclain.Jennifer@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Stein, Raffael[Stein.Raffael@epa.gov]; Gueriguian, Leo[Gueriguian.Leo@epa.gov]; Nagle, Deborah[Nagle.Deborah@epa.gov]
From: Sawyers, Andrew
Sent: Thur 3/16/2017 12:37:42 PM
Subject: RE: ECOS Questions for Administrator call - OW

Thanks Peter, Raffael, please work with Peter's team to provide talking points on infrastructure. Deborah, probably has some ideas concerning the permitting process. Thanks

From: Grevatt, Peter
Sent: Thursday, March 16, 2017 7:38 AM
To: Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Thompkins, Anita <Thompkins.Anita@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Mclain, Jennifer <Mclain.Jennifer@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
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Sent from my iPhone

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> **Date:** March 15, 2017 at 5:54:29 PM EDT
> **To:** "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Grevatt, Peter" <Grevatt.Peter@epa.gov>
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Office of Intergovernmental Relations

U.S. Environmental Protection Agency

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To: OW-OWOW-EVERYONE[OWOWOWEVERYONE@epa.gov]
From: Bravo, Antonio
Sent: Thur 3/16/2017 12:17:12 PM
Subject: FYI Only: Water articles in the Press

Supreme Court Urged To Hear CWA Rule Suit Despite Trump EPA Review

Environmentalists are urging the Supreme Court to reject the Trump administration's request to indefinitely stay a suit over the correct venue for challenging the Obama-era Clean Water Act (CWA) jurisdiction rule while EPA weighs revising or scrapping it, arguing a stay would effectively repeal the existing rule with no way to contest that decision.

Pruitt Said To Be Seriously Weighing Shuttering EPA's Enforcement Office

EPA Administrator Scott Pruitt and top White House officials are said to be seriously considering a major reorganization of EPA's Office of Enforcement & Compliance Assurance (OECA), which could result in moving much of the office's personnel to the agency's program offices.

Pruitt Withdraws Decision-Making Powers From Senior Officials, Email Shows

EPA Administrator Scott Pruitt has since March 2 rescinded delegated authority for acting assistant administrators and regional administrators to take "significant" actions on his behalf, according to an internal email obtained by *Inside EPA*, centralizing decision-making for many high-profile issues despite Pruitt's lack of agency experience and minimal staff.

Parties Spar Over RCRA Authority For Underground Disposal Of Liquid Waste

Opposing parties in a Resource Conservation & Recovery Act (RCRA) citizen suit are both citing correspondence between EPA and an Oklahoma state commission to underpin competing arguments over whether the case alleging endangerment from earthquakes prompted by oil and gas liquid waste disposal into underground wells should proceed.

House Lawmakers Weigh Options To Speed Water Infrastructure Projects

House lawmakers are weighing options to speed water infrastructure projects as part of a potential legislative deal between Congress and the White House on boosting overall infrastructure funding, with Republicans saying they favor streamlining environmental reviews for projects while Democrats are focusing on increasing spending.

White House Considering Even Deeper Cuts To EPA Budget.

The Hill (3/14, Henry) reports that EPA Administrator Scott Pruitt "did not fight the 25 percent cut the White House proposed in its first budget draft last month," and now the Trump administration is reportedly "weighing even deeper cuts." Additional cuts are expected to target the EPA climate change programs, "with the staff there expected to leave the agency." Although Republican lawmakers have "roundly criticized the agency's regulatory work," it is uncertain if the budget will get approval from Congress considering there are proposed cuts to EPA programs that "many lawmakers support."

The Daily Caller (3/14, Bastasch) reports a source familiar with the budget talks told Axios "[s]enior Trump officials consider the EPA the leading edge of the administration's plans to deconstruct the administrative state."

Proposed EPA Budget Cuts Spark Concerns From State Officials. The Hendricks County (IN) Flyer (3/14, Murakami) reports that Sen. Gary Peters (D.-Mich.) said he's worried that EPA budget cuts could "endanger $100 million the city of Flint is supposed to receive to improve its contaminated water system." Similarly, Sen. Dave Loebsack (D-Iowa) said it is "irresponsible" to reduce the capability of an agency "responsible for keeping the water we drink clean and the air that we breathe safe."

Brown: EPA Budget Cuts Threaten To Leave Agency Without Sufficient Staff, Resources. Chicago Sun-Times (3/14, Brown) contributor Mark Brown interviews four EPA employees in an effort to "put a face on the agency that President Donald Trump's administration is looking to dismantle." In his article, Brown expresses concern that without proper funding, the agency won't have sufficient staff or resources to enforce essential environmental protection laws.

Local TV Coverage: EPA Budget Cut. 12-TV Bronx, NY (3/14, 9:56 p.m. EDT) reported, "We're learning cuts at the Environmental Protection Agency could be more extensive than previously thought. Reports say cuts up to 25 percent are already on the horizon, and that even with negotiations still underway, cuts could target state grants that protect air, water, and land."

Survey: Paul Ryan's Constituents Support Him, But Oppose EPA Cuts.

E&E Publishing (3/14, Reilly)reports that a survey conducted for the anti-Paul Ryan political action committee Stop The Speaker PAC found that his constituents "roundly rejected" attempts to transfer public lands and roll back EPA regulations. Although most respondents said they support Ryan and President Trump, "62 percent rejected the Trump administration's proposed 97 percent cut in funding for the Great Lakes through EPA" and another 60 percent opposed Trump's order for the EPA to rescind clean water rules

If EPA Hands Responsibility Down To States, Will Florida Be Able To Step Up?

Noting that EPA Administrator Scott Pruitt has pledged to hand much of the federal EPA's duties back to the states, the Tampa Bay (FL) Times (3/14) questions whether Florida's Department of Environmental Protection has the adequate staff and resources to protect the environment. Since 2011, the state agency has "shrunk by more than 600 employees, dropping from about 3,500 to 2,900." Florida DEP spokeswoman Dee Ann Miller defended the reductions, saying that while the agency Is focused on protecting the environment, "we are also committed to being responsible stewards of taxpayer dollars, improving processes and increasing the effectiveness and efficiency of our operations."

Narooma News **EPA continues water quality monitoring at Whittakers Creek**

The NSW Environment Protection Authority (EPA) is continuing to monitor the water quality within Whittakers Creek and has undertaken further sampling after heavy rain in the area of the Brou landfill, just north of Narooma.

NSW EPA Manager Regional Operations South and West Nigel Sargent said in

response to community concerns the EPA is investigating whether the water quality of Whittakers Creek is being impacted by the Brou landfill.

“After two days of heavy rain, EPA officers conducted a comprehensive sediment and water quality sampling program, involving the collection of over 40 water and sediment samples at a number of locations, including Whittakers Creek and in a dam below the landfill on March 6,” Mr Sargent said.

“The samples will be analysed at OEH laboratories for a range of pollutants.”

Mr Sargent said results from water samples taken in November and December last year showed water quality in the Whittakers Creek was non-toxic to the local environment.

“These results were positive for the community, however we want to be sure that the water quality is not being impacted which is why we have undertaken further water sampling in the area,” he said.

“We should get sample results back before the end of the month and will provide further information then.”

East Chicago's Pleas for Clean Drinking Water Go Unanswered

Environmental justice is on the chopping block at the Environmental Protection Agency, and that doesn't bode well for communities like East Chicago, Indiana, where the agency recently discovered that drinking water is contaminated with lead.

Nearly two weeks ago, a number of East Chicago churches and community groups petitioned the EPA to take emergency action and protect the majority-Black community from lead poisoning, which can cause a long list of health problems, especially in children. As of Tuesday, the local leaders and their environmentalist allies had yet to hear back from the agency.

The EPA's inaction in East Chicago comes as Trump's administration considers massive budget cuts that could crush the agency's environmental justice program, which is supposed to ensure the fair treatment of low-income communities and people of color under environmental law.

The agency's environmental justice office is slated to lose at least 78 percent of its

funding, according to data obtained by the National Association of Clean Air Agencies. Last week, the office's longtime administrator resigned in frustration.

While researching soil contamination at the site, the EPA recently discovered that lead was present in East Chicago's drinking water, due to aging pipes that have not been properly treated for corrosion. Similar problems contributed to the water crisis in Flint, Michigan, which drew national attention to environmental justice last year and inspired bold campaign statements from then-presidential candidate Donald Trump.

"This is a perfect example of an environmental injustice," said Debbie Chizewer, an attorney who teaches at Northwestern University and works with community groups in East Chicago, a small city in northwestern Indiana.

East Chicago residents are now being evacuated from public housing at a Superfund site that is contaminated with lead left behind by heavy manufacturing. Superfund sites are federal priorities for environmental cleanup.

During his confirmation hearings, Scott Pruitt, Trump's pick for EPA administrator, told a Senate committee that the crisis in Flint was a "failure at every level of government" and criticized the EPA for waiting to take action until months after the lead problems became public. If faced with a similar situation, Pruitt said, he would use EPA's emergency authority if a state government failed to act.

Water Online

Study Highlights Breadth Of Dioxane Contamination

Utility officials on Long Island are working to expand their treatment capabilities to ward off the threat of dioxane contamination.

Dioxane appears to be a widespread contaminant on the island.

A report released last month by the Citizens Campaign for the Environment showed that samples have turned up unsafe levels of the manufacturing solvent in multiple Long Island communities, CBS New York reported. The report included an interactive map highlighting sites of dioxane contamination.

The report noted that 1,4-dioxane is never found in nature, and that federal regulators say it is likely carcinogenic. Hair products, detergents, and cleaning products sometimes contain this contaminant. The U.S. EPA says 1,4-dioxane poses a cancer risk in

drinking water at levels above 0.35 µg/L, according to the report.

"Detections above this amount have been found within 39 separate water districts and distribution areas across Long Island, serving about two million Long Islanders," the environmental report said.

The dioxane threat in Long Island came under scrutiny this year after samples at a Hicksville well registered the contaminant at 33 parts per million, CBS New York reported.

"Water testing in Hicksville turned up the highest level of 1,4-dioxane found in the entire country," Newsday reported.

The well is now used for emergency purposes only, but major concerns remain.

"Collectively, Long Island's water supply has the highest levels of the chemical in the state, levels that are considerably higher than the national average," Newsday reported.

The Suffolk County Water Authority is working on an effort to remove more dioxane from the supply. The utility has plans to build the first advanced oxidation process treatment system in the state, according to a statement from the utility issued in January.

THE NATIONAL LAW REVIEW **Clean Water Act Suit in Washington Federal District Court Implicates Pesticide Active Ingredients**

On February 21, 2017, the *Northwest Environmental Advocates* ***(NWEA)*** filed a Clean Water Act (CWA) lawsuit in the U.S. District Court for the Western District that involves a number of pesticide active ingredients in addition to other chemicals. The lawsuit seeks to compel the U.S. Environmental Protection Agency's (EPA) response to

NWEA's 2013 Petition for Rulemaking to Update the Water Quality Criteria for Toxics in the State of the Washington (*NWEA v. EPA*, No.: 2:17-cv-00263). NWEA asserts that Washington's aquatic life water quality criteria (ALC) and human health water quality criteria (HHC) for many chemicals that are classified as "toxic pollutants" are outdated and inadequate. The chemicals at issue include the pesticide active ingredients acrolein, carbaryl, copper, diazinon, demeton, malathion, and methoxychlor. NWEA alleges that Washington's continued use of outdated criteria violates the CWA and poses a risk to species listed as threatened or endangered under the Endangered Species Act (Act), specifically Chinook Salmon and Southern Resident orca whales.

Under the CWA, states develop and adopt water quality criteria and are required on a triennial basis to review and revise or develop new criteria if appropriate to protect designated uses (*e.g.*, recreation, wildlife protection). As part of this triennial review process, states are required to consider any recommended new or revised quality criteria published by EPA. States may adopt the criteria that EPA publishes, modify EPA's criteria to reflect site-specific conditions, or adopt different criteria based on other scientifically-defensible methods. Criteria are a component of water quality standards that inform the development of total maximum daily load (TMDL) calculations, discharge limits in permits, and management of nonpoint sources of pollution, including agricultural run-off. If state criteria are inadequate for the protection of designated uses, EPA may step-in to issue updated criteria, and can be compelled to promulgate criteria by citizen suit action.

NWEA alleges that Washington has failed to adopt HHC or ALC for several toxic pollutants since 1992. In November 2016, EPA published a final rule updating Washington's HHC for toxics. 81 Fed. Reg. 85417. NWEA asserts that the revised HHC do not address the full spectrum of HHC, as updates for arsenic, dioxin, and thallium were not included. NWEA also argues that updated HHC do not alleviate the ongoing risk to aquatic life from Washington's inadequate ALC. EPA has not responded to NWEA's complaint.

It is unclear how EPA will respond to NWEA's suit. Often a state will work simultaneously to develop its own criteria that will meet EPA approval. Registrants associated with the pesticides at issue should prepare for potentially forthcoming proposals of more stringent criteria. The proposal and promulgation of new criteria is a lengthy process and requires public notice and comment. It may well be at least two years before either EPA or Washington issues proposed updates for ALC. A compilation of the latest EPA recommended ALC is accessible here.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

District Court Weighs Claims Over EPA's Liability For Gold King Mine Spill

New Mexico and the Navajo Nation are urging a federal district court to hold EPA liable

for its role in the 2015 Gold King Mine wastewater spill, arguing that the Superfund law does not shield a government agency from penalties for its negligence and that the court should allow their lawsuits to proceed.

The state and tribal governments' claim comes as Sen. John McCain (R-AZ) is seeking new details on the EPA Office of Inspector General's criminal investigation into the spill.

In March 13 briefs, the governments of New Mexico and the Navajo Nation suing EPA over the Gold King spill say their claims about EPA's liability for the spill are valid despite the agency's bid for dismissal. They say the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), or Superfund law, makes no exceptions for pollution caused by negligent federal actors.

"[E]ven state and local governments can be liable for recklessness and gross negligence in response to an emergency . . . Here, the Nation has plainly alleged that that the EPA was negligent, reckless, and grossly negligent, and is therefore subject to liability," the Navajo Nation charges in its brief.

Both governments are suing EPA and private companies involved in either the spill or past mining activities at the Gold King site in Colorado, with their claims consolidated into *New Mexico, et al., v. EPA, et al.*, pending before the U.S. District Court for the District of New Mexico. They are hoping to win both repayment for their costs to clean up environmental damage from the spill, and a broad mandate for the agency to remedy mining-related contamination across the region.

In the newly filed *New Mexico* briefs, both the state and tribal governments call on the court to reject DOJ's argument on EPA's behalf that agencies are shielded from CERCLA liability when a federal cleanup operation inadvertently causes a new pollution release -- which was the case at Gold King.

New Mexico argues in its brief that the Superfund law "waives the federal government's immunity when it engages in activities that would make a private party liable in similar circumstances." Those circumstances include "conduct 'which is negligent, grossly negligent, or which constitutes intentional misconduct,'" the state says.

It continues that EPA staff at the Gold King site acted negligently because they failed to

craft a safety plan for the cleanup; ignored directives from their own on-scene coordinator -- which New Mexico claims violates the National Contingency Plan that Superfund cleanups must follow -- and took actions that “were negligent and reckless.”

Louisiana wetlands hurting from accelerated sea level rise

"In order to assess how dire the situation is in Louisiana, this new dataset is a huge step forward compared to anything we've done before," geologist Torbjörn E. Törnqvist said.

By Brooks Hays | March 14, 2017 at 12:18 PM

Rising seas result in a greater influx of saltwater, turning Louisiana's coastal swamps into marshes and killing trees. Photo by Torbjorn Tornqvist/Tulane University

March 14 (UPI) -- Sea levels along the Louisiana coast are rising at four times the global average. New research suggests the state's already degraded wetlands are paying the price.

Over the last decade, sea levels have risen roughly half an inch per year along Louisiana's coast. The future might not look so dire if the state's natural coastal buffer, its wetlands, was in better shape.

Wetlands offer a variety of ecological benefits, including protection against storm surges, flooding and sea level rise. Unfortunately, Louisiana's wetlands have been degraded and destroyed in recent decades, leaving the coast increasingly vulnerable.

A new survey by scientists at the University of Tulane suggests the state's wetlands may not be up to the task of fending off rising seas.

"In the Mississippi Delta, about 65 percent of study sites are probably still keeping pace, but in the westernmost part of coastal Louisiana, more than 60 percent of sites are on track to drown," Tulane geology professor Torbjörn E. Törnqvist said in a news release.

Researchers combined field survey measurements of local sea level change with similar data collected by satellites. The combined data helped scientists map rising sea levels in and around Louisiana's wetlands. The researchers published the results of their survey in the journal Nature.

"The bottom line is that in order to assess how dire the situation is in Louisiana, this new dataset is a huge step forward compared to anything we've done before," Törnqvist said.

Antonio Bravo

Office of Wetlands, Oceans & Watersheds

202-566-1976

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From: Shapiro, Mike
Sent: Thur 3/16/2017 12:52:30 AM
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Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

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From: Downing, Donna
Sent: Tue 3/14/2017 10:06:25 PM
Subject: For consideration -- One-page table summarizing the Deliberative Process / Ex. 5 riefing paper

Nonresponsive Internal URL/ Ex. 6

Hi everybody –

Deliberative Process / Ex. 5

Enthusiastic thanks to Dan, who developed this helpful format.

Donna

Sharepoint link:

Open **Nonresponsive Internal URL/ Ex. 6**

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Kwok, Rose
Sent: Tue 3/14/2017 8:22:04 PM
Subject: Kwok, Rose has invited you to '2017 WOTUS Proposed Rule Team'

Folks - most of the documents right now are in the Briefing Materials folder and then the Options Subfolder (Click Briefing Materials and then Options. I can send you a direct link to that subfolder if it's helpful).

Go to 2017 WOTUS Proposed Rule Team

Follow this site to get updates in your newsfeed.

Get the OneDrive mobile app! Available for

From: Edwards, Crystal
Location: 3233 WJCE
Importance: Normal
Subject: Theodore Roosevelt Conservation Partnership (TRCP) Call in Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Wed 3/15/2017 1:00:00 PM
End Date/Time: Wed 3/15/2017 2:00:00 PM
TRCP Stakeholder Meeting Agenda 3.15.17.docx

Theodore Roosevelt Conservation Partnership Stakeholder Meeting

March 15, 2017

9-10AM

Nonresponsive Conference Code/ Ex. 6

- EPA Transition
- Budget Update
- Clean Water Rule
- Extension of Public Comment Period for Draft Methods for Specific Conductivity

From: Edwards, Crystal
Location: 3233 WJCE
Importance: Normal
Subject: Brown Bag w/ Environmental Stakeholders Call in **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Wed 3/15/2017 4:00:00 PM
End Date/Time: Wed 3/15/2017 5:00:00 PM
Environmental Stakeholders Meeting Agenda 3.15.17.docx

Environmental Stakeholder Meeting

March 15, 2017

12-1PM

Nonresponsive Conference Code/ Ex. 6

- EPA Transition
- Budget Update
- Clean Water Rule
- Status of Dental Amalgam
- Extension of Public Comment Period for Draft Methods for Specific Conductivity

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Goodin, John
Sent: Tue 3/14/2017 6:29:45 PM
Subject: Re: Update on WOTUS Briefing for the Administrator

Thanks, Mike. Steve and I chatted about potential approaches early this afternoon which we can share. As for participation in addition to you, my initial response would be Greg and me.
Thanks
John

Sent from my iPhone

On Mar 14, 2017, at 1:35 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

So we have time with the Administrator on Monday on Waters of the US. Looks like I will need to leave ACWA early on Monday. We'll need to work closely with OGC. Who should we have for the +2?

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Neugeboren, Steven
Sent: Tuesday, March 14, 2017 1:18 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Subject: RE: Update on WOTUS Briefing for the Administrator

Thanks. I'll follow up with you.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Minoli, Kevin
Sent: Tuesday, March 14, 2017 1:11 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: Update on WOTUS Briefing for the Administrator

Hi Mike and Steve- I wanted to update you on where things stand with a briefing for the Administrator on WOTUS. We are currently scheduled for 11:00 on Monday the 20th. I met with Sarah Greenwalt (a new addition to the Administrator's Team, and the former General Counsel for the Oklahoma AG's Office) today regarding the invitation list. She is going to recommend that it be Mike+2 and me+2, and we should know the results of that in the next day or so. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5 Steve, we need to get some time on the calendar tomorrow to talk through how to approach the briefing in light of that.

Finally, as far as I know Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Shapiro, Mike
Sent: Tue 3/14/2017 5:35:31 PM
Subject: FW: Update on WOTUS Briefing for the Administrator

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Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Penman, Crystal
Location: 3219A WJCE
Importance: Normal
Subject: CWR Update call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Tue 3/14/2017 8:00:00 PM
End Date/Time: Tue 3/14/2017 9:00:00 PM

To: OWOW Managers Group[OWOW_Managers_Group@epa.gov]
From: Nandi, Romell
Sent: Tue 3/14/2017 2:43:37 PM
Subject: need Shapiro biweekly agenda topics by 12pm on Thursday, 3/16...

All:

Even though John just had his last biweekly with Mike Shapiro on 3/9, the next one is scheduled for 3/17, and John wants to keep it on the calendar since at minimum he can talk about CWR developments.

Please send me any agenda topics (and TPs if needed) **by 12pm on Thursday** (I have to send the agenda to OW by 3pm Thursday).

Thanks.

Romell

Personal Phone / Ex. 6

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Mon 3/13/2017 4:02:26 PM
Subject: ECOS coming in today!

Mike, Benita. I just noticed ECOS wants to meet with Mike today at 3:15 on the CWR. I added Benita to the invite. Should I also add John Goodin? There is a call-in number, do you want me to call in?

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Campbell, Ann
Sent: Mon 3/13/2017 1:13:08 PM
Subject: Talking Points for OW Staff Meeting

Benita, here are the TPs I recommend for today's staff meeting, pulled from the full report below.

ASDWA

- Today Mike is meeting with the Association of State Drinking Water Administrators, the professionsla assosication serving state drinking water officials.

Lead Modeling Federal Register Notice

- Deliberative Process / Ex. 5

Drinking Water Infrastructure Needs Survey & Assessment Report

- Deliberative Process / Ex. 5

From: Shapiro, Mike
Sent: Thursday, March 9, 2017 10:14 PM
To: Weekly Report Group

Cc: Campbell, Ann; Best-Wong, Benita; OW Office Directors; Lousberg, Macara; Strauss, Alexis; Pirzadeh, Michelle
Subject: OW Weekly Report

Administrator and company, Here is the OW report. Please note that I will be offsite Monday morning at the Association of State Drinking Water Administrators meeting where I will deliver opening remarks and participate in a lunchtime discussion with the ASDWA Board.

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Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

Washington State Ports Authority Meeting: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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Mike Shapiro

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

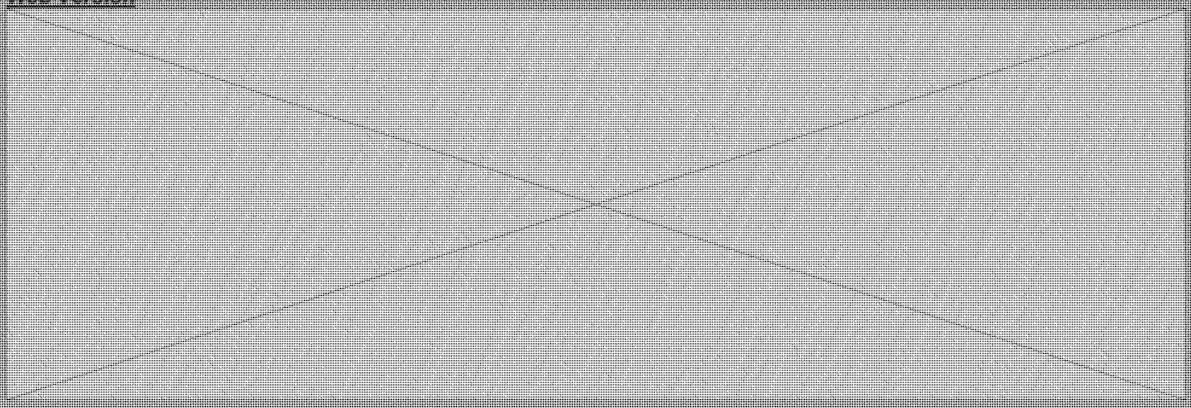
Washington, DC 20460

202-564-5700

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Laura Burchill
Sent: Fri 3/10/2017 10:15:22 PM
Subject: ASWM's Insider's Edition: What's New, The Compleat Wetlander, Webinars, Workshops, Jobs and Events Calendar

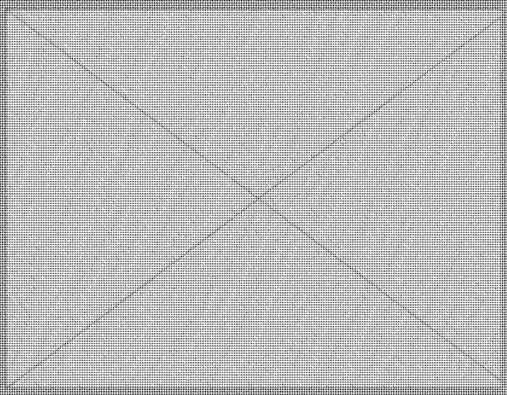
Association of State Wetland Managers - March 10, 2017WHAT'S NEW ▪ Notice of Intention to Review and Rescind or Revise the Clean Water Rule (https:

Web Version



Association of State Wetland Managers - March 10, 2017

WHAT'S NEW



(Jeanne Christie Photo

- Notice of Intention to Review and Rescind or Revise the Clean Water Rule
- Zinke Vows to Fight Trump Over Interior Budget Cuts
- New Bipartisan Congressional Caucus Formed to Support Our Nation's Estuaries
- Former EPA Scientists to Trump: 'Evidence Does Not Change When the Administration Changes'
- Trump's EPA Budget Proposal Targets Climate, Lead Cleanup

C[illegible]NGE FEATURE

- [illegible]nto Oil and Gas Industry Emissions of Methane, a Powerful G[illegible]
- [illegible]e to Ease the Pressures on Aging Dams

THE COMPLEAT WETLANDER

The Wetland Wanderer: **Creating Memorable Wetland Experiences for Others – Big or Small**

By Brenda Zollitsch, Policy Analyst, ASWM

As a mother of two elementary school-aged children, I always have my eye out for interesting weekend or evening activities that we can go to as a family that have hands-on learning opportunities and provide a chance to get the kids out of the house and un-bounced. Whether a picnic at a local park, a science festival, an outdoor movie night or a night lantern making event with a community parade, these kinds of activities are gold for families and others seeking to get out into their community and even learn something new. Not all parents seek these activities out, but lots and lots do. (Continued)

Views from the Blog-o-sphere: **Infrastructure Investment? Time for some Integrated Thinking**

Wetlander's Pick of the Posts: **The Meaning of Water: Trump Orders a Review of Obama-Era WOTUS Rule**

PRIORITIES FOR STATE WETLAND PROGRAMS IN THE NEW ADMINISTRATION

The Association of State Wetland Managers (ASWM) has forwarded a paper describing 'Priorities for State Wetland Programs in the New Administration' to U.S. Environmental Protection Agency Administrator Scott Pruitt. The paper outlines six areas of importance to state wetland managers. 1) Supporting open communications between Federal and State Agencies, 2) Encouraging state assumption of the Clean Water Act Section 404 Permit Program, 3) Fully funding Clean Water Act programs including Wetland Program Development Grants, 4) Offering technical support and training to state wetland programs to ensure

c[illegible]requirements, 5) providing accurate maps of the nation's a[illegible] 6) leveraging opportunities to reduce pollution and natural h[illegible]ng water and reduce costs through natural infrastructure s[illegible]ands are intrinsic to sustaining clean water for the Nation as a[illegible]of individual state wetland programs is essential to sustain t[illegible]c resources. ASWM hopes to work with the new a[illegible]ral agencies and many others to address the priorities c[illegible]

U[illegible]BINARS

ASWM MEMBERS' WEBINAR

Improving Crediting of Wetland and Stream Mitigation

Wednesday, May 17, 2017 - 3-5 pm Eastern

Presenters:
* Steve Martin, US Army Corps of Engineers
* Michelle Mattson, US Army Corps of Engineers
* Eric Stein, Southern California Coastal Water Research Project
* Will Harman, Stream Mechanics

Click here for more information and to register.

POSTPONEMENT OF FUTURE NATIONWIDE PERMIT REISSUANCE WEBINARS

In light of the nearness of the deadline to provide §401 certification on Nationwide General Permits (NWPs), ASWM has determined that an additional webinar on linear projects would have limited benefit at this time, and thus this webinar has been removed from the planned series. However, we remain aware of the challenge of addressing linear utility and transportation programs in an efficient and effective manner, and will address these topics in future webinars related to §401 certification training and §401 certification for energy development planned for later in 2017.

Previous webinars on the NWPs are posted here for your reference.

NFFA WEBINAR RECORDING AVAILABLE

The Value of Nature: Practical Applications for Managers

Tuesday, February 21, 2017

Presented by Elizabeth Schuster, Environmental Economist, The Nature Conservancy

For more information and to view the recording, click here.

C RSE

I nds and Deepwater Habitats from Aerial Imagery

S Michigan State University Institute of Agricultural Technology, in c RS&GIS and Northwest Michigan College.

F on, click here.

UPCOMING WORKSHOP

WETLAND JOBS

- Farm Bill Wildlife Biologist - 2 Openings – AZ
- Santa Cruz Island Preserve Coordinator – CA
- Farm Bill Wildlife Biologist - Illinois - 3 Positions
- Manager of Conservation Programs - Coastal Louisiana
- Restoration Ecologist (Conservation Biologist III) - MA
- Engineer II - MO
- Environmental Educator - Seasonal, Full-Time - NY
- Restoration Technician - Temporary – NY
- Mid-Level Environmental Scientist - SC
- Project Engineer (Water Resources) – VA
- Regional Conservation Partnership Program (RCPP) Coordinator – WA
- Palouse Watershed Conservation Planner – WA
- Biological Science Technician (Vegetation) - Temporary - Washington, DC

For more information about these jobs, visit the Wetland Jobs board. If you have a job related to wetlands you wish to see posted on the Wetland Jobs board, please fill out this form. Please also see our Fellowship, Internship and Awards page.

ASWM's Annual State/Tribal/Federal Coordination Meeting: Using Sound Science and Effective Communication to Strengthen Wetland Conservation, Restoration and Management

April 11-13, 2017 at the National Conservation Training Center near Shepherdstown, West Virginia

You are invited to ASWM's State/Tribal/Federal Coordination Meeting, April 11-13, 2 p m cl o

T

- Addressing systemic barriers to wetland restoration
- Integrating wetlands with other water programs
- Training on communication tools for wetland professionals
- Update on FACA process to clarify requirements for Assumption of the 404 Program

Agenda

To see the draft agenda, click here (html) or
will be updated to reflect some changes as s

Registration and Lodging

For more information about the meeting, incl
reservations, click here.

Rideshare Board

If you are interested in sharing a ride to the meeting from an airport location or as a commuter, check out our **Rideshare Board** to access forms and information sheets.

This meeting is by invitation only, so save the links above because you will not find information about the meeting on the ASWM webpages. We do this to ensure we have plenty of room for ASWM members, state and tribal participants along with representatives of federal agencies, interest groups, nonprofit organizations and members of the academic community. If you would like us to invite another individual or organization, please let us know by responding to this e-mail and we will forward an invitation.

For all questions, please contact Brenda Zollitsch (agenda content and speakers) or Laura Burchill (registration and logistics) via e-mail or at (207) 892-3399.

here.

ASWM CALENDAR

For a calendar of wetland events, meetings, conferences, and courses nationwide, visit the ASWM calendar.

SUPPORT WETLANDS WITH AMAZON PURCHASES

You can help support wetlands with your Amazon purchases.

1. Go to smile.amazon.com
2. Select Association of State Wetland Managers
3. Start shopping

Amazon will donate 0.5% of the price of your eligible AmazonSmile purchases to ASWM — with no extra cost to you.

Laura Burchill
Association of State Wetland Managers
207-892-3399
ASWM Website

Over 30 Years of Protecting the Nation's Wetlands

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To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Gonzalez, Julian
Sent: Fri 3/10/2017 5:08:49 PM
Subject: ACWA Weekly Wrap Vol VIII Issue 10 (Week of March 6, 2017)

This Week's Wrap is accessible here:

Nonresponsive Internal URL/ Ex. 6

*Please try refreshing your browser if you encounter font formatting issues that make the above-linked PDF difficult to view when first opened. Please notify us if this fails to correct the problem.

In this issue . . .

- Administrator Pruitt confirmed for ACWA 2017 Mid Year Meeting
- 2017 ASCE Infrastructure Report Card Released
- WOTUS Rule Rescind/Revise Federal Register Notice
- and more!

This week's Wrap will be posted to the web early next week on ACWA's website - where you can currently find the latest issue and an archive of the issues from 2015 to present.

What is the Wrap? The Weekly Wrap is a one page road map of the past week's events and upcoming activities. The Wrap reminds our membership of important deadlines and may highlight information distributed by the Association. Please direct any Wrap comments to Frannie Monasterio at interns@acwa-us.org.

Enjoy your weekend!

-ACWA Staff

To: OWOW Managers Group[OWOW_Managers_Group@epa.gov]
From: Nandi, Romell
Sent: Fri 3/10/2017 2:38:35 PM
Subject: Office of Water Weekly Report to Administrator

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Romell

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Deliberative Process / Ex. 5

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Mike Shapiro

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Washington State Ports Authority Meeting: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Meeting with Representative Napolitano: Next week I, along with others in my office and OCIR, will attend a meeting with Representative Napolitano and several Los Angeles Councilmembers and city staff. Rep. Napolitano requested this meeting with EPA to discuss cost concerns with the Los Angeles County MS4 permit. This meeting is a follow up to a series of discussions we had last year with Napolitano and her staff and with California State Assembly member Chris R. Holden on MS4 permitting in California.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Litigation in Washington on Coastal Zone Act (CZARA), ESA and the Section 319 Program: Northwest Environmental Advocates filed a complaint against EPA and NOAA alleging, amongst other things, that EPA should have consulted with the Marine Fisheries Service and Fish & Wildlife Services under the Endangered Species Act when EPA approved the state's Section 319 Nonpoint Source Management Program. Other issues raised, challenge EPA's administration and oversight of the Section 319 program, including how the statute applies when the Agency requires and takes action on updated state Nonpoint Source Management Programs, and whether the agency violated the APA when it found that the state had made satisfactory annual progress in 2014 and 2015. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Upcoming Major Public Events

Stakeholder Engagement: Next week, I will meet with the Theodore Roosevelt Conservation Partnership and representatives of the NGO community as part of a series of standing engagements at regularly scheduled intervals to discuss issues of importance to these stakeholder groups and provide updates on activities of mutual interest.

National League of Cities Conference: Next week, OW officials will participate in the NLC conference. The conference brings together mayors, council members and city staff from across the country to discuss policy ideas, such infrastructure, public safety, finance, and technology innovation, building on best practices of local governments across the country as part of a broader approach to integrated planning.

Water Week 2017: The week of March 19 through 25, water sector organizations with members nationwide will gather in DC to discuss national policies for the advancement of clean, safe and affordable water. OW will participate extensively in the policy forums sponsored by the Association for Clean Water Administrators, (ACWA), where I understand you are confirmed to speak, and the National Association of Clean Water Agencies (NACWA). That week I also anticipate meeting with the Clean Water Network, a nationwide coalition of local, regional, and national groups.

Water Infrastructure Improvements for the Nation (WIIN) Act: Development of the Strategic Plan for Targeted Outreach to Populations Affected by Lead: On March 23, we anticipate hosting the first of 2 webinars to engage states and public water systems in the development of the strategic plan. The WIIN amendments to the Safe Drinking Water Act require EPA to develop a strategic plan within 180 days (by June 14) that describes how the Administrator, states and the public water systems will work together to provide public education to communities affected by lead. Under the Act, EPA is required to develop the strategic plan, in collaboration with states and owners/operators of public water systems. A second webinar is planned for May 4th to discuss stakeholder comments and share an updated version of the strategic plan.

Past Week Accomplishments:

WEF GI Certification Program: This week, we met with leaders from the Water Environment Federation (WEF) to learn about the National Green Infrastructure Certification Program (NGICP). Initiated under the leadership of *DC Water* and *WEF*, NGICP sets national certification standards for green infrastructure (GI) construction, inspection, and maintenance workers. Designed to meet international best practice standards, the certification supports the development of a proficient workforce and establishes a career path for skilled GI workers. The NGICP offers a credential for GI installation, inspection, and maintenance workers that verifies that they have the required knowledge to build, inspect, and maintain sustainable GI systems. It is meant to be an entry-level certification that focuses on knowledge that is important for all three of these groups of workers to carry out their job tasks properly. The NGICP is being developed and implemented with the support of a growing number of utilities to help advance the program nationwide.

Mike Shapiro

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Thur 3/9/2017 11:07:57 PM
Subject: FOR YOUR REVIEW: Office of Water Weekly Report

Administrator and company, Here is the OW report. Please note that I will be offsite Monday morning at the Association of State Drinking Water Administrators meeting where I will deliver opening remarks and participate in a lunchtime discussion with the ASDWA Board.

Upcoming Hot Issues and Important Deadlines

Clean Water Rule Update: This week we sat down with David Schnare and Justin Schwab to discuss an initial set of options for your consideration. Based on that discussion we are refining our framing of the options and will meet again with members of your team next Wednesday. This week we also met with the career leadership at Army and the Army Corps of Engineers to begin coordination. These were productive discussions towards fully assembling a joint rulemaking team and we anticipate some from Army and the Corps will join us at next week's meeting as well. Lastly, we began conducting some preliminary outreach this week, speaking to the National Tribal Water Council, and will continue next week reaching out to the state associations.

-

Deliberative Process / Ex. 5

-

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Washington State Ports Authority Meeting: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Thomas, Latosha
Sent: Thur 3/9/2017 11:00:14 PM
Subject: Re: OD's Speaking Topics for NACWA (3.21.17)

Sounds good. Thanks!

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)
(Personal Phone / Ex. 6)
thomas.latosha@epa.gov

On Mar 9, 2017, at 5:59 PM, Best-Wong, Benita <Best-Wong.Benita@epa.gov> wrote:

Thanks Latosha,

This is very helpful. Let's see what I can crib from Mike's talking points for ASDWA supplemented with whatever the Administrator talks about at the ACWA meeting on the 20th.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Thomas, Latosha

Sent: Thursday, March 09, 2017 5:03 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: OD's Speaking Topics for NACWA (3.21.17)

Hi Benita,

Here are the topics that each of the ODs will be covering for NACWA. We just found out that each of them will only have 5-10 minutes to speak (You'll have 20 minutes.). Hopefully, that will be enough time, and you won't have to cover any of these topics. I think it'll be good for you to stay focused on broader TPs.

Betsy (OST)

OST will be presenting on FY17 priorities, which include the following:

Deliberative Process / Ex. 5

John (OWOW)

- **Deliberative Process / Ex. 5**
-
-

Andrew (OWM)

- Deliberative Process / Ex. 5

- Deliberative Process / Ex. 5

Peter (OGWDW)

- Deliberative Process / Ex. 5

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

Personal Phone / Ex. 6

thomas.latosha@epa.gov

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Thomas, Latosha
Sent: Thur 3/9/2017 10:03:20 PM
Subject: OD's Speaking Topics for NACWA (3.21.17)

Hi Benita,

Here are the topics that each of the ODs will be covering for NACWA. We just found out that each of them will only have 5-10 minutes to speak (You'll have 20 minutes.). Hopefully, that will be enough time, and you won't have to cover any of these topics. I think it'll be good for you to stay focused on broader TPs.

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Deliberative Process / Ex. 5

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-
- Deliberative Process / Ex. 5
-

Andrew (OWM)

- Deliberative Process / Ex. 5

- Deliberative Process / Ex. 5

Peter (OGWDW)

- Deliberative Process / Ex. 5

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

Personal Phone / Ex. 6

thomas.latosha@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Ann Campbell
Sent: Thur 3/9/2017 3:33:28 PM
Subject: Fwd: Re-Evaluating The Clean Water Rule: A Long Road Ahead

Sent from my iPhone

Begin forwarded message:

From: Ann Campbell < Personal Email / Ex. 6
Date: March 6, 2017 at 8:56:21 PM EST
To: Ann Campbell Personal Email / Ex. 6
Subject: Re-Evaluating The Clean Water Rule: A Long Road Ahead

https://www.lw.com/thoughtLeadership/re-evaluating-the-clean-water-rule

Sent from my iPhone

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Nandi, Romell
Sent: Thur 3/9/2017 2:30:21 PM
Subject: RE: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?

I told Mike to cc Christine when he sends you the draft TPs. He will give you enough lead time before the 11th for any changes that you want to make.

From: Best-Wong, Benita
Sent: Wednesday, March 08, 2017 6:00 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Subject: Re: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?

They can send draft talking points. I'll follow up with them.

Sent from my iPhone

On Mar 8, 2017, at 4:36 PM, Nandi, Romell <Nandi.Romell@epa.gov> wrote:

> OK. Do you prefer that Mike and Mindy send you some draft TPs for you to then shape as you prefer? Or would you rather speak with them first about what you want to speak about?
>
> **From:** Best-Wong, Benita
> **Sent:** Wednesday, March 08, 2017 4:35 PM
> **To:** Nandi, Romell <Nandi.Romell@epa.gov>
> **Subject:** RE: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?
>
> Hi Romell,
>
> I can attend the meeting. Crystal asked me about it before she put it on my calendar.
>
> Regards,
>
> Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Nandi, Romell
Sent: Wednesday, March 08, 2017 3:09 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?
Importance: High

Benita:

I saw you had the ASWM meeting at NCTC on your calendar for **April 11** (and that it is Personal Matters / Ex. 6 birthday!), but was not certain if that was confirmation you are attending. ASWM is asking if you can attend and speak from **10-10:30am**. Mike and Mindy asked me to confirm you are willing and able to attend. John will be on leave at that time and so cannot attend.

ASWM is not calling your talk a keynote on the agenda, but you would be the first major speaker on the first day after Jeanne Christie sets the stage, and you are the only EPA speaker. They basically want an overview of what is going on with wetlands from an EPA perspective.

Brenda from ASWM said they would love for you to stay beyond 10:30 if you can, but they will take what they can get.

If you confirm that you will attend and speak, then between you, Mike, and Mindy you can figure out what topics to cover and WD can help with talking points (I am sure the attendees will want to hear about CWR, but just so you know, there will be a CWR panel on after you speak).

In any case, let me know if you can attend and we will go from there.

Thanks.

Romell

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Nandi, Romell
Sent: Wed 3/8/2017 9:36:59 PM
Subject: RE: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?

OK. Do you prefer that Mike and Mindy send you some draft TPs for you to then shape as you prefer? Or would you rather speak with them first about what you want to speak about?

From: Best-Wong, Benita
Sent: Wednesday, March 08, 2017 4:35 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Subject: RE: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?

Hi Romell,

I can attend the meeting. Crystal asked me about it before she put it on my calendar.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Nandi, Romell

Sent: Wednesday, March 08, 2017 3:09 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?
Importance: High

Benita:

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If you confirm that you will attend and speak, then between you, Mike, and Mindy you can figure out what topics to cover and WD can help with talking points (I am sure the attendees will want to hear about CWR, but just so you know, there will be a CWR panel on after you speak).

In any case, let me know if you can attend and we will go from there.

Thanks.

Romell

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Nandi, Romell
Sent: Wed 3/8/2017 8:09:12 PM
Subject: Benita: can you speak at ASWM mtg at NCTC on April 11 starting at 10am?

Benita:

I saw you had the ASWM meeting at NCTC on your calendar for **April 11** (and that it is Personal Matters / Ex. 6 birthday!), but was not certain if that was confirmation you are attending. ASWM is asking if you can attend and speak from **10-10:30am**. Mike and Mindy asked me to confirm you are willing and able to attend. John will be on leave at that time and so cannot attend.

ASWM is not calling your talk a keynote on the agenda, but you would be the first major speaker on the first day after Jeanne Christie sets the stage, and you are the only EPA speaker. They basically want an overview of what is going on with wetlands from an EPA perspective.

Brenda from ASWM said they would love for you to stay beyond 10:30 if you can, but they will take what they can get.

If you confirm that you will attend and speak, then between you, Mike, and Mindy you can figure out what topics to cover and WD can help with talking points (I am sure the attendees will want to hear about CWR, but just so you know, there will be a CWR panel on after you speak).

In any case, let me know if you can attend and we will go from there.

Thanks.

Romell

From: Campbell, Ann
Location: WJCE 3233; Call in # Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: CWR
Start Date/Time: Wed 3/8/2017 7:00:00 PM
End Date/Time: Wed 3/8/2017 8:00:00 PM

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Fontaine, Tim[Fontaine.Tim@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Gonzalez, Yvonne V.[Gonzalez.Yvonne@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Thomas, Latosha
Sent: Wed 3/8/2017 4:10:49 PM
Subject: Draft Agendas for TRCP and Enviro Stakeholders Meetings (March 15, 2017)
TRCP Stakeholder Meeting Agenda 3.15.17.docx
Environmental Stakeholders Meeting Agenda 3.15.17.docx

Hi All,

Here are the draft agendas for two of the upcoming stakeholder meetings. Please let me know if you have any changes. I'd like to get TPs for the annotated versions of these agendas by **COB Friday (3/10)**. Thanks!

TRCP – March 15, 2017; 9-10AM

Enviro – March 15, 2017; 12-1PM

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

Personal Phone / Ex. 6

thomas.latosha@epa.gov

Environmental Stakeholder Meeting

March 15, 2017

12-1PM

Nonresponsive Conference Code/ Ex. 6

- EPA Transition
- Budget Update
- Clean Water Rule
- Status of Dental Amalgam
- Extension of Public Comment Period for Draft Methods for Specific Conductivity

Theodore Roosevelt Conservation Partnership Stakeholder Meeting

March 15, 2017

9-10AM

Nonresponsive Conference Code/ Ex. 6

- EPA Transition
- Budget Update
- Clean Water Rule
- Extension of Public Comment Period for Draft Methods for Specific Conductivity

To: Downing, Donna[Downing.Donna@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Wehling, Carrie
Sent: Wed 3/8/2017 1:32:01 PM
Subject: RE: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

Nothing further from me, although I like Karyn's suggestion – believe we discussed it at our meeting. If it's not in the paper, it would be good for us to make a note of it orally.

Great job pulling this together after several long, meandering meetings!

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Tuesday, March 07, 2017 6:03 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose

<Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Subject: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

Hi everybody:

Attached is the briefing one-pager and an updated timeline, revised to reflect this afternoon's discussion.

If you have suggested edits that you would like incorporated prior to the documents' use at Wednesday's 11am "wetlands general" meeting, please send them to me in redline/strikeout by 9pm tomorrow morning. That way, I'll have time to revise and redistribute the documents well in advance of the 11am meeting.

Thanks!

Donna

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Neugeboren, Steven
Sent: Wed 3/8/2017 1:19:02 PM
Subject: Re: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

I think that would be a useful change.

Sent from my iPhone
Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

On Mar 8, 2017, at 7:29 AM, Wendelowski, Karyn <wendelowski.karyn@epa.gov> wrote:

One thought (may have already been discussed). After the first sentence of the overview it may be worth adding a sentence like: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Karyn Wendelowski
Attorney Advisor
Office of General Counsel
(202) 564-5493

On Mar 7, 2017, at 6:03 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi everybody:

Attached is the briefing one-pager and an updated timeline, revised to reflect this afternoon's discussion.

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Thanks!

Donna

<WOTUS2 briefing paper v3.docx>

<Rule Timeline short v4.xlsx>

To: Goodin, John[Goodin.John@epa.gov]
Cc: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Campbell, Ann
Sent: Wed 3/8/2017 12:29:54 PM
Subject: Re: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

Yes, thanks everyone! Mike is good with the paper and is prepared to present the first half of the briefing as discussed.

On Mar 8, 2017, at 7:20 AM, Goodin, John <Goodin.John@epa.gov> wrote:

Thanks, Donna. Kudos to Everyone-- like how this has evolved.
John

On Mar 7, 2017, at 6:11 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Looks good. Suggest adding a date, and add a comma after "in practice" in first bullet under option 2.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Tuesday, March 07, 2017 6:03 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose

<Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Subject: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

Hi everybody:

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If you have suggested edits that you would like incorporated prior to the documents' use at Wednesday's 11am "wetlands general" meeting, please send them to me in redline/strikeout by 9pm tomorrow morning. That way, I'll have time to revise and redistribute the documents well in advance of the 11am meeting.

Thanks!

Donna

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Wendelowski, Karyn
Sent: Wed 3/8/2017 12:29:48 PM
Subject: Re: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

One thought (may have already been discussed). After the first sentence of the overview it may be worth adding a sentence like: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Karyn Wendelowski
Attorney Advisor
Office of General Counsel
(202) 564-5493

On Mar 7, 2017, at 6:03 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

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Thanks!

Donna

<WOTUS2 briefing paper v3.docx>

<Rule Timeline short v4.xlsx>

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Goodin, John
Sent: Wed 3/8/2017 12:20:36 PM
Subject: Re: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

Thanks, Donna. Kudos to Everyone-- like how this has evolved.
John

On Mar 7, 2017, at 6:11 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Looks good. Suggest adding a date, and add a comma after "in practice" in first bullet under option 2.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Tuesday, March 07, 2017 6:03 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>;

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Donna

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Shapiro, Mike
Sent: Wed 3/8/2017 3:10:39 AM
Subject: RE: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

I'm good with. There's a superfluous second page on the schedule spreadsheet that can be removed.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Campbell, Ann
Sent: Tuesday, March 07, 2017 6:22 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>
Subject: Fwd: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

I haven't reviewed yet. Steve has weighed in that it looks good, just add a date to the paper.

Begin forwarded message:

> **From:** "Downing, Donna" <Downing.Donna@epa.gov>
> **Date:** March 7, 2017 at 6:03:28 PM EST
> **To:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Kwok, Rose"

<Kwok.Rose@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Bennett, Brittany" <bennett.brittany@epa.gov>, "Auerbach, Daniel" <Auerbach.Daniel@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>
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From: Neugeboren, Steven
Sent: Tue 3/7/2017 11:11:38 PM
Subject: RE: For review: Revised draft 1-pager on the re-do of the WOTUS rule, reflecting this afternoon's discussion

Looks good. Suggest adding a date, and add a comma after "in practice" in first bullet under option 2.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Tuesday, March 07, 2017 6:03 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
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From: Downing, Donna
Sent: Tue 3/7/2017 7:46:49 PM
Subject: RE: For review: Draft 1-pager on the re-do of the WOTUS rule

Thanks, Steve. This looks helpful in moving forward our conversation (and what becomes briefing materials). Let's discuss this in the context of Mike's input at this afternoon's meeting.

Donna

From: Neugeboren, Steven
Sent: Tuesday, March 07, 2017 2:43 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: For review: Draft 1-pager on the re-do of the WOTUS rule

Our comments. Redline/strikeout would have been confusing so it's clean. I think the substance is exactly the same, but we have tried to strealmine the presentation, bring a little more clarity to the precise purpose of mtg (more on process/timing than a deicion meetings) and other thinking we can discuss with you today.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Monday, March 06, 2017 7:44 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Neugeboren, Steven
Sent: Tue 3/7/2017 7:12:53 PM
Subject: RE: For review: Draft 1-pager on the re-do of the WOTUS rule

Coming soon! By 230

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Tuesday, March 07, 2017 11:09 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

Thanks, Steve. That sounds very helpful.

Donna

Sent from my iPhone

On Mar 7, 2017, at 10:41 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Donna =- we will provide consolidated comments; I have some thoughts/contributions on framing that others in OW may want to see before digging into it in too much detail.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Monday, March 06, 2017 7:44 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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Washington, DC 20004

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Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Campbell, Ann
Sent: Tue 3/7/2017 5:58:48 PM
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

Makes sense. Thanks everyone. I will send something out shortly.

On Mar 7, 2017, at 11:59 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Per my earlier message, I've dug into this and we will send it back shortly after 1. I have made what I consider to be no substantive changes but a lot of framing/language/presentation suggestions and to avoid version control issues, I suggest further editing await our comments and also see what Mike thinks of them. I think a conversation later today would be good.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Campbell, Ann
Sent: Tuesday, March 07, 2017 11:57 AM
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Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn

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Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

Donna, Mike had some direction he gave to me on this. It will take me some time to pull together comments (I won't make it by 1p). and it may be easier if we can, as a group, sit down for 30 minutes or so later today to go over where the paper is at and Mike's thoughts. If folks are game I'll set something up.

Ann

On Mar 6, 2017, at 7:44 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

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Washington, DC 20460

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Washington, DC 20004

<WOTUS2 next steps v3.docx>

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Cc: Downing, Donna[Downing.Donna@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/7/2017 5:12:21 PM
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

Thanks Ann. Sitting down this afternoon will be helpful.

Sent from my iPhone

On Mar 7, 2017, at 11:57 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

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Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<WOTUS2 next steps v3.docx>

To: Campbell, Ann[Campbell.Ann@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Neugeboren, Steven
Sent: Tue 3/7/2017 4:59:34 PM
Subject: RE: For review: Draft 1-pager on the re-do of the WOTUS rule

Per my earlier message, I've dug into this and we will send it back shortly after 1. I have made what I consider to be no substantive changes but a lot of framing/language/presentation suggestions and to avoid version control issues, I suggest further editing await our comments and also see what Mike thinks of them. I think a conversation later today would be good.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Campbell, Ann
Sent: Tuesday, March 07, 2017 11:57 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

Donna, Mike had some direction he gave to me on this. It will take me some time to pull together

comments (I won't make it by 1p). and it may be easier if we can, as a group, sit down for 30 minutes or so later today to go over where the paper is at and Mike's thoughts. If folks are game I'll set something up.

Ann

On Mar 6, 2017, at 7:44 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi everybody:

At today's meeting we had a broad discussion on how best to present in a one-pager the options, timeline implications, and other issues associated with a re-do of the WOTUS regulatory definition. Attached please find a first draft that hopefully reflects much of that discussion. As suggested at the meeting, let's collectively review and suggest how best to turn this draft into what we need for briefing the Administrator and others.

Please send me suggested edits and other thoughts by 1pm tomorrow (ideally in redline/strikeout)(no penalty for being early!). I'll work with Mindy and John to harmonize input and turn around a revised draft by mid-afternoon tomorrow.

Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<WOTUS2 next steps v3.docx>

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Downing, Donna
Sent: Tue 3/7/2017 4:59:28 PM
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

I'm game! We figured the one-pager would spur discussion and are pleased it has.

Donna

Sent from my iPhone

On Mar 7, 2017, at 11:57 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

Donna, Mike had some direction he gave to me on this. It will take me some time to pull together comments (I won't make it by 1p). and it may be easier if we can, as a group, sit down for 30 minutes or so later today to go over where the paper is at and Mike's thoughts. If folks are game I'll set something up.

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Office of Wetlands, Oceans & Watersheds

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To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
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Sent: Tue 3/7/2017 4:57:00 PM
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

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Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Downing, Donna
Sent: Tue 3/7/2017 4:08:57 PM
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

Thanks, Steve. That sounds very helpful.

Donna

Sent from my iPhone

On Mar 7, 2017, at 10:41 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Donna =- we will provide consolidated comments; I have some thoughts/contributions on framing that others in OW may want to see before digging into it in too much detail.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna
Sent: Monday, March 06, 2017 7:44 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>;

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Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

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1200 Pennsylvania Avenue, NW

Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/7/2017 3:58:18 PM
Subject: Fwd: As requested: talking points regarding v Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Peck, Gregory" <Peck.Gregory@epa.gov>
Date: March 7, 2017 at 10:25:59 AM EST
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Downing, Donna" <Downing.Donna@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Bennett, Brittany" <bennett.brittany@epa.gov>, "Auerbach, Daniel" <Auerbach.Daniel@epa.gov>, "Nandi, Romell" <Nandi.Romell@epa.gov>
Subject: RE: As requested: talking points regarding v Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Mindy – I don't want to have this discussion in emails. The key point is that Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Eisenberg, Mindy
Sent: Tuesday, March 07, 2017 10:20 AM
To: Peck, Gregory <Peck.Gregory@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: Re: As requested: talking points regarding v Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

There certainly is the legal issue as you reference below that needs to be answered. But if

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 7, 2017, at 10:10 AM, Peck, Gregory <Peck.Gregory@epa.gov> wrote:

Donna – I wonder if these talking points avoid responding directly Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

So the issue is more a legal question – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Downing, Donna
Sent: Tuesday, March 07, 2017 9:39 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: As requested: talking points regarding v Deliberative Process / Ex. 5 r Deliberative Process / Ex. 5

Hi Mike (and others):

We understand an issue likely to arise during your meeting with Deliberative Process / Ex. 5 is Deliberative Process / Ex. 5 At yesterday's meeting you'd requested Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Attached are some TPs that might be helpful. The TPs reflect review by John, Mindy, and Rose (thanks!), and John suggested I send them directly to you.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

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Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

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Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Orvin, Chris[Orvin.Chris@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Fields, Wanda
Sent: Tue 3/7/2017 1:08:36 PM
Subject: RE: Executive Correspondence: AX-17-000-5593 (Christie, Jeanne)
AL 17-000-5593 CHRISTIE.pdf

Here is the attachment.

From: Orvin, Chris
Sent: Tuesday, March 07, 2017 7:53 AM
To: Fields, Wanda <Fields.Wanda@epa.gov>
Subject: RE: Executive Correspondence: AX-17-000-5593 (Christie, Jeanne)

Thanks, Wanda. Do you have it in a PDF? I didn't see an attachment.

Chris Orvin
U.S Environmental Protection Agency

Special Assistant to the Chief of Staff
Office of Water

202-564-0430

From: Fields, Wanda
Sent: Monday, March 06, 2017 3:45 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>
Subject: Executive Correspondence: AX-17-000-5593 (Christie, Jeanne)

CITIZEN/ORIGINATOR: Christie, Jeanne

CONTROL NUMBER: AX-17-000-5593

STATUS: Pending

DUE DATE: 3/21/2017

SUBJECT: Priorities for State Wetland Programs in the New Administrator

ASSIGNMENT: OWOW

Fri Mar 03 17:41:59 EST 2017
Hope.Brian@epamail.epa.gov
Fw: Association of State Wetland Managers Policy Priorities
To: CMS.OEX@epamail.epa.gov

From: Dickerson, Aaron
Sent: Thursday, March 2, 2017 5:51 PM
To: Hope, Brian
Subject: FW: Association of State Wetland Managers Policy Priorities

Hi Brian

This looks more like the organization just passing on information and not requesting a meeting so I believe this needs to go into CMS. Let me know if you think differently. Thanks.

Aaron Dickerson
Office of the Administrator
U.S. EPA
Phone: 202-564-1783
Fax: 202-501-1338

From: Jeanne Christie [mailto:jeanne.christie@aswm.org]
Sent: Wednesday, March 1, 2017 4:30 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: Association of State Wetland Managers Policy Priorities

Mr. Dickerson,

Attached is a letter to Administrator Pruitt with a paper that highlights six areas of public policy of importance to the members of the Association of State Wetland Managers.

If you have any questions or need additional information, please contact me.

Thank you,

Jeanne Christie
Executive Director
Association of State Wetland Managers
Ph: (207) 892-3399 C: (207) 310-8708 F: (207) 892-3089
Website: www.aswm.org

Association of State Wetland Managers
www.aswm.org
The Association of State Wetland Managers is a nonprofit membership organization established in 1983 to promote and enhance protection and management of wetland ...

Blog: http://www.aswm.org/wordpress/

The Compleat Wetlander | The Contemplative Blog of the ...
www.aswm.org
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The Association of State Wetland Managers, Inc.

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

Executive Director
Jeanne Christie
32 Tandberg Trail, Suite 2A
Windham ME 04062
(207) 892-3399

Executive Director Emeritus
Jon A. Kusler, Esq.
1434 Helderberg Trail
Berne, NY 12023-9746
(518) 872-1804

Senior Policy Analyst
Peg Bostwick
7521 South Forest Hill Road
St. Johns, MI 48879
(517) 388-2214

Chairman
Kenneth Murin
PA Dept. of Environmental Protection
RCSOB 400 Market Street
P.O. Box 8460
Mechanicsburg, PA 17105
(717) 772-5975

Vice Chairman
Tom Harcarik
OH Environmental Protection Agency
50 West Town Street
Columbus, OH 43215
(614) 644-3639

Secretary/Treasurer
Mark Biddle
DE Dept. of Natural Resources and Environmental Control
820 Silver Lake Blvd., Suite 220
Dover, DE 19904
(302) 739-9939

Members at Large

Denise Clearwater
MD Dept. of the Environment

Maryann McGraw
NM Environment Department

Doug Norris
MN Dept. of Natural Resources

Timothy Rach
FL Dept. of Environmental Protection

Bill Ryan
OR Dept. of State Lands

March 1, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW (MC1101A)
Washington, DC 20460

Dear Administrator Pruitt,

As you begin your tenure at the U.S. Environmental Protection Agency (USEPA), we are writing to you to share the areas of public policy that are of high importance to the members of the Association of State Wetland Managers. Attached is a paper that provides some background on our organization and outlines six priority topics that we believe are important. Healthy wetlands are intrinsic to sustaining clean water for the Nation as a whole and the work of individual state wetland programs is essential to sustain these and other aquatic resources. We look forward to working with you and your team at USEPA on these and other issues.

The Association of State Wetland Managers was founded in 1983 to support the work of states in protecting and managing wetland resources through the application of sound science. ASWM is a national, nonpartisan organization that works with states and other partners to build state capacity to protect, conserve and restore wetlands. We look forward to continued collaboration with the U.S. Environmental Protection Agency.

We look forward to working with you.

If you have questions or would like to receive additional information, please contact ASWM's Executive Director, Jeanne Christie (jeanne.christie@aswm.org / 207-892-3399).

Sincerely,

Jeanne Christie
Executive Director

Cc: Mike Shapiro, USEPA
John Goodin, USEPA
ASWM Board

The Association of State Wetland Managers, Inc.

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

Priorities for State Wetland Programs in the New Administration

The Association of State Wetland Managers (ASWM) was established in 1983 to promote and enhance protection and management of wetland resources, to promote application of sound science to wetland management and to provide training and education for our members and the public. Currently thirty-nine states are members of the ASWM and state staffs from all 50 states as well as interested tribes, corporate and consultant interests participate in ASWM information transfer, education, program development, and training activities. The goals of ASWM include:

- Improve the coordination of wetland programs and policies at all levels of government
- Translate wetland science into fair and reasonable government policies
- Help states develop and implement wetland conservation and regulatory programs
- Integrate wetlands into broader landscape and resource management initiatives
- Provide training and capacity building for state wetland programs
- Build conservation and restoration partnerships among states, tribes, local governments, nonprofits, and other interested parties
- Encourage minority participation in wetland protection, restoration and management

A New York Example of Cost Savings from Natural Infrastructure

Numerous case studies have highlighted the cost-savings of natural vs. manmade infrastructure, including the New York Staten Island Bluebelt project where stormwater is controlled using existing natural drainage systems, e.g., streams, ponds, and wetlands. The Bluebelt "now includes about 400 acres of freshwater wetland and riparian stream habitat and almost 11 miles of stream corridor…[and]… it has successfully removed the scourge of regular flooding from southeastern Staten Island, while saving the City $300 million in costs of constructing storm water sewers."[1]

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recreational opportunities and even impacting public drinking water supplies. A 2011 report by Southwick Associates (a market research, statistics, and economics firm specializing in the outdoor recreation markets) estimates that the loss of wetlands in the U.S. since the 1950's has resulted in an economic loss of more than $81 billion in wetland related ecosystem services.[3] The Outdoor Industry Association in its 2012 report estimated annual expenditures of $91.9 billion in gear- and travel- related sales, $34.7 billion generated in jobs, and $12.1 billion in federal, state and local taxes from fishing, hunting, and wildlife viewing alone. Sustainable fish and wildlife populations to support these industries are heavily dependent on healthy wetlands.[4] The Millennium Ecosystem Assessment gave wetlands world-wide a value of $15 trillion in 1997.[5] A report on the impact of wetland restoration on local economies found that every dollar spent on coastal wetland restoration returns $1.90 in economic activity. [6]

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accomplished through peer to peer sharing, training, and exploration of new scientific findings and technology as well as information about recent court cases and changes in federal programs and policies. In fact, cooperation and consensus-based agreements can sometimes lead to successful environmental outcomes that are less costly than existing regulations—either through improvements in the regulatory program or development of new nonregulatory initiatives. ASWM has a long history of assisting states achieve these goals, and is uniquely positioned to help states learn from each other's experiences.

5. **Providing accurate maps of the nation's aquatic resources.** The lack of ample, clean water is a growing concern across the United States. An important tool in addressing this issue will be up to date and accurate maps of the location of water resources including streams, lakes, rivers, wetlands and groundwater. For many reasons, but primarily due to lack of adequate funding, many existing maps of water resources are not accurate. For example the National Wetlands Inventory, maintained by the U.S. Fish and Wildlife Service, provides critical, detailed information on the abundance, characteristics and distribution of U.S. wetlands, but is based largely on imagery from the 1980's and urgently needs updating with state-of-the-art mapping tools. Wetlands and other water resources are changeable in size and quality due to changes in land use, weather patterns, and other drivers. Accurate maps of the location and distribution of water resources is essential to sound decision making by both government and developers when rebuilding infrastructure and conserving water for a wide variety of users including business and industry. ASWM has provided leadership and has facilitated the sharing of state-of-the-art wetlands mapping techniques and innovations among states, agencies, academic institutions, consultants, and businesses.

Local benefits from wetlands

Industry-based risk models indicate that coastal wetlands saved more than $625 million in avoided flood damage from Hurricane Sandy.[7]

6. **Leveraging opportunities to reduce pollution and natural hazards, protect drinking water, and reduce costs through natural infrastructure solutions.** Pollution from nonpoint source runoff and streambank erosion continues to be a significant threat to the nation's water quality and people's use of our nation's water resources. Flood damages are also on the increase as are wildfires and droughts. Wetlands, floodplains, stream buffers, living shorelines and other forms of natural infrastructure are widely recognized as natural, cost-effective and sustainable approaches to reduce threats to human health and safety and the environment. For example, groundwater sources provide drinking water for 51% of the total U.S. population and 99% of the rural population and wetlands can provide water to recharge depleted aquifers.

[7] Narayan, S., Beck, M.W., Wilson, P., Thomas, C., Guerrero, A., Shepard, C., Reguero, B.G., Franco, G., Ingram, C.J., Trespalacios, D. 2016. Coastal Wetlands and Flood Damage Reduction: Using Risk Industry-based Models to Assess Natural Defenses in the Northeastern USA. Lloyd's Tercentenary Research Foundation, London.

States, cities and smaller communities across the country are pursuing a wide variety of natural infrastructure solutions. Quantifying ecosystem services provided by natural resources such as wetlands is an important tool for state and local decision-makers in weighing the initial and long-term costs and benefits of these approaches. Identifying opportunities to support adoption of successful, cost-saving practices provides significant potential for win-win outcomes--safer, healthier communities and a healthier, more resilient environment for less cost.

Conclusion

The Association of State Wetland Managers has a long history of collaborating successfully with states, federal agencies, and a broad cross section of interest groups engaged in shaping wetland and broader water resources policy. Wetlands and other aquatic resources are important to both a healthy economy as well as a healthy environment. We look forward to working with the Administration on the areas of state interest described above as well as areas identified by the Administration. For more information please contact Executive Director Jeanne Christie at (207) 892-3399, jeanne.christie@aswm.org or visit the Association of State Wetland Managers web page at www.aswm.org.

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Campbell, Ann
Sent: Mon 3/6/2017 7:56:12 PM
Subject: Fwd: WOTUS Meeting

FYI.

Begin forwarded message:

From: "Kime, Robin" <Kime.Robin@epa.gov>
Date: March 6, 2017 at 2:28:41 PM EST
To: "Penman, Crystal" <Penman.Crystal@epa.gov>
Cc: "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: WOTUS Meeting

Hi Crystal,

I hope you are well. I just talked with David Schnare about the upcoming WOTUS meeting with politicals – I think folks are talking about having that on Wednesday. He's asked for our new OP Associate Administrator, Samantha Dravis, to be invited to join in the meeting. I am copying Ann here as well - just give me a call with any questions or if I can help with anything. Thanks and have a good afternoon.

Robin

564-6587

To: Loop, Travis[Loop.Travis@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Duke, Nia[Duke.Nia@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Schollhamer, Mary[Schollhamer.Mary@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Jones, Enesta[Jones.Enesta@epa.gov]; Lynn, Tricia[lynn.tricia@epa.gov]
From: Fuld, John
Sent: Mon 3/6/2017 12:56:21 PM
Subject: OW - Morning Insider

March 6, 2017

NEWS:

Omaha World-Herald Editorial: EPA needs to get water policy right

The Trump administration's overturning of the so-called "waters of the United States" environmental regulations last week was an act of responsible governance, not radicalism.

What was radical the Environmental Protection Agency's excessive regulatory claims to begin with.

The U.S. Supreme Court has told the EPA not once but twice, in 2001 and 2006, that the agency exceeded its regulatory authority in separate, significant water-policy cases.

Rather than heed the court's admonitions to demonstrate proper restraint, however, the EPA proceeded to develop the expansive "waters of the U.S." rules. The action raised justified concern that the agency once again was claiming enforcement powers beyond its legal authority.

Two federal courts — a U.S. district judge in North Dakota and a three-judge panel of the U.S. Court of Appeals in Cincinnati — put the rules on hold. Twenty-nine states filed legal action against the rules. And majorities in both houses of Congress voted in favor of legislation directing the EPA to step back and revamp the regulations.

Sen. Charles Grassley, R-Iowa, rightly termed the "waters of the U.S." initiative "the ultimate power grab by the EPA."

Ag producers in the Midlands were outspoken in expressing concern about economic harm posed by the rules, since farmers and ranchers would be required for the first time to get federal permits for a range of activities. The permitting process would add delays and increase costs.

The feds' regulatory reach would have extended for the first time to include putting in or changing drainage ditches; installing small dams and terracing; applying fertilizer, pesticides and manure; and using stock ponds for watering animals.

Water Online With Uncertain EPA, New York Democrats Push Plan To Protect Drinking Water

In order to protect drinking water in New York State, State Senate Democrats presented a new, seven-point plant. The plan call for the regulation contaminants, testing of all water supplies, and provisions for stronger infrastructure upgrades.

According to an article by Newsday, Sen. Andrea Stewart-Cousins said that "the plan would serve as a strategy to protect water locally in the face of an uncertain federal regulatory landscape in Washington, D.C., where at least one bill has been filed to eliminate the U.S. Environmental Protection Agency."

"It's clear we need to take action now," Stewart-Cousins said during a news conference

at the Long Beach Water Authority. “We need to ensure these water resources are protected.”

The plan is focused on regulating the chemicals 1,4-dioxane and Chromium 6. 1,4-dioxane, a carcinogen, has been found in groundwater throughout the country. Recently, it had been located in Long Island, NY in 71 percent of water supply systems.

Last August, the U.S. EPA released a survey that showed 1,4-dioxane contaminated the island’s water and exceeded the national average. In January, U.S. Senators Charles Schumer and Kirsten Gillibrand asked the EPA to “prioritize and accelerate” the risk evaluation for 1,4-dioxane.

According to the Environment News Service, both senators wrote a letter to the EPA’s acting administrator Catherine McCabe because of the dire situation.

Because of the recently passed Toxic Substances Control Act (TSCA) reform bill, 1,4-dioxane was named by the agency “as one of the first 10 chemicals to be evaluated for potential risks to human health and the environment.”

Last month, State Health Commissioner Howard Zucker said on Long Island “that Gov. Andrew M. Cuomo and other officials urged the EPA to regulate 1,4-dioxane and if no action was taken within three months, New York would start to set a specific limit,” according to Newsday.

State Sen. Todd Kaminsky filed legislation directing Zucker to set a drinking water standard.

The Democrats’ plan also seeks to limit exposure to perfluorooctanoic acid, or PFOA, and perfluorooctanesulfonic acid, or PFOS, in drinking water through state standards.

Scott Reif, spokesman for the State Senate Republican majority, said in an emailed statement to Newsday that the Senate Democrats’ report was “short on details.”

“The Democrats’ plan also calls on the state to look at contaminants under review or with health advisories from the EPA or other states to see if the state should take action,” per Newsday. “Expanding drinking water tests to all suppliers statewide is also mentioned.”

Families Concerned Over Chemical Exposure From Contaminated Water At Former Air Base.

The AP (3/4, Casey) reports on the families who are having to come to terms with the hidden risks of having lived at the Pease International Tradeport, an air base that underwent redevelopment. The AP says the drinking water are the base was "contaminated by military firefighting foam that contained perfluorinated compounds, or PFCs." This exposure, the piece says, was in everything from "nonstick cookware and stain-resistant carpet." The PFCs have also been "linked in animal studies to low birth weight, accelerated puberty, cancer and thyroid problems, among other maladies, according to the Environmental Protection Agency." The AP indicates, however, that how problems may be manifesting themselves in humans isn't clear and that this is not "sitting well with the Pease parents whose children were found to have elevated levels of PFCs in their blood."

John W. Fuld, Ph.D.

Media Relations Manager-Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Kaiser, Russell[Kaiser.Russell@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Zobrist, Marcus[Zobrist.Marcus@epa.gov]
From: Goodin, John
Sent: Thur 3/2/2017 9:47:23 PM
Subject: FW: Ellen on NPR

FYI—thanks, Marcus

From: Zobrist, Marcus
Sent: Thursday, March 02, 2017 3:50 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Kaiser, Russell <Kaiser.Russell@epa.gov>
Subject: Ellen on NPR

"former EPA administrator" Ellen Gilinsky sees opportunity in the Clean Water Rule redux….

http://www.npr.org/sections/thetwo-way/2017/02/28/517016071/trump-aims-to-eliminate-clean-water-rule

Marcus Zobrist

Acting Director, Oceans & Coastal Protection Division

Office of Oceans, Wetlands and Watersheds | Office of Water

U.S. Environmental Protection

(202) 564-8311 | Zobrist.Marcus@epa.gov

This e-mail is intended solely for the use of the individual or entity to whom it is addressed and its content shall be regarded as confidential unless explicitly stated otherwise. If you have received this e-mail by mistake, please notify the sender immediately by e-mail and delete this e-mail from your system.

To: Loop, Travis[Loop.Travis@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Duke, Nia[Duke.Nia@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Schollhamer, Mary[Schollhamer.Mary@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Jones, Enesta[Jones.Enesta@epa.gov]; Lynn, Tricia[lynn.tricia@epa.gov]
From: Fuld, John
Sent: Thur 3/2/2017 8:53:27 PM
Subject: OW-Daily Wrap

March 2, 2017

Media Inquiries

Inquiries:

STATUS: OPEN

OUTLET: WIRED MAGAZINE

REPORTER: Nick Stockton

TOPIC: RE: The Technologies

OPA CONTACT: Tricia Lynn

PROGRAM CONTACT: Antonio Bravo

DEADLINE: FRIDAY, March 3 11 am

PERTINENT INFORMATION:

He's working on a story about the technologies the EPA and US ACOE use to enforce the Clean Water Act and Waters of the US rule.

QUESTION:

1. I'd like to know about any technologies—remote sensing, satellite imagery, terrain modeling software, hydrology tools, GIS, and so on— the EPA uses to determine whether a body of water falls under the protection of the Clean Water Act.

2. I understand the Wotus rule hasn't yet taken effect, but I'd like to know how it would change, add to, or alter the technologies and parameters that EPA technicians use to delimit a federally regulated waterway.

Two Inquiries under source review:

1. **OST**- Michigan Radio RE: Advisories for Microcystins and Cylindrospermopsin

2. **OGWDW & OWM** - Building Operating Management **TOPIC: RE:** Water Supply

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To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Wall, Tom[Wall.Tom@epa.gov]; Zobrist, Marcus[Zobrist.Marcus@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; Hall, Lynda[Hall.Lynda@epa.gov]; Yusuf, Istanbul[Yusuf.Istanbul@epa.gov]; Robiou, Grace[Robiou.Grace@epa.gov]; Shah, Surabhi[Shah.Surabhi@epa.gov]; Havard, James[Havard.James@epa.gov]; Holdsworth, Susan[Holdsworth.Susan@epa.gov]; Chancey, Barbara[Chancey.Barbara@epa.gov]; Monschein, Eric[Monschein.Eric@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]; Smith, Bernicel[Smith.Bernicel@epa.gov]
From: Eisenberg, Mindy
Sent: Wed 3/1/2017 10:55:55 PM
Subject: FW: Association of State Wetland Managers Policy Priorities
Cover Letter to EPA Administrator from ASWM.pdf
Association of State Wetland Managers Priorities.pdf

FYI letter to Administrator

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Jeanne Christie [mailto:jeanne.christie@aswm.org]
Sent: Wednesday, March 01, 2017 5:33 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Association of State Wetland Managers Policy Priorities

FYI

Jeanne Christie

Executive Director

Association of State Wetland Managers

Ph: (207) 892-3399 C: (207) 310-8708 F: (207) 892-3089

Website: www.aswm.org

Blog: http://www.aswm.org/wordpress/

From: Jeanne Christie [mailto:jeanne.christie@aswm.org]
Sent: Wednesday, March 01, 2017 4:30 PM
To: 'Dickerson.aaron@epa.gov'
Cc: Shapiro, Mike (Shapiro.Mike@epa.gov); Goodin, John (Goodin.John@epa.gov)
Subject: Association of State Wetland Managers Policy Priorities

Mr. Dickerson,

Attached is a letter to Administrator Pruitt with a paper that highlights six areas of public policy of importance to the members of the Association of State Wetland Managers.

If you have any questions or need additional information, please contact me.

Thank you,

Jeanne Christie

Executive Director

Association of State Wetland Managers

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The Association of State Wetland Managers, Inc.

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

Priorities for State Wetland Programs in the New Administration

The Association of State Wetland Managers (ASWM) was established in 1983 to promote and enhance protection and management of wetland resources, to promote application of sound science to wetland management and to provide training and education for our members and the public. Currently thirty-nine states are members of the ASWM and state staffs from all 50 states as well as interested tribes, corporate and consultant interests participate in ASWM information transfer, education, program development, and training activities. The goals of ASWM include:

- Improve the coordination of wetland programs and policies at all levels of government
- Translate wetland science into fair and reasonable government policies
- Help states develop and implement wetland conservation and regulatory programs
- Integrate wetlands into broader landscape and resource management initiatives
- Provide training and capacity building for state wetland programs
- Build conservation and restoration partnerships among states, tribes, local governments, nonprofits, and other interested parties
- Encourage minority participation in wetland protection, restoration and management

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3. **Fully funding Clean Water Act programs including Wetland Program Development Grants.** The ASWM supports fully funding Clean Water Act grant programs to states and tribes including State and Tribal Assistance Grants, §106 grant funding, and §319 nonpoint source program grants. In particular, the §104(b)(3) Wetland Program Development Grants are very important to states. These program funds support development of state capacity to protect wetlands, water quality and aquatic resources through wetland programs nationwide. Wetland Program Development Grants provide critical resources that benefit not only individual states but water quality nationwide recognizing that water resources often flow across state lines. In addition states have a longstanding interest in expanding the eligible activities under this grant program to include program implementation.

4. **Offering technical support and training to state wetland programs to deliver effective and efficient permitting that ensures compliance with state water quality requirements and other applicable standards.** Delivery of balanced, efficient state wetland regulatory programs is important. Permit applicants desire consistent requirements and the timely issuance of permits. The general public desires clean water and its attendant benefits including recreational opportunities and abundant fish and wildlife, as well as protection from natural hazards such as flooding. Successful wetland programs can achieve all of these objectives by incorporating sound science and legally defensible policies. Often innovation and program improvement is

accomplished through peer to peer sharing, training, and exploration of new scientific findings and technology as well as information about recent court cases and changes in federal programs and policies. In fact, cooperation and consensus-based agreements can sometimes lead to successful environmental outcomes that are less costly than existing regulations—either through improvements in the regulatory program or development of new nonregulatory initiatives. ASWM has a long history of assisting states achieve these goals, and is uniquely positioned to help states learn from each other's experiences.

5. **Providing accurate maps of the nation's aquatic resources.** The lack of ample, clean water is a growing concern across the United States. An important tool in addressing this issue will be up to date and accurate maps of the location of water resources including streams, lakes, rivers, wetlands and groundwater. For many reasons, but primarily due to lack of adequate funding, many existing maps of water resources are not accurate. For example the National Wetlands Inventory, maintained by the U.S. Fish and Wildlife Service, provides critical, detailed information on the abundance, characteristics and distribution of U.S. wetlands, but is based largely on imagery from the 1980's and urgently needs updating with state-of-the-art mapping tools. Wetlands and other water resources are changeable in size and quality due to changes in land use, weather patterns, and other drivers. Accurate maps of the location and distribution of water resources is essential to sound decision making by both government and developers when rebuilding infrastructure and conserving water for a wide variety of users including business and industry. ASWM has provided leadership and has facilitated the sharing of state-of-the-art wetlands mapping techniques and innovations among states, agencies, academic institutions, consultants, and businesses.

Local benefits from wetlands

Industry-based risk models indicate that coastal wetlands saved more than $625 million in avoided flood damage from Hurricane Sandy.[7]

6. **Leveraging opportunities to reduce pollution and natural hazards, protect drinking water, and reduce costs through natural infrastructure solutions.** Pollution from nonpoint source runoff and streambank erosion continues to be a significant threat to the nation's water quality and people's use of our nation's water resources. Flood damages are also on the increase as are wildfires and droughts. Wetlands, floodplains, stream buffers, living shorelines and other forms of natural infrastructure are widely recognized as natural, cost-effective and sustainable approaches to reduce threats to human health and safety and the environment. For example, groundwater sources provide drinking water for 51% of the total U.S. population and 99% of the rural population and wetlands can provide water to recharge depleted aquifers.

[7] Narayan, S., Beck, M.W., Wilson, P., Thomas, C., Guerrero, A., Shepard, C., Reguero, B.G., Franco, G., Ingram, C.J., Trespalacios, D. 2016. Coastal Wetlands and Flood Damage Reduction: Using Risk Industry-based Models to Assess Natural Defenses in the Northeastern USA. Lloyd's Tercentenary Research Foundation, London.

States, cities and smaller communities across the country are pursuing a wide variety of natural infrastructure solutions. Quantifying ecosystem services provided by natural resources such as wetlands is an important tool for state and local decision-makers in weighing the initial and long-term costs and benefits of these approaches. Identifying opportunities to support adoption of successful, cost-saving practices provides significant potential for win-win outcomes--safer, healthier communities and a healthier, more resilient environment for less cost.

Conclusion

The Association of State Wetland Managers has a long history of collaborating successfully with states, federal agencies, and a broad cross section of interest groups engaged in shaping wetland and broader water resources policy. Wetlands and other aquatic resources are important to both a healthy economy as well as a healthy environment. We look forward to working with the Administration on the areas of state interest described above as well as areas identified by the Administration. For more information please contact Executive Director Jeanne Christie at (207) 892-3399, jeanne.christie@aswm.org or visit the Association of State Wetland Managers web page at www.aswm.org.

The Association of State Wetland Managers, Inc.

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

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Maryann McGraw
NM Environment Department

Doug Norris
MN Dept. of Natural Resources

Timothy Rach
FL Dept. of Environmental Protection

Bill Ryan
OR Dept. of State Lands

March 1, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW (MC1101A)
Washington, DC 20460

Dear Administrator Pruitt,

As you begin your tenure at the U.S. Environmental Protection Agency (USEPA), we are writing to you to share the areas of public policy that are of high importance to the members of the Association of State Wetland Managers. Attached is a paper that provides some background on our organization and outlines six priority topics that we believe are important. Healthy wetlands are intrinsic to sustaining clean water for the Nation as a whole and the work of individual state wetland programs is essential to sustain these and other aquatic resources. We look forward to working with you and your team at USEPA on these and other issues.

The Association of State Wetland Managers was founded in 1983 to support the work of states in protecting and managing wetland resources through the application of sound science. ASWM is a national, nonpartisan organization that works with states and other partners to build state capacity to protect, conserve and restore wetlands. We look forward to continued collaboration with the U.S. Environmental Protection Agency.

We look forward to working with you.

If you have questions or would like to receive additional information, please contact ASWM's Executive Director, Jeanne Christie (jeanne.christie@aswm.org / 207-892-3399).

Sincerely,

Jeanne Christie
Executive Director

Cc: Mike Shapiro, USEPA
John Goodin, USEPA
ASWM Board

To: Flahive, Katie[Flahive.Katie@epa.gov]
Cc: Hall, Lynda[Hall.Lynda@epa.gov]; Larsen, Erika[Larsen.Erika@epa.gov]; Yusuf, Istanbul[Yusuf.Istanbul@epa.gov]; Havard, James[Havard.James@epa.gov]; Monschein, Eric[Monschein.Eric@epa.gov]; Holdsworth, Susan[Holdsworth.Susan@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Wall, Tom
Sent: Wed 3/1/2017 2:26:30 AM
Subject: Re: Adm Pruitt at the Farm Bureau Advocacy meeting today - Clean Water Rule

Thank you, Katie

On Feb 28, 2017, at 9:09 PM, Flahive, Katie <Flahive.Katie@epa.gov> wrote:

> I see from Twitter that the new Adm. addressed a crowd of 600 at the Farm Bureau advocacy meeting today and discussed the clean water rule. His remarks (~13 min) are online: https://m.facebook.com/st **Nonresponsive Internal URL/ Ex. 6**
>
> Worth a view in my opinion re: his perspective on coop federalism, restoring trust and communication with ag.
>
> Sent from my iPhone

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Tue 2/28/2017 9:10:26 PM
Subject: FW: CWR Scans - Reduced Size
CWR Page 1.Scanned.Reduced.pdf
CWR Page 2.Signed.Reduced.pdf

From: Minoli, Kevin
Sent: Tuesday, February 28, 2017 4:08 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: FW: CWR Scans - Reduced Size

Still working to obtain the signature of the Corps, but great work making this signature possible.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Hope, Brian
Sent: Tuesday, February 28, 2017 4:02 PM
To: Hull, George <Hull.George@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: CWR Scans - Reduced Size

Reduced size PDFs attached. Full resolution to follow. Thanks.

Brian T. Hope

Deputy Director

Office of the Executive Secretariat

Office of the Administrator

(202) 564-8212

To: Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]
From: Dennis, Allison
Sent: Tue 2/28/2017 8:58:38 PM
Subject: FW: Afternoon Energy, presented by Utah Diné Bikéyah: Trump issues order to revamp water rule — Never mind on NAFTA complaint — DAPL delayed

Politico's take on today's EO . - Allison

TRUMP'S EO TARGETS WATER RULE: Criticizing it as a "very destructive and horrible rule," President Donald Trump signed an executive order this afternoon calling on EPA to overhaul the Waters of the U.S. regulation, which defined the rivers, streams and wetlands protected by the Clean Water Act. The new EO is the first in what is likely to be a series of orders targeted at reversing former President Barack Obama's environmental policies. Today's order would start a process for Trump's EPA to either review or rescind the regulation that has faced sharp criticism by conservatives and the agricultural industry as an overreach by the federal government.

As Trump signed the order, he was joined at the White House by farmers, his new EPA Administrator Scott Pruitt and several conservative senators. The president said the executive order would "pave the way for the elimination of this very destructive and horrible rule." But it's worth noting that this isn't going to be quick fix. Altering the Obama rule, which is currently on hold pending federal court proceedings, is expected to take months, if not years. The order instructs EPA and Army Corps of Engineers to begin a process to rescind the rule, which will open the door to legal challenges by environmental groups or states who support it. It also proposes creating a narrower standard than one used by Obama's EPA to determine the scope of federal water protections in the future. Annie Snider has the details here.

MCCARTHY HITS TRUMP'S EO: Former EPA Administrator Gina McCarthy released a statement today, ahead of the president's executive order on the Waters of the U.S. rule. "An Executive Order may give the illusion they're fulfilling a campaign promise to gut the EPA, but it doesn't 'trump' a rule," McCarthy said. "Only a new rule based on a new record can make current rules go away."

From: POLITICO Pro Energy [mailto:politicoemail@politicopro.com]
Sent: Tuesday, February 28, 2017 3:47 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Subject: Afternoon Energy, presented by Utah Diné Bikéyah: Trump issues order to revamp water rule — Never mind on NAFTA complaint — DAPL delayed

By Kelsey Tamborrino | 02/28/2017 03:44 PM EDT

TRUMP'S EO TARGETS WATER RULE: Criticizing it as a "very destructive and horrible rule," President Donald Trump signed an executive order this afternoon calling on EPA to overhaul the Waters of the U.S. regulation, which defined the rivers, streams and wetlands protected by the Clean Water Act. The new EO is the first in what is likely to be a series of orders targeted at reversing former President Barack Obama's environmental policies. Today's order would start a process for Trump's EPA to either review or rescind the regulation that has faced sharp criticism by conservatives and the agricultural industry as an overreach by the federal government.

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ABOUT THAT RFS EO: The White House today also sought to shut down reports that Trump is planning to issue an executive order to shift the burden of who has to blend ethanol into gasoline. "There isn't an Ethanol EO in the works," White House spokeswoman Kelly Love said today by email. Love was responding to a claim from Renewable Fuels Association chief Bob Dinneen, who told POLITICO Monday that a Trump administration official informed him that the White House was planning to issue an executive order instituting a major change to the Renewable Fuel Standard.

Welcome to Afternoon Energy, where we are wishing you a happy Fat Tuesday! Make sure you follow along tonight with POLITICO when Trump speaks before Congress. I'm your host Kelsey Tamborrino. Send your thoughts, news and tips to ktamborrino@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at @kelseytam, @dailym1, @nickjuliano, @Morning_Energy and @POLITICOPro.

NEVER MIND ON NAFTA COMPLAINT: TransCanada has dropped the NAFTA complaint it filed against the U.S. last year, the company said today. TransCanada filed the $15 billion complaint in January 2016 after the Obama administration killed its plans for the Keystone XL

pipeline. The company is no longer seeking damages through the trade agreement's dispute resolution process, it said.

President Donald Trump signed an executive order in January calling for expedited environmental reviews for high-priority infrastructure projects, as well as a memo directing the State Department to reach a decision on Keystone within 60 days. TransCanada refiled its applications to build the cross-border pipeline soon after. Ben Lefebvre has more here.

WAITING FOR THE PIPELINE: Despite previous guidance that it would be sooner, oil isn't expected to flow through the contentious Dakota Access pipeline for about another month, lawyers representing the pipeline developer told a federal judge today. Energy Transfer Partners had said last week that it expected to begin shipping crude oil through the pipeline as soon as March 6. But digging under Lake Oahe in North Dakota has only reached the halfway point, the a lawyer for the company said in U.S. District Court in Washington, meaning the pipeline most likely won't carry crude until closer to April 1.

**** A message from Utah Diné Bikéyah:** The protection of the Bears Ears National Monument reflected the will of Utahns and Native Americans. Now, President Trump and Interior Secretary-nominee Ryan Zinke are considering undermining this designation and threatening this sacred public land. Join us as we ask them to honor Tribes and stand with Bears Ears: http://bit.ly/2luGehY **

ICYMI: BILL GATES UNLEASHED: Bill Gates talked about everything from the prospect of "miracle batteries" to his affinity for cheeseburgers and his penchant for wearing hats to disguise himself in public in his fifth Reddit AMA on Monday. The Microsoft co-founder also reiterated his hope that Trump will commit resources to promoting clean energy. "I hope his administration will decide that funding R&D to invent the next generation of energy (clean, cheap, reliable) is a good deal for the U.S. and for the world," he wrote. "Climate change requires cooperation between countries over a period of decades but we don't have much time to waste." (h/t Morning Tech)

WESTERN VALUES PROJECT'S NEW TV SPOT : The Western Values Project today launched a TV ad campaign urging support of the Bureau of Land Management's Methane and Waste Prevention Rule. The spot features western rancher Don Schreiber discussing the need to lessen the practice of venting and flaring on public lands. "For too long taxpayers in Colorado and across the West have watched the oil and gas industry burn away millions of dollars of taxpayer revenue," said Chris Saeger, director of the Western Values Project. "Our elected officials in Colorado and across the West should stand with taxpayers and support the BLM's methane waste rule. Thousands of Westerners collaborated to create a strong BLM rule, our elected officials should listen to their constituents and support this common sense rule."

TRUMP'S SPEECH: WHAT TO WATCH: Donald Trump will address Congress in a joint session tonight — 39 days after his inaugural address. In his address, POLITICO's Annie Karni writes, "the tradition-flouting president will take part in a carefully choreographed House chamber appearance that serves as the functional equivalent of the traditional State of the Union during a president's first year in office." Annie highlights five things to watch for during the

address, including whether the president will talk about the price of anything. Read her forward-thinking analysis here.

MAIL CALL — PRIORITIZE HEALTH: A group of medical and health organizations — including the American Lung Association and American Public Health Association — sent a letter to Congress today urging it to reject a series of bills that, they say, would force agencies to prioritize polluters over the health of the American people. In the letter, they name the SCRUB Act (H.R. 998) as an example that would "arbitrarily require federal agencies to sacrifice existing safeguards even as they seek to address new problems in their efforts to protect the public." The letter also names the Regulatory Integrity Act (H.R. 1004) and the OIRA Insight, Reform and Accountability Act (H.R. 1009) as problematic. Read it here.

CANTWELL SPEAKS OUT ON ZINKE: Senate Natural Resources ranking member Maria Cantwell released a statement today detailing her opposition to Rep. Ryan Zinke , who easily cleared a procedural hurdle on Monday night by a 67-31 vote to be Interior secretary. "Unfortunately, I'm not convinced that Congressman Zinke will be able to moderate the Trump administration's extreme views on exploiting our public lands," Cantwell said. "I'm not sure he will be able to stand up to the president and protect the public interest ... required to manage our public lands for the benefit of all Americans — not just the oil, gas and mining companies and their commercial interests." Zinke is still expected to be confirmed.

QUICK HITS:

— Flint residents must start paying for water they still can't drink without a filter, The Washington Post.

— Trump plans to begin EPA rollback with order on clean water, The New York Times.

— Minister: Ireland looks to LNG, France supply line in 'post-Brexit era,' Reuters.

— EPA removes mentions of 'climate change' in water utilities program, InsideClimate News.

WIDE WORLD OF POLITICS:

— New NSC chief pushed Trump to moderate his language on terrorism

— Manafort's Ukrainian 'blood money' caused qualms, hack suggests

— Trump says he's adjusting to the 'surreal' experience of being president

**** A message from Utah Diné Bikéyah:** The designation of the Bears Ears National Monument reflected the will of a majority of Utahns and Native American Tribes. This monument permanently protected public lands threatened by vandalism and looting in southeast Utah that we consider sacred. Yet already, politicians are pushing President Trump and Interior Secretary-nominee Ryan Zinke to reduce or undo its protections. We call on President Trump to resist efforts to seize or sell off Bears Ears and other parks and monuments. Stand with Bears Ears.

Let's protect our national public lands for future generations of all people. Learn more at: http://bit.ly/2luGehY **

To view online: https://www.politicopro.com/tipsheets/afternoon-energy/2017/02/trump-issues-order-to-revamp-water-rule-021604

Stories from POLITICO Pro

Trump signs order targeting Waters of the U.S. rule Back

By Annie Snider | 02/28/2017 02:53 PM EDT

President Donald Trump signed an executive order today to revamp or rescind one of the Obama administration's most controversial regulations, a rule that defined the rivers, streams and wetlands that are protected by the Clean Water Act.

The order, the first in series expected to be issued by Trump to gut President Barack Obama's environmental policies, calls on EPA to begin an overhaul of the Waters of the U.S. rule — a regulation that has been sharply criticized by Republicans and the agricultural industry as an example of federal overreach.

Trump, joined at the White House by farmers, his new EPA Administrator Scott Pruitt and several conservative senators, said his executive order would "pave the way for the elimination of this very destructive and horrible rule."

The order instructs EPA and Army Corps of Engineers to review the rule with the goal of rescinding or revising it — a process that opens the door to legal challenges by environmental groups or states who backed the rule. It also proposes creating more limited standard than one used by Obama's EPA to determine the scope of federal water protections in the future.

The Obama WOTUS rule is currently on hold as its navigates a spate of legal challenges, and Trump's order also instructs the attorney general to seek to freeze those courtroom proceedings while the review is underway.

The Trump administration could decide to write its own rule aimed at clearing up long-running confusion about which water bodies are protected under the Clean Water Act. If Trump's EPA chooses that path, the order calls for it to use the late Supreme Court Justice Antonin Scalia's reading of how far federal power should reach under the 1972 law.

Back

White House says no plans for executive order on ethanol Back

By Eric Wolff | 02/28/2017 02:56 PM EDT

The White House today knocked down reports that President Donald Trump is planning to issue an executive order to shift the burden of who has to blend ethanol into gasoline.

"There isn't an Ethanol EO in the works," White House spokeswoman Kelly Love said today by email.

Love was responding to a claim from Renewable Fuels Association chief Bob Dinneen, who told POLITICO Monday that a Trump administration official informed him that the White House was planning to issue an executive order instituting a major change to the Renewable Fuel Standard. White House deputy press secretary Stephanie Grisham said Monday night in an email, "When we have something we can comment on, we will let you know."

Dinneen said he was told that the order would move the RFS "point of obligation" so that oil refiners would no longer be responsible for meeting the EPA biofuels mandates. Instead, that job would fall to the gasoline wholesalers who supply fuel to retail outlets. The change was sought by Trump's regulation czar Carl Icahn, who owns CVR Energy, among others.

Dinneen said he remained confident that an executive order was in the pipeline.

"There is certainly something in the works, but they're not going to confirm it until they are ready to roll with it," Dinneen said in a statement today.

Back

TransCanada drops NAFTA complaint over Keystone rejection Back

By Ben Lefebvre | 02/28/2017 12:02 PM EDT

TransCanada has dropped the $15 billion NAFTA complaint it filed against the U.S. last year, the company said today.

TransCanada filed the complaint in January 2016, after the Obama administration killed its plans for the Keystone XL pipeline. But it is no longer seeking damages through the trade agreement's dispute resolution process, the company said. President Donald Trump last month took steps to revive the project, although the company said as recently as two weeks ago that its legal challenge was still live.

Former President Barack Obama in 2015 denied the company's request for a cross-border permit, citing environmental concerns. That prompted the company's NAFTA claim, intended to recoup the costs and damages related to its preparation of the roughly 1,300-mile pipeline that would deliver up to 830,000 barrels a day of heavy Canadian crude to refiners in the U.S.

Trump signed an executive order in January calling for expedited environmental reviews for high-priority infrastructure projects, as well as a memo directing the State Department to reach a decision on Keystone within 60 days. TransCanada refiled its applications to build the cross-border pipeline soon after.

Back

Lawyer: Dakota Access completion still a month away Back

By Ben Lefebvre | 02/28/2017 01:20 PM EDT

Oil isn't expected to flow through the Dakota Access pipeline for about another month, lawyers representing the pipeline developer told a federal judge today.

Energy Transfer Partners had said last week that it expected to begin shipping crude oil through the pipeline as soon as March 6. But digging under Lake Oahe in North Dakota has only reached the halfway point, meaning the pipeline most likely won't carry crude until closer to April 1, the a lawyer for the company said in U.S. District Court of Washington.

The update on the construction schedule came during a hearing in the Cheyenne River Sioux's lawsuit against the project. The tribe is arguing that the pipeline threatens the lake's water, which it says is important for its religious rituals.

The judge in the case also today ordered Energy Transfer to give 48 hours notice before it starts shipping oil through Dakota Access.

Back

Manafort's Ukrainian 'blood money' caused qualms, hack suggests Back

By Kenneth P. Vogel, David Stern and Josh Meyer | 02/28/2017 05:27 AM EDT

Paul Manafort's family expressed misgivings about the political consultant's work for both Russia-aligned Ukrainian strongman Viktor Yanukovych and Donald Trump, according to text messages allegedly hacked from one of his daughters' phones.

The texts, posted on a darknet website run by a hacktivist collective, appear to show Manafort's family fretting about the ethics, safety and consequences of his work for Yanukovych. And they reveal that Manafort's two daughters regarded their father's emergence as a key player on Trump's presidential campaign with a mixture of pride and embarrassment.

In one exchange, daughter Jessica Manafort writes "Im not a trump supporter but i am still proud of dad tho. He is the best at what he does." Her sister Andrea Manafort responded by referring to their father's relationship with Trump as "The most dangerous friendship in America," while in another exchange she called them "a perfect pair" of "power-hungry egomaniacs," and asserted "the only reason my dad is doing this campaign is for sport. He likes the challenge. It's like an egomaniac's chess game. There's no money motivation."

By contrast, the Manafort daughters and their mother seemed much more unsettled about Paul Manafort's work as a political consultant for Yanukovych's Russia-backed Party of Regions,

which is a subject of renewed interest among investigators probing possible links between Trump's campaign and Russia.

In one March 2015 exchange that appears to be between the two sisters, Andrea Manafort seems to suggest that their father bore some responsibility for the deaths of protesters at the hands of police loyal to Yanukovych during a monthslong uprising that started in late 2013.

"Don't fool yourself," Andrea Manafort wrote. "That money we have is blood money."

In another hacked exchange a few months later with someone else, Andrea Manafort wrote that her father's "work and payment in Ukraine is legally questionable."

Paul Manafort in an interview defended his work in Ukraine as "open, transparent and focused on doing all that I could to promote policies that were pro-Western" and focused on "moving Ukraine into the [European Union]."

Manafort acknowledged that his daughter Andrea had been hacked and corroborated the authenticity of at least some of the texts between him and her, but declined to comment on most of them.

The darknet website that posted the texts is associated with a hacktivist collective. The post accompanying the files was written early this month by an anonymous user who indicated that the motivation was payback for those who were "screwed" by Trump. The post also suggested that there was more information forthcoming on Manafort's family.

The post included two sets of data files that appeared to have originated from the iPhone of Andrea Manafort — a series of screenshots and a database containing more than 280,000 text messages. The files appear to have been accessed through a backup of Andrea Manafort's iPhone stored on a computer or iCloud account, through which hackers conceivably could have accessed all the contents of her phone.

The hacked texts cover about four years — from Oct. 9, 2012 through Sept. 7, 2016. The files end a little more than three weeks after Paul Manafort stepped down from Trump's campaign amid questions about his work for — and associations with — Russia-linked figures in Ukraine. The dissemination of Andrea Manafort's hacked texts comes as the FBI and congressional committees alike are looking into contacts between Trump's associates — including Manafort — and Russian officials during the presidential campaign.

The inquiries are being fueled by lingering concerns over the U.S. intelligence community's conclusion that Russian intelligence engineered cyberattacks during the presidential campaign to try to undermine Hillary Clinton and boost Trump, whose stances on Russia were far friendlier than Clinton's. The cyberattacks yielded thousands of emails from the Democratic National Committee and Clinton's campaign chairman John Podesta, which were released by WikiLeaks, producing damaging headlines for Clinton's team throughout the general election. Given that precedent, the Manafort hack evokes at least some feeling of turnabout.

Andrea Manafort, 31, and Jessica Manafort, 34, did not respond to requests for comment.

Included in the tranche of texts posted this month are messages suggesting that both Jessica Manafort and Paul Manafort also have been targeted by hackers.

In an exchange in late August 2016 — which appears to have been shortly before she was hacked — Andrea Manafort received a text from her father warning "Your sister has been ... hacked. I just got an email from her saying 'important document' and sharing a Google spreadsheet ... Needless to say, don't open!"

The year before, Andrea Manafort indicated in a text to an associate that her father was reluctant to communicate sensitive information from his mobile devices because "Russians literally hack his phones."

Asked if he was considering going to the authorities about the hacks, or about messages — one of which was revealed in the hack — that appeared to contain a blackmail threat, Paul Manafort, 67, said "I am preserving all my options on the hacks and blackmail and will be following my lawyer's recommendations."

It's not clear who sent that message, which references Manafort's work for the Party of Regions and his alleged role in setting up a purported 2012 meeting between Trump and a Yanukovych ally. (The White House has not responded to a question about whether the meeting took place, but a White House official pointed out that Trump had not worked with Manafort before the 2016 campaign).

The message, which was attached to a text from an icloud.com address with little discernible public record, asks Manafort to respond to a different email address on a mail.ru account that has been used by a Ukrainian parliamentarian named Serhiy Leshchenko. He has alleged that Manafort was paid millions of dollars illegally by the Party of Regions.

Andrea Manafort appears to have forwarded a screenshot of the message to her father on Sept. 6, 2016 — the second-to-last day for which there are hacked messages in the data dump — writing "I imagined this is spam but wanted to pass along."

Ten minutes later, her father responded "It is. TY" — short for "thank you."

But Paul Manafort told POLITICO he was merely trying to put his daughter's mind at ease, and that, in fact, before his daughter received the message, he had received similar messages from the same icloud.com address sent to directly to his cellphone. He said he did not respond to the messages, instead forwarding them to his lawyer.

Separately, sources familiar with the situation say that word had circulated in Kiev over the summer that Manafort was receiving threatening messages related to his work in Ukraine, though the sources said it was not clear from whom the messages were sent.

But Leshchenko, a former investigative journalist who has built a reputation as an anti-

corruption crusader, said he never communicated with Manafort or his daughter.

In a Sunday interview with POLITICO, he alleged that the purported blackmail message was an effort to frame him, and said he planned to flag the matter for the FBI.

He contended that the icloud.com email address from which the note was sent to Andrea Manafort was not his. And he added that he had stopped using the mail.ru email address to which the note asked Manafort to respond because it had been hacked multiple times, including by someone that he believes used it to set up an icloud.com address around the time of the Manafort hack.

Leshchenko suggested that the note might have been sent to Andrea Manafort by Russian-linked forces to divert attention away from the ongoing investigations into Russian meddling in the presidential election.

"They need to prove that not only Russia influenced the U.S. elections — that it was Ukraine as well," he said. "It muddies the picture, makes it less sharp."

He also suggested that the note might have been the work of people allied with the administration of Ukrainian President Petro Poroshenko, whom Leshchenko has criticized for corruption. Poroshenko's government has struggled to make inroads with Trump, amid allegations that Ukrainian officials tried to undermine Trump during the election, and Leshchenko speculated that if he were scapegoated, it might help Poroshenko on that front.

"I think that it could be Ukraine, for Poroshenko to establish contact with Trump and show that all this was the initiative of one crazy deputy," Leshchenko said, referring to himself. (A Washington lobbyist representing a Poroshenko-linked group did not immediately respond to a request for comment.)

Leshchenko even floated the possibility that Manafort himself may have been behind the purported blackmail note to discredit documents he's disputed that were released by the National Anti-Corruption Bureau of Ukraine that appeared to show $12.7 million in cash payments earmarked for Manafort from Yanukovych's party.

On Monday, Manafort rejected that prospect.

"That makes no sense," he said. "If I were trying to frame him, I would have released [the blackmail note] when I got it. Not six months later, after the ledgers had been discredited. It came out in a hack, not because I released it."

The texts that were hacked from Andrea Manafort's phone seem to reveal the personal costs — but also the financial benefits — of Manafort's work for Russia-aligned interests in Ukraine, where he was widely credited as the key player behind Yanukovych's political resurrection. After Yanukovych's 2004 presidential election was nullified amid allegations of widespread fraud and voter intimidation, Manafort helped Yanukovych get elected prime minister in 2006 and president in 2010. Yet by late 2013, Yanukovych was facing widespread protests over

government corruption.

When a friend expressed concern for Paul Manafort during those protests, Andrea Manafort responded, "My dad isn't in Ukraine. My mom won't allow it until it chills out." But she added that "my dad said the media is over hyping it. Specifically stating Obama's approval ratings are lower than yanukovch's [sic] and you don't see him being ousted.' So yea. Just some wild protestors I guess."

Kathleen Manafort, the Manafort daughters' mother, declined to comment, referring questions to her husband, Paul Manafort.

On Feb. 20, 2014, with Kiev roiled by violent clashes between protesters and government security forces, a different friend texted Andrea Manafort asking if her father was "okay and in the us I hope!?!?"

Andrea Manafort responded that her father was "totally fine," and that "the news is very over dramatic ... Ukraine has been in 'crisis' for about year. Arguably longer. Hence my father's employment."

The very next day, Yanukovych fled the capital, leading the Ukrainian parliament to strip him of the presidency. Yanukovych ended up living in Russia under the protection of Russian President Vladimir Putin.

Manafort continued working in Ukraine for a Russian-aligned party called Opposition Bloc that emerged from the ashes of Yanukovych's presidency, helping Oppo Bloc, as it's known in Ukraine, win some seats in the October 2014 parliamentary elections. While Manafort has said he stopped working in Ukraine after that, POLITICO last year revealed that he traveled to Kiev several times after that election, all the way through late 2015, and that he was working to recoup millions owed to him by Oppo Bloc.

In 2015, Andrea Manafort indicated in a text to a friend that "Ukraine is late in paying" Manafort, but she also refers repeatedly in the hacked texts to her father giving her $4 million.

When Paul Manafort signed on to work for Trump in 2016, Andrea Manafort told one friend "he isn't being paid," explaining to another "There's no money motivation."

In a text exchange in early April, Jessica Manafort tells her sister that her father, who maintained an apartment in Trump Tower, where the campaign is located, seemed to be thriving on the campaign.

"Dad and Trump are literally living in the same building and mom says they go up and down all day long hanging and plotting together," Jessica Manafort wrote. "Gross," Andrea Manafort responded, prompting Jessica Manafort to come to their father's defense.

"Its really amazing opportunity at 67 years old. And he is basically running the campaign now He is so happy," Jessica Manafort wrote.

When WikiLeaks released a massive tranche of hacked emails from the DNC ahead of Clinton's nominating convention in late July, Jessica Manafort seemed to assume that it was her father's doing, texting her sister "Dad is brilliant." Andrea Manafort responded "Well it wasn't dads doing. It was hackers," adding "But dad has to be thrilled about this. It's overshadowing the whole convention."

But Paul Manafort's work started causing problems for Andrea Manafort when The New York Times published an August 2016 exposé revealing that the National Anti-Corruption Bureau of Ukraine had obtained the documents showing $12.7 million in cash earmarked for Manafort.

The Ukrainian parliamentarian Leshchenko, who had played a role in exposing the documents, seized on the documents to pressure Ukrainian and American law enforcement to aggressively investigate Manafort.

Andrea Manafort brushed off the controversy in a text to one friend, explaining "He would never have accepted cash. He wouldn't need to." Defending her father, she wrote "My dad has answers to all the allegations. And there is no fed investigation."

But, at the time, she was interviewing for a job with a hedge fund, and she texted a friend saying the executives "were concerned" about whether she "ever worked for him or own property w him, which I haven't and don't."

She texted another friend that someone from the firm called and "had to ask if I have any connection to my dad on paper. Like if I have worked for him or if I could be tied to this Ukraine stuff in any way. Like the money trail." She continued "there's no connection. But like, obviously the article is making them nervous about me."

She added "I hate my name. This is so unfair. And I HATE Hillary. She hired someone to do this to my family. I'm so upset. All this fucking press. It's so unfair."

Clinton campaign officials have denied playing a role in the story.

Officials from the hedge fund did not respond to requests for comment, but Andrea Manafort did end up getting the job there.

While Paul Manafort disputed the authenticity of the documents and denied receiving any off-books cash from Yanukovych's party, the controversy forced him to step down from Trump's campaign only days after the Times story.

Hours after the resignation was announced, Andrea Manafort texted a friend that her father "felt he was becoming a distraction and that would ultimately take a toll on the campaign."

Back

Trump says he's adjusting to the 'surreal' experience of being president Back

By Louis Nelson | 02/28/2017 10:24 AM EDT

President Donald Trump, on the eve of his first address before Congress, presented himself as a man still adjusting to the Oval Office — coping with the "surreal" experience of being commander in chief while still nursing grudges and complaining that he's not getting enough credit for his early moves.

In a wide-ranging interview on "Fox & Friends," Trump gave a frank assessment of one aspect of his performance, saying he would give himself only average marks for his messaging performance while saying that his overall effort during the first 40 days of his presidency was top-notch.

"I think in terms of effort, which means something, but I give myself an A-plus, okay? Effort. But that's, you know, results are more important. In terms of messaging, I would give myself a C or a C-plus," Trump said in an interview that was taped Monday afternoon inside the White House and aired Tuesday morning.

The president claimed that his administration has already delivered on some of his campaign promises, including saving money on military contracts and luring companies into creating jobs in the U.S., despite a seemingly constant stream of negative press. He told his panel of interviewers that "I've done just about more than anybody in the first four weeks."

But in a rare moment of self-criticism, Trump said "my messaging isn't good," using press reports regarding vacant executive-branch jobs as an example. Trump said those stories often portray him as being behind in appointing people for such jobs when, in reality, he has no intention of filling them at all because he sees them as unnecessary.

The president also acknowledged that protests against him have continued, spurred by his controversial executive orders on immigration and promises to undo the Affordable Care Act. He blamed the protests at least in part on leftover hurt feelings from last year's presidential election, but he said he intends to bring the country together. "The way you do that is through success," he said, promising to boost jobs and replace his predecessor's controversial health care law.

Trump will address a joint session of Congress on Tuesday night, an opportunity, he said, to turn around his administration's messaging struggles.

"In terms of achievement, I think I'd give myself an A. Because I think I've done great things," Trump said. "I and my people, I don't think we've explained it well enough to the American public. I think I get an A in terms of what I've actually done, but in terms of messaging, I'd give myself a C or a C-plus."

Trump, a political novice, also engaged in some self-reflection regarding his early days, speaking about his adjustment to the trappings of the West Wing.

"Well, it started off being a surreal experience. You know, you wake up and you're in the White

House or you're walking through the front door and it's the White House and all of that. But you do get over that," Trump said. "I think the one thing that hits me even more than anything else is the magnitude of everything. The numbers are so big. You buy an airplane, but here you're buying 3,500 airplanes."

But Trump still flashed his harder edges in the interview, delivering a rebuke to his beleaguered press secretary, Sean Spicer, for demanding a surprise inspection of staff members' personal and government-issued cellphones to search for leaks. The president also accused former President Barack Obama of being behind the protests that have plagued his fellow Republicans at constituent meetings in their home districts.

"I think [Obama] is behind it. I also think it's politics. That's the way it is," Trump said about the town halls, in which GOP lawmakers have faced angry voters worried about losing health care coverage under Obamacare.

The president further accused supporters of Obama of being behind media leaks — leaks that Trump has vowed to crack down on.

"Some of the leaks possibly come from that [Obama supporters] group, you know, some of the leaks, which are really very serious leaks, because they're very bad ... in terms of national security," he said.

In the interview, Trump also responded to the Academy Awards, where he served as the butt of numerous jokes delivered to the left-leaning Hollywood audience. Host Jimmy Kimmel jabbed at Trump repeatedly over the course of the telecast Sunday night, joking in his opening monologue that the president was racist and made last year's Oscars, which were heavily criticized for nominating only white actors and actresses for major awards, look better by comparison.

Trump said he considered such jokes "a very serious violation" but that he cannot take them personally. Charges of racism, he said, have long been an attack of last resort for liberals.

"It just seems the other side, whenever they are losing badly, they always pull out the race card. And I've watched it for years. I've watched it against Ronald Reagan. I've watched it against so many other people. And they always like pulling out the race card," Trump said. "The fact is, I did pretty well, much better than past people in the Republican Party in the recent election, having to do with Hispanics, having to do with African-Americans. I did pretty well or I wouldn't be sitting here."

Trump called House Minority Leader Nancy Pelosi of California "incompetent" and blamed her for the ills of her party, which finds itself in the minority in both houses of Congress and without control of the White House. The president lamented the decline of the Democratic Party and said Pelosi has "done a terrible job."

"You know, if you look at what's going on with the Democrats and the party, it's getting smaller and smaller," he said. "You know, in a certain way, I hate to see it, because I like a two-party system, and we're soon going to have a one-party system. I actually think a two-party system is

healthy and good."

Asked about his decision not to attend this year's White House Correspondents' Association dinner, Trump said he would skip the event over his long-running feud with the media and "I am not a hypocrite." He recalled the 2011 dinner, where he was pilloried by both Obama and host Seth Meyers over rumors that he might jump into the 2012 presidential race, and said he had "loved the evening" and that it was a misconception that he had left the night angry over the jokes at his expense.

Trump also left the door open to attending the dinner in the future.

"I just thought, in light of the fact of fake news and all of the other things we're talking about now — I thought it would be inappropriate," he said. "I have great respect for the press. I have great respect for reporters and the whole profession. Now, with all of that being said, I just thought it would be better if I didn't do the dinner. That doesn't mean I'm not going to do it next year."

Back

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Yes, very	Somewhat	Neutral	Not really	Not at all

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This email was sent to dennis.allison@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Fuld, John[Fuld.John@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]
From: Loop, Travis
Sent: Tue 2/28/2017 8:45:36 PM
Subject: CWR EO and FRN

Here is the statement. We are updating the CWR webpage to have some of this language and links to EO and FRN.

At the White House today President Donald Trump issued an Executive Order directing the Environmental Protection Agency (EPA) and the Army Corps of Engineers to withdraw and reconsider the 2015 Clean Water Rule: Definition of "Waters of the United States".

EPA Administrator Scott Pruitt joined the President for this announcement and afterward issued the following statement, "EPA intends to immediately implement the Executive Order and submit a Notice of Proposed Rulemaking to withdraw and replace the Waters of the U.S. rule. The President's action today preserves a federal role in protecting water, but it also restores the states' important role in the regulation of water."

Travis Loop

Director of Communications
Office of Water

U.S. Environmental Protection Agency

202-870-6922

loop.travis@epa.gov

To: Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Kwok, Rose
Sent: Tue 2/28/2017 6:28:03 PM
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

We'll need a concurrence email from OGC and a communications strategy (at least a desk statement) to move forward.

I'm waiting to hear back from Antonio on the EPA email address – he said not to include it until we get confirmation from OEI that we can use it as is.

I'll send this back in the proper formatting with the edits to the name and email (we don't have enough time to change the phone number).

From: Campbell, Ann
Sent: Tuesday, February 28, 2017 12:52 PM
To: Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: CWR FR notice draft 2-28 12.25pm clean.docx

Folks, here the final language. We need to insert Donna's name as the POC, a new email address and get it FR formatted. I think you all are also working on the action memo from John to Mike and the typeset request. I'm working on the action memo from Mike to the Admin (and will get that to you shortly for you to crib from).

I'm still clarifying timing. What are we missing?

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 12:34 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR FR notice draft 2-28 12.25pm clean.docx

Look at this one please. We also need OW to identify a contact for the notice.

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

To: Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Tue 2/28/2017 5:51:30 PM
Subject: FW: CWR FR notice draft 2-28 12.25pm clean.docx
CWR FR notice draft 2-28 12.25pm clean.docx
ATT00001.htm

Folks, here the final language. We need to insert Donna's name as the POC, a new email address and get it FR formatted. I think you all are also working on the action memo from John to Mike and the typeset request. I'm working on the action memo from Mike to the Admin (and will get that to you shortly for you to crib from).

I'm still clarifying timing. What are we missing?

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 12:34 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR FR notice draft 2-28 12.25pm clean.docx

Look at this one please. We also need OW to identify a contact for the notice.

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]
From: Neugeboren, Steven
Sent: Tue 2/28/2017 1:57:37 PM
Subject: RE: Mtg tomorrow on CWR

We are good to go at 1030. See you then.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Shapiro, Mike
Sent: Monday, February 27, 2017 11:30 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Subject: RE: Mtg tomorrow on CWR

Deliberative Process / Ex. 5

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Neugeboren, Steven
Sent: Monday, February 27, 2017 10:46 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Subject: Mtg tomorrow on CWR

Deliberative Process / Ex. 5

Mike - interested in your thoughts.

HOLD: General
Scheduled: Tuesday, Feb 28, 2017 from 10:30 AM to 12:00 PM
Location: 3233 WJCE
Invitees: Campbell, Ann, Nickerson, William, Wehling, Carrie, Stokely, Peter, Shapiro, Mike, Peck, Gregory, Goodin, John, Best-Wong, Benita, Cherry, Andrew, Minoli, Kevin, Rees, Sarah, Frithsen, Jeff, Pollins, Mark

Sent from my iPhone

Steven Neugeboren

Associate General Counsel

United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington DC. 20460

202-564-5488

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Minoli, Kevin[Minoli.Kevin@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Neugeboren, Steven
Sent: Tue 2/28/2017 1:43:06 PM
Subject: Re: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation

Deliberative Process / Ex. 5

Sent from my iPhone
Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

On Feb 28, 2017, at 7:40 AM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

In case you haven't seen this coverage of WOUS

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

Begin forwarded message:

From: POLITICO Pro Energy <politicoemail@politicopro.com>
Date: February 28, 2017 at 5:48:24 AM EST
To: <shapiro.mike@epa.gov>
Subject: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation
Reply-To: POLITICO subscriptions <reply-fe8a12737d6604747c-630326_HTML-709550709-1376319-0@politicoemail.com>

By Anthony Adragna | 02/28/2017 05:45 AM EDT

With help from Annie Snider

'BIG LEAGUE' CHANGES COMING TO EPA: President Donald Trump's administration is charging ahead with its plans to dramatically revamp the EPA. Today, the president will sign an executive order at 1:50 p.m. beginning the long and winding process of attempting to undo the controversial Waters of the U.S. rule. The order will instruct EPA and the Army Corps of Engineers to "review and reconsider the rule," a senior White House official told reporters Monday night, at the same time ordering Attorney General Jeff Sessions to ask the court to put the court case on hold. It's a review that "is going to take a long time to get through," the official said, and don't expect any more certainty in the meantime. "You'll just have to do sort of a case-by-case assessment as permit issues arise."

But that's not all: The Trump administration has bigger plans than just killing the Obama rule: it's also taking on the legal interpretation on which the rule is premised. In the 2006 case *Rapanos v. United States* dealing with which wetlands are protected under the Clean Water Act, the Supreme Court reached a muddled 4-1-4 ruling, with the four conservative justices, led by Antonin Scalia, on one side, the four liberal justices on the other, and moderate Anthony Kennedy issuing his own concurring opinion that set an entirely separate test for when a water body should be covered. Since then courts have largely held that Kennedy's test, at least, must be met. But the Trump administration doesn't buy that, and as part of the EO is asking the Army Corps and EPA "to consider thinking about Justice Scalia's interpretation of navigable waters," which is generally narrower, the senior White House official said.

A friendly reminder: Vowing to kill the water rule, like promises to undo EPA's climate regulations, is easier said than done. Justices may not want to put the case on hold, especially since the Supreme Court has already agreed to take on a related question about which court has jurisdiction over challenges. And if the Trump administration moves to withdraw the Obama rule, it'll have to go through the same rulemaking process that created it, including notice and comment periods, and will face all but certain legal challenges from environmental groups and sympathetic states.

Huge EPA budget, staffing cuts eyed: The executive order comes on the heels of a White House proposal — "far more severe than anyone imagined," according to one source — that would see the agency's budget slashed by a quarter and one in five of its workers eventually eliminated, Pro's Alex Guillén reports . If enacted, sources said, EPA's budget would drop from its current level of $8.1 billion to $6.1 billion, a level not seen since 1991, and one source said the agency's 15,000-strong workforce would drop to 12,000, a level not seen since the mid-1980s. It's unclear if congressional Republicans would go along with such dramatic reductions, but Democrats are already vowing staunch resistance and the final appropriations package will need some of their votes (more on that reaction below).

Meanwhile, the Capitol buzzes with anticipation of Trump's speech to a joint session tonight. Expect the president to tout the two Congressional Review Act resolutions he signed to wipe away Obama-era energy regulations, as well as his efforts to revamp the

regulatory process through executive orders. ME isn't holding its breath for specific additional details on an energy agenda, though we may get more details on additional steps to slash regulations. Advocates, including Food & Water Watch, National Nurses United, the Hip Hop Caucus and (long-time Trump foe) Rosie O'Donnell, will gather in front of the White House at 6:00 p.m. ahead of the speech to highlight their opposition to his agenda.

Before the speech: House lawmakers today take up the SCRUB Act (H.R. 998), which would create a five-year commission to identify federal regulations that could be rescinded. It would focus on older regulations and aim to reduce overall regulatory costs by 15 percent.

WELCOME TO TUESDAY! How is it already the end of February? I'm your host Anthony Adragna, and Daniel J. Weiss was first to identify Hugo Black as the most recent sitting senator picked for the Supreme Court. For today: Who was the last pro athlete to serve in Congress? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy, and @POLITICOPro.

MAJOR CHANGE COMING TO RFS: Trump's administration plans to issue an executive order changing the Renewable Fuel Standard so that oil refiners would no longer be responsible for meeting the EPA biofuels mandates, leaving that job instead to gasoline wholesalers who supply fuel to retail outlets, Bob Dinneen, CEO of the Renewable Fuels Association, tells Pro's Eric Wolff. That move is likely to be worth hundreds of millions of dollars to CVR Energy, a company owned by Trump regulation czar Carl Icahn.

POET, the world's largest biofuel producer, blasted the "bailout" and "back-room deal" in a statement. "Bob Dinneen does not have the authority to negotiate on behalf of the biofuels industry, and Icahn does not have the authority to negotiate policy on behalf of the U.S. government," POET CEO Jeff Broin said in a statement.

ZINKE POISED FOR CONFIRMATION: It's now only a matter of time — and how much of it Senate Democrats want to burn — before Rep. Ryan Zinke takes the reins of the Interior Department, Pro's Esther Whieldon reports. The Montana Republican easily cleared a procedural hurdle on Monday night by a 67 to 31 vote. Sixteen members of the Democratic caucus supported cloture on the nomination, while Sen. Ron Wyden voted present over what he said were unanswered questions about Oregon forestry: "So far, it has proven impossible to get even a twig of information about his intentions for Oregon's O&C forests," he said in a statement. "Oregonians deserve to have this information before a final vote."

SENIOR DEMOCRATS SLAM POTENTIAL EPA CUTS: Senior Senate Democrats slammed the Trump administration's plans for drastic EPA cuts and warned the president will ultimately need some Democratic appropriations votes. "I hope that he thinks about that when he establishes his priorities," Dick Durbin, the No. 2

Democrat, told reporters. "Many of the things which he's pushing for now are not going to win a lot of Democratic support." Top EPW Democrat Tom Carper called the threatened cuts "appalling" and said they would imperil public health. "Reckless cuts to the EPA — the agency responsible for protecting public health and our environment — are not what Americans voted for in November," he said in a statement.

GOP unsure too: Congressional Republicans expressed skepticism Monday about building up the military on the back of deep cuts to domestic programs, POLITICO's Rachael Bade, Sarah Ferris and Shane Goldmacher report. "The president will propose and the Congress will dispose," House Appropriator Charlie Dent (R-Pa.) said. "We'll look at his budget but at the end of the day we in Congress write the appropriations bills, and I am not one who thinks you can pay for an increase in [military] spending on the backs of domestic discretionary programs, which constitute 13 or 14 percent of all federal spending."

Barrasso backs fundamental changes: EPW Chairman John Barrasso declined to comment on the initial guidance but said he supported "fundamentally" changing the EPA's direction. "The EPA has really lost its way over the last eight years," the Wyoming Republican told ME. "We need to fundamentally change the direction of the EPA to get it back basically focused on the laws that passed Congress, not on what it chooses to do with a mind of its own." He declined to say whether he would support drastically cutting the agency's climate change work until he reviewed Trump's proposal.

Blame it on the Democrats: Any delay in getting White House energy policy efforts up and running stems from staunch Democratic opposition to even the most non-controversial Cabinet nominations, Barrasso said. "Needless obstruction is causing difficulty in getting things done from the standpoint of energy policy," he told ME. "It's deliberate and obstructive and I think it's not helping the country move forward." But he also described Trump's actions in his first month in office as "pretty terrific," citing executive orders aimed at overhauling the regulatory process and getting two energy-related CRAs signed into law.

**** A message from Utah Diné Bikéyah:** The protection of the Bears Ears National Monument reflected the will of Utahns and Native Americans. Now, President Trump and Interior Secretary-nominee Ryan Zinke are considering undermining this designation and threatening this sacred public land. Join us as we ask them to honor Tribes and stand with Bears Ears: http://bit.ly/2luGehY **

MORE PRESSURE AGAINST BLM METHANE CRA: More than 60 local officials from Colorado, Utah, New Mexico, Nevada and the Ute Tribe are urging senators in a letter today not to vote on a Congressional Review Act challenge to a BLM rule targeting methane emissions from oil and gas operations on public lands. "We urge your opposition to using the Congressional Review Act to eliminate BLM's rule to reduce natural gas waste because of the rule's benefit to our local governments, constituents, and taxpayers," they wrote.

But senior Senate Republicans remain committed to voting on the CRA challenge, even though some undecided GOP senators complicate its path to passage. "I'm committed to getting that passed," Barrasso told ME. Regardless, it appears Cabinet nominations will consume the Senate's time this week, so any consideration of the CRA will wait.

PRUITT EMAIL QUESTIONS NOT GOING AWAY: Revelations that EPA Administrator Scott Pruitt used a private email account while serving as Oklahoma attorney general — in direct contradiction to his Senate testimony — are "only the beginning of the mess of conflicts and falsehoods," Sen. Sheldon Whitehouse told ME in a statement. "Lo and behold, the documents Scott Pruitt wanted to keep hidden have confirmed our suspicion that he used his personal email address to conduct official state business and that he was not honest with the Senate about this during his confirmation process," the Rhode Island Democrat said. "Senate Republicans had every opportunity to prevent this mess. Instead, they rammed this nomination through, and it looks like they did it, not despite him being the polluters' tool, but because he is the polluters' tool."

Listening sessions roll on: Add another governor — Mississippi's Phil Bryant — to the list of state executives Pruitt has met with since assuming office little more than a week ago. That brings the total to 19 governors, according to EPA, which Pruitt tweeted is a "good 1st step to restoring cooperative federalism."

SOCIAL COST OF CARBON UNDER THE SPOTLIGHT: Two House Science subcommittees today plan to "examine the methods and parameters used to establish the social cost of carbon" and look at "how the process can be improved." Chairman Lamar Smith is decidedly not a fan of the metric used to measure costs imposed on society by each metric ton of greenhouse gas pollution, warning in his priorities for this Congress that it was used by the Obama administration to "push a costly climate agenda with little transparency or accessibility." Witnesses include the University of Chicago's Michael Greenstone, who helped implement the figure during the Obama presidency; the Brookings Institution's Ted Gayer; the Heritage Foundation's Kevin Dayaratna and the Cato Institute's Patrick Michaels. It kicks off at 10:00 a.m. in Rayburn 2318.

WHAT'S UP IN INTERNATIONAL CLIMATE ACTION? UNFCCC Executive Secretary Patricia Espinosa delivers her first remarks in the U.S. since the start of the Trump administration today. Expect discussion to touch on how the international community is adjusting to the new U.S. president. It kicks off at 1:00 p.m. at the Copley Formal Lounge at Georgetown University (3700 O St NW).

NOT BORDERLINE: Alberta Premier Rachel Notley warned Monday a border adjustment tax that hurts the flow of crude from the oil-rich province would negatively impact both the U.S. and Canada, Pro's Ben Lefebvre reports. Notley said Canadian energy executives "asked for us to make the case to as many people as possible on the

economic effects of Albertan oil."

MAIL CALL! TIME TO SAVE THE WHALES: The Center for Biological Diversity sent a letter Monday to Pruitt urging the agency to prosecute Hilcorp Alaska for Clean Air Act and Clean Water Act violations related to an ongoing natural gas pipeline leak in Alaska's Cook Inlet or face a lawsuit. "Every day they delay, wildlife is harmed, boaters are at risk, and a potent greenhouse gas rises into the atmosphere," Miyoko Sakashita, the group's oceans program director, said in a statement.

BANKS, CATANZARO FORMALLY ANNOUNCED: Pros learned last week they had begun work, but the White House formally announced George David Banks and Michael Catanzaro as presidential aides on Monday. Banks, previously executive vice president of the American Council for Capital Formation, will serve as special assistant for international energy and environment, while Catanzaro, most recently a partner at the CGCN Group, will be special assistant for domestic energy and environmental policy.

MOVER, SHAKER: Johan Bergenas is joining Paul Allen's Vulcan Inc. as senior director for government affairs, focusing on wildlife trafficking, illegal fishing, and energy and climate change issues. He was previously senior associate at the Stimson Center (h/t POLITICO Influence).

John Holdren, former President Barack Obama's top science adviser, has rejoined the Woods Hole Research Center as senior adviser to its president. "The Center's work on the causes, dynamics, and consequences of climate change and on the actions needed to reduce its damages has never been more important," Holdren said in a statement.

QUICK HITS

— EPA wants planning schedule on Flint's future water source. MLive.

— Shell Shuns New Oil-Sands Projects as Low Prices Force Cost Control. Bloomberg.

— Eni chief denies wrongdoing in Nigerian corruption case. Financial Times.

— How will Alaskans talk climate change with the Trump administration? Alaska Dispatch News.

— Officials temporarily shut off water flow at damaged Oroville Dam in a race against Mother Nature. Los Angeles Times.

— Final cleanup begins at Dakota Access pipeline protest camp. AP.

HAPPENING TUESDAY

9:00 a.m. — "ARPA-E Energy Innovation Summit," Gaylord Hotel and Convention

Center in National Harbor, MD

10:00 a.m. — "At What Cost? Examining the Social Cost of Carbon," House Science, Space and Technology Environment and Oversight Subcommittees, 2318 Rayburn

11:00 a.m. — American Public Power Association President and CEO Sue Kelly discusses 2017 legislative priorities, The Mayflower Hotel, Rhode Island Room, 1127 Connecticut Ave. NW

12:00 p.m. — "101 on Onshore Drilling Rigs and Well Construction," International Association of Drilling Contractors, 406 Dirksen

12:00 p.m. — "Geopolitical Dynamics and Middle East Energy," The Middle East Institute, 1319 18th Street NW

12:30 p.m. — "Public Policy Issues Facing the Federal Energy Regulatory Commission," The American Council for Capital Formation's Center for Policy Research, 485 Russell

1:00 p.m. — Interview with Patricia Espinosa, executive secretary of the UNFCCC, Georgetown Institute for Women, Peace & Security, Copley Formal Lounge, 3700 O Street Northwest

1:30 p.m. — House Appropriations Members' Day hearing on Interior, 2007 Rayburn

2:00 p.m. — Meeting on H.R. 1009 and H.R. 1004, House Rules Committee, H-313

3:00 p.m. — "The Next Generation of Climate Conversations: A Town Hall Discussion," Bloomberg Government, 1101 K Street, Suite 500 (by invitation)

THAT'S ALL FOR ME!

** **A message from Utah Diné Bikéyah:** The designation of the Bears Ears National Monument reflected the will of a majority of Utahns and Native American Tribes. This monument permanently protected public lands threatened by vandalism and looting in southeast Utah that we consider sacred. Yet already, politicians are pushing President Trump and Interior Secretary-nominee Ryan Zinke to reduce or undo its protections. We call on President Trump to resist efforts to seize or sell off Bears Ears and other parks and monuments. Stand with Bears Ears. Let's protect our national public lands for future generations of all people. Learn more at: http://bit.ly/2luGehY **

To view online:
https://www.politicopro.com/tipsheets/morning-energy/2017/02/trump-administration-pushing-massive-epa-changes-021585

Stories from POLITICO Pro

Sources: White House proposes to cut EPA budget by quarter Back

By Alex Guillén | 02/27/2017 07:10 PM EDT

The White House has proposed slashing EPA's budget by about a quarter and eventually eliminating 1 in 5 of the agency's workers, according to sources familiar with the budget proposal sent to EPA on Monday.

That budget proposal would set EPA's budget at $6.1 billion, down from its current level of $8.1 billion, according to two sources outside the agency. EPA's budget hasn't been that low since 1991, according to agency records. One of those sources also said that the White House has proposed reducing EPA's 15,000-strong workforce to 12,000, a level not seen since the mid-1980s.

The White House declined to confirm the figures.

One source told POLITICO that the proposed cuts were "far more severe than anyone imagined." And an EPA employee said staff were buzzing on Monday about the possibility of such a massive cut to the agency's budget.

In a brief interview, a senior EPA official refused to confirm the proposed cuts, adding that he was "not in a position to discuss it publicly." The official said the budget blueprint is part of a "deliberative process" between the White House and EPA, adding that the Office of Management and Budget is expecting a response from the agency by Wednesday afternoon.

The White House said Monday it is seeking to hike defense spending by $54 billion, a jump offset by shrinking spending at non-security agencies across the federal government.

Monday's proposal is part of the initial stages of the Trump administration's budget-crafting process. Agencies will return the proposals with comment in the coming days, and the Office of Management and Budget will release a "budget blueprint" on March 16, OMB Director Mick Mulvaney said. A full, detailed budget plan will not be released until May.

It remains unclear whether congressional Republicans will be willing to make such drastic budget shifts, but Democrats and environmentalists are already blasting the Trump proposal's domestic spending cuts.

"Reckless cuts to the EPA — the agency responsible for protecting public health and our environment — are not what Americans voted for in November," said Sen. Tom Carper (D-Del.).

"Here's what cutting EPA's budget means in the real world: more air pollution, more

asthma attacks for kids, more health problems. This isn't about budget savings. It is about giving big polluters a license to pollute without consequences," said Elizabeth Thompson of the Environmental Defense Fund.

Andrew Restuccia and Esther Whieldon contributed to this report.

Back

Biofuel official: Trump to alter ethanol program, helping Icahn Back

By Eric Wolff | 02/27/2017 10:00 PM EDT

The White House is planning to issue an executive order to shift the burden for blending corn ethanol into the nation's gasoline, according to an ethanol industry official, a move that's likely to be worth hundreds of millions of dollars to a company owned by President Donald Trump's regulation czar and fellow billionaire Carl Icahn.

Bob Dinneen, CEO of the ethanol lobby group Renewable Fuels Association, told POLITICO on Monday that he received a call from a person in the Trump administration informing him that Trump would issue an executive order to change the Renewable Fuel Standard so that oil refiners, like Icahn's CVR Energy, would no longer be responsible for meeting the EPA biofuels mandates. Instead, that job would fall to the gasoline wholesalers who supply fuel to retail outlets.

Dineen said that he told the official, whose identity he declined to disclose, that the ethanol producers would support the move if EPA would allow the use of E15 — gasoline containing 15 percent ethanol — year round. Currently, most gasoline is contains no more than 10 percent ethanol, with the higher 15 percent blend available only in the cooler months.

"I was told the executive order was coming no matter what, so I tried to get what I could for my members," he said.

That move is likely to be opposed by the broader oil industry, which is seeking to overhaul or repeal the RFS that was last updated by Congress in 2007. Automakers have also fought higher ethanol blends, and burning E15 or higher blends in many cars will void the warranty. Even others in the ethanol industry are likely to oppose the move.

"If we had been approached with this deal we would have flat out rejected it," said Emily Skor, CEO of Growth Energy, another ethanol producer's group. "This would gut the RFS and violate the president's commitment to the policy."

Icahn, who Trump has been named as a special adviser to the president on overhauling federal regulations, did not respond to requests for comment.

But Icahn has been the most vocal proponent of moving the responsibility that his CVR Energy has to blend the ethanol into its gasoline and to buy the trading credits, called Renewable Identification Numbers. Buying those RINs to meet the federal rules was expected to cost his CVR $235 million last year — all part of what Icahn derided as "the mother of all short squeezes" that resulted from the collaboration of retail gas chains and investment bankers.

Other refiners, such as Valero Energy and Monroe Energy, have also complained about the RFS requirements, which they say was costing them hundreds of millions of dollars.

Dinneen said he received a call from the administration, though not the EPA, which administers the RFS. EPA did not respond to requests for comment.

White House spokeswoman Stephanie Grisham would not confirm Dinneen's remarks, saying, "When we have something we can comment on, we will let you know."

Ethanol producers are banking on higher ethanol blends gaining acceptance in the market as the best way to increase their domestic sales, since the mandate for conventional biofuel set by Congress will peak this year at 15 billion gallons. RFA has also been pressing EPA to accept scientific studies that show higher proportions of ethanol can be accommodated in the U.S. fuel market.

Dinneen said that his request for the increase in E15 sales was not granted immediately by his caller, but that he was later given assurances the waiver from the EPA and the reviews would be forthcoming.

He disputed that notion that he had struck a deal with the administration, as had been rumored in the industry, although he added that he might be willing to join Trump for the signing of an executive order or to put out a supportive statement, providing political cover for a move that will infuriate the rest of the ethanol industry.

"If I can get a waiver that ethanol producers have been trying to get for five years, if I can get reviews of studies that ethanol has been trying to get for years, then yes, I might," he said.

RFA has opposed the change to the point of obligation since it became a hot issue last fall, though the group added refining and ethanol giant Valero to it's membership late last year.

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Senate moves closer to final Zinke vote Back

By Esther Whieldon | 02/27/2017 07:57 PM EDT

Rep. Ryan Zinke's nomination to be Interior secretary cleared a key procedural hurdle on a 67-31 vote this evening in the Senate, setting up final approval in the chamber.

Procedural rules call for up to 30 hours of debate before a final vote, meaning Democrats could push the final vote on the Montana Republican's nomination to early Wednesday morning.

Zinke appears to be well positioned to clear the chamber after he garnered support from a number of Democrats in the Energy and Natural Resources Committee vote and again at tonight's cloture vote.

Zinke is a former state senator and Navy SEAL commander, as well as an avid hunter and angler who has positioned himself as a Teddy Roosevelt conservationist.

Back

Trump budget faces GOP resistance Back

By Rachael Bade, Sarah Ferris and Shane Goldmacher | 02/27/2017 07:31 PM EDT

Congressional Republicans on Monday panned Donald Trump's call to finance a military buildup by slashing domestic agencies and ignoring entitlement programs — undermining the president's budget even before it's been finalized.

The consternation spanned the party's ranks just one day before Trump addresses Congress for his first time Tuesday evening: House GOP fiscal hawks said it was ludicrous to think they'd pass a budget that did not address ballooning costs in Medicare and Social Security, the main drivers of the national debt. Pragmatic-minded GOP appropriators scratched their heads over where Trump would siphon off $54 billion in domestic cuts. And GOP defense hawks said the Pentagon budget boost doesn't go nearly far enough.

Republican sources in leadership and on the Budget and Appropriations committees, meanwhile, quietly assured reporters that this was just an opening bid and that Congress, ultimately, has the power of the purse.

Make no mistake, they say: They'll be writing their own budget plans.

"The president will propose and the Congress will dispose," said House appropriator Charlie Dent (R-Pa.) "We'll look at his budget, but at the end of the day we in Congress write the appropriations bills, and I am not one who thinks you can pay for an increase in [military] spending on the backs of domestic discretionary programs, which constitute 13 or 14 percent of all federal spending."

Senior GOP aides echoed that sentiment. One noted, for instance that "few if any Democrats voted for President [Barack] Obama's budget the first time around. ... It's a

blueprint." Another added, "it's the White House budget request — and 'request' is the key word here."

While most Republicans declined to be quoted on record criticizing Trump's budget before it has even been released, their initial reaction is a warning sign for the White House: If Trump wants to fortify the military, he has to give Republicans on the Hill something they can work with.

It's not that Republicans don't want to boost the Pentagon, but if they're going to pay for it, they'd rather not do it all on the backs of domestic agencies that have already seen their budgets gutted in recent years. They also are itching to do entitlement reform — a key pillar of the traditional GOP platform.

"There have been many attempts made to try to balance the books of the U.S. government on the backs of the discretionary dollar, and we all know that's a fantasy because the drivers of the debt are on the mandatory side: Medicare, Medicaid, Social Security," said Rep. Steve Womack (R-Ark.), who also sits on both the Budget and the Appropriations committees. "Trying to solve for a deficit in the hundreds of billions of dollars cannot be accomplished through deeper cuts to discretionary programs without terrific harm to both the economy and a lot of innocent people."

That's to say nothing of the practical problem Trump's plan would face in the Senate, where at least eight Democrats will be needed to overcome a filibuster and pass any spending bill. Senior Democrats on both sides of the Capitol greeted Trump's initial budget plan with furious opposition, and one Senate Democratic aide said "it's pretty hard to imagine" a single member of their party backing the proposal.

"Democrats will not help pass laws that shift more economic burdens onto hardworking American families," said House Appropriations Committee ranking member Nita Lowey (D-N.Y.) in a statement. Senate Minority Leader Chuck Schumer equated the plan to "taking a meat ax to programs that benefit the middle class."

The White House on Monday unveiled the proposed spike in military spending and vowed to offset it dollar-for-dollar with cuts to domestic programs that have nothing to do with defense. Those agencies and departments, including State and the Environmental Protection Agency, could face severe cutbacks on average of more than 10 percent if veterans' benefits remain unchanged.

The White House sources said the domestic offsets were necessary because Trump does not intend to go after entitlements to pay for spending increases, a promise he made on the campaign trail. And therein lies the first problem: The Republican budget playbook in recent years has always relied on entitlement reforms to achieve the party's fiscal gold standard: balancing the budget within 10 years.

House Republicans are already prodding their leaders to maintain that pledge in their coming budget — even if Trump doesn't in his.

"We can't abandon long-term reforms and entitlement and maintain any kind of credibility at all," Rep. Tom Cole (R-Okla.) said in an interview last week. "We've always had reforms in there, we need to keep reforms there."

Republicans will also find themselves under heavy pressure from outside conservative groups to rein in entitlements, which compose about half of annual federal spending. In an interview last week, FreedomWorks policy director Jason Pye noted that Republicans could "cut every single bit of nondefense discretionary spending, and you're still going to run a budget deficit." The entire budgets of the State Department and EPA, for instance, barely exceed the proposed $54 billion increase in defense-related spending.

"You're effectively only taking 12.5 percent of federal spending. I don't think that's tenable. You actually have to do more," Pye said.

Hill Democrats spent all of Monday accusing the president of putting the burden on everyday Americans. Sen. Chris Coons (D-Del.) argued that foreign aid — which is on Trump's chopping block — isn't "charity" but "directly advances U.S. national interests by fostering a safer and more stable world." Schumer said Americans under Trump's domestic cuts would be breathing "dirtier air and drinking dirtier water." And House Minority Leader Nancy Pelosi (R-Calif.) said the cuts could mean "1,000 grants to medical researchers" are cut and "100,000 low-income kids would be cut out of" federal education programs.

Meanwhile, defense hawks like Sen. John McCain said there wasn't enough spent on defense. Other defense-minded Republicans quietly fretted that cuts to State, the key department heading up the nation's diplomacy, would mean less security for the country, not more.

Not everyone dreads the idea of offsetting a military boost with cuts to domestic spending. One Freedom Caucus source believed its group members could be receptive to such reductions; they feel the government is too bloated anyway. Other budget hawks like Rep. Todd Rokita (R-Ind.) said there "certainly" is enough waste on the domestic side that it could offset the defense boost.

Like Democrats, Republicans on the appropriations panel — and most if not all moderate Republicans — also worry about what such those cuts would mean for their constituents. Rep. Mike Simpson (R-Idaho) says he doesn't think the House could pass such cuts, and "I think you'd see even appropriators voting against those bills." Asked if he worried Trump might tweet shame him for opposing his idea, Simpson said no.

"There is just not that much spending in the rest of [the agencies]" to offset the military increase, he told reporters during a House vote Monday night. "There is more to our government than just defense."

Appropriations Committee spokeswoman Jennifer Hing said Chairman Rodney Frelinghuysen (R-N.J.) "strongly agrees that more investment in our national defense is needed, and that all federal programs should be reviewed as to their worth and value."

She notably added this caveat, however, echoing the theme of the day on the Hill: "As always, the power of the purse lies with Congress, and any budget decisions will go through the regular budget and appropriations process."

Jennifer Scholtes and Burgess Everett contributed to this story.

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Alberta's Notley starts push against border tax proposal Back

By Ben Lefebvre | 02/27/2017 04:37 PM EDT

Alberta Premier Rachel Notley warned today that both the U.S. and Canada will suffer economically if U.S. lawmakers institute a border adjustment tax that hurts the flow of crude from the oil-rich province.

Notley, who traveled to Washington after huddling earlier in the month with Canadian energy executives — including the CEOs of Cenovus Energy, Enbridge, TransCanada and Imperial Oil — said the Canadian industry was concerned about a potential 20 percent tax on goods imported into the U.S., which would include crude from the oil sands of western Canada.

In an interview, Notley called the border tax "a hypothetical," but said the energy executives "asked for us to make the case to as many people as possible on the economic effects of Albertan oil."

"We're trying to get as much time as we can with as many Congressional members as we can," Notley said. She is also planning to visit with a group of U.S. governors later today to plead the case against a border tax.

Canada supplied 40 percent of U.S. oil imports in November, making it America's largest single foreign crude source.

"The American economy benefits greatly from the contribution of Alberta's energy exports," Notley said in an interview. "And folks in Alberta have strong economic connections in the U.S. as well. The nature of the Canadian-U.S. relationship is such that all of us lose if we interfere with our ability to move our products back and forth over the border."

Back

Energy advisers Banks and Catanzaro start at White House Back

By Eric Wolff | 02/21/2017 02:14 PM EDT

George David Banks and Mike Catanzaro have started working in the White House, providing President Donald Trump with expertise in energy and environment.

Banks started last week as Special Assistant to the President and Senior Director for International Energy and Environment, a White House spokeswoman confirmed today. Prior to joining the Trump administration, Banks had worked for the CIA, the State Department, the Senate Committee on Environment and Public Works and the George W. Bush White House.

Catanzaro, an energy lobbyist and former staffer for Sen. James Inhofe (R-Okla.) at EPW, started today as the Special Assistant to the President for Energy and the Environmental Policy at the National Economic Council.

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Yes, very	Somewhat	Neutral	Not really	Not at all

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This email was sent to shapiro.mike@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]
From: Neugeboren, Steven
Sent: Tue 2/28/2017 1:36:24 PM
Subject: Re: Mtg tomorrow on CWR

Deliberative Process / Ex. 5

Sent from my iPhone
Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

On Feb 27, 2017, at 11:43 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Deliberative Process / Ex. 5

Steve, happy to connect with you and Justin in the morning to discuss if you want.

Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

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From: Shapiro, Mike
Sent: Monday, February 27, 2017 11:30 PM
To: Neugeboren, Steven; Campbell, Ann; Wehling, Carrie; Goodin, John; Best-Wong, Benita; Minoli, Kevin; Rees, Sarah; Pollins, Mark
Subject: RE: Mtg tomorrow on CWR

Deliberative Process / Ex. 5

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

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From: Neugeboren, Steven
Sent: Monday, February 27, 2017 10:46 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Subject: Mtg tomorrow on CWR

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mike - interested in your thoughts.

HOLD: General
Scheduled: Tuesday, Feb 28, 2017 from 10:30 AM to 12:00 PM
Location: 3233 WJCE
Invitees: Campbell, Ann, Nickerson, William, Wehling, Carrie, Stokely, Peter, Shapiro, Mike, Peck, Gregory, Goodin, John, Best-Wong, Benita, Cherry, Andrew, Minoli, Kevin, Rees, Sarah, Frithsen, Jeff, Pollins, Mark

Sent from my iPhone

Steven Neugeboren

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To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]
From: Campbell, Ann
Sent: Tue 2/28/2017 1:30:46 PM
Subject: RE: Mtg tomorrow on CWR

You to be clear, we are moving forward with the meeting this morning AND we are broadening the participation?

From: Minoli, Kevin
Sent: Monday, February 27, 2017 11:44 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
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Deliberative Process / Ex. 5

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Kevin

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Sent: Monday, February 27, 2017 11:30 PM
To: Neugeboren, Steven; Campbell, Ann; Wehling, Carrie; Goodin, John; Best-Wong, Benita; Minoli, Kevin; Rees, Sarah; Pollins, Mark
Subject: RE: Mtg tomorrow on CWR

Deliberative Process / Ex. 5

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From: Neugeboren, Steven
Sent: Monday, February 27, 2017 10:46 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
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Scheduled: Tuesday, Feb 28, 2017 from 10:30 AM to 12:00 PM
Location: 3233 WJCE
Invitees: Campbell, Ann, Nickerson, William, Wehling, Carrie, Stokely, Peter, Shapiro, Mike, Peck, Gregory, Goodin, John, Best-Wong, Benita, Cherry, Andrew, Minoli, Kevin, Rees, Sarah, Frithsen, Jeff, Pollins, Mark

Sent from my iPhone

Steven Neugeboren

Associate General Counsel

United States Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington DC. 20460

202-564-5488

To: OW-OWOW-EVERYONE[OWOWOWEVERYONE@epa.gov]
From: Bravo, Antonio
Sent: Tue 2/28/2017 1:19:23 PM
Subject: FYI Only: Water articles in the Press

EPA pushes Flint public participation

EPA is pushing back on a request from Flint, MI, officials to extend a public participation plan deadline.

Group launches 'Shadow Cabinet' to track Trump officials

The group of former federal officials and policy experts will track Trump Cabinet officials with the goal of exposing when they "don't lead but mislead."

Our most read: all about Pruitt's priorities and staff opposition

More questions than answers as the Pruitt era comes into being.

Trump launches FY 18 budget review expected to cut billions from EPA

The administration is beginning the "passback" process, starting internal deliberations and discussions.

Pennsylvania DEP Proposes Fee Increase To Improve Drinking Water Standards.

NPR (2/27) reports that last December, the EPA sent a letter to Pennsylvania environmental regulators telling them to dedicate a sufficient number of staff and financial resources toward properly enforcing clean water standards or risk losing federal funding and their primacy in enforcement. During the Pennsylvania Department of Environmental Protection's budget hearing on Monday, lawmakers largely focused on how to avoid those consequences, and are now considering a fee increase on permit and annual fees on the state's public water systems. Noting that some towns in her own district have been plagued by water contamination problems, State Rep. Madeleine Dean (D-Montgomery) questioned why the department is considering fees and not a larger increase to the general fund.

CNN politics

Trump to sign order reviewing EPA water rule

Washington (CNN) -President Donald Trump will sign Tuesday an executive order requiring the Environmental Protection Agency to review Obama-era water regulations to make sure they are not harming the economy, according to an internal EPA email obtained by CNN.

The order -- which is currently in draft form and subject to change before Tuesday afternoon, when Trump is expected to sign it -- addresses the "Waters of the United States" rule, which applies to 60% of the bodies of water in the US.

The regulation was created under the Clean Water Act in the early 1970s and essentially gives the federal government authority over major bodies of water, rivers, streams and wetlands, allowing the federal government to police these waterways to ensure they are pollution free.

Trump's executive order requires the EPA and other applicable departments to review the regulation and ensure it promotes economic growth and minimizes uncertainty when it comes to regulation. The order then requires agencies to rescind or revise aspects of the regulation that are incompatible with the new policy guidance.

By reviewing the regulation, the administration can begin to pick it apart and weaken it.

Critics, including some in the farming community, have complained that the rule restricted how they could use their land and had a negative economic impact on their business.

The executive order is one of two executive actions and three legislative bills that Trump will sign on Tuesday before he heads to Capitol Hill to deliver his first address to a joint session of Congress, multiple senior administration officials said.

EPA Removes Mentions of 'Climate Change' in Water Utilities Program

The Environmental Protection Agency's website has gotten a makeover since the Trump administration took office, with some references to climate change now wiped from its pages.

But the agency removed the word "climate" from a division's name and webpage even before President Donald Trump's inauguration, suggesting that EPA employees may have started constraining information in anticipation of the incoming chill from the new administration.

The division once known as Climate Ready Water Utilities was rebranded as the Creating Resilient Water Utilities in late December, according to archived webpages. By then, Myron Ebell had been in place as head of the agency's transition team for more than a month. Ebell, a senior fellow at the conservative Competitive Enterprise Institute who has long promoted climate denial in his work, was considered a threat to the agency's mission by many of the career employees.

The program's website originally said the initiative "provides the water sector (drinking water, wastewater and stormwater utilities) with the practical tools, training, and technical assistance *needed to adapt to climate change by promoting a clear understanding of climate science* and adaptation options." The page now highlights resilience to extreme weather events aimed at adaptation, with no mention of climate change.

EPA wants planning schedule on Flint's future water source

FLINT, MI -- Flint will get more time to finish plans showing its technical, managerial and financial capacity to operate its own water system, but the U.S. Environmental

Protection Agency wants some information without delay.

Christopher Korleski, director of the EPA's water division, told Mayor Karen Weaver in a Feb. 21 letter that the city can have the additional time it requested to complete parts of a plan for treating a new source of water.

But by Wednesday, March 1, the city must tell the federal agency when its analysis of alternative water sources will be completed, when a water source will be selected and when it can report on its own capacity to treat the water source it's selected.

Korleski also told the city to report by Wednesday on how the public "has been or will be engaged in the ultimate selection of the city's new water source" and other information showing "meaningful public involvement" in the process so far.

"EPA expects the respondents to engage with the public as soon as possible to allow for public input on any decisions that directly affect them, such as changing the decision on the city's water source," Korleski's letter to Weaver says.

Flint is required to comply with a federal order, issued by EPA in January 2016 and updated in November, for fixing its water system.

The mayor asked earlier this month to "delay public participation in the new source treatment plan developed until (its) evaluation is complete and the proper economic, social, political and public health issues are vetted."

Weaver also asked for more time to finish some parts of a plan for dealing with a new water source after disconnecting from water supplied by the Great Lakes Water Authority.

Antonio Bravo

Office of Wetlands, Oceans & Watersheds

202-566-1976

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Orvin, Chris[Orvin.Chris@epa.gov]
From: Fields, Wanda
Sent: Mon 2/27/2017 6:57:35 PM
Subject: Executive Correspondence: AX-17-000-4821
AX_17-000-4821 KILKENNEY.pdf

CITIZEN/ORIGINATOR: Kilkenney, Mark A.

CONTROL NUMBER: AX-17-000-4841

STATUS: Pending

DUE DATE: 3/13/2017

SUBJECT: Concerns with the WOTUS

To: OW-OWOW-EVERYONE[OWOWOWEVERYONE@epa.gov]
From: Bravo, Antonio
Sent: Mon 2/27/2017 1:34:19 PM
Subject: FYI Only: Water articles in the News

Environmentalists sue EPA over Washington water criteria

NWEA is hoping to win a deadline for the agency to disapprove the state's policies and trigger a statutory requirement for enacting federal limits.

Bannon says cabinet tapped for 'deconstruction' of administrative state

Steve Bannon's remarks are likely to further undermine staff morale at EPA and other agencies, where many workers are already concerned that newly installed Administrator Scott Pruitt is not committed to the agency's mission.

Business Roundtable urges overhaul of regulatory process

The coalition of CEOs seeks government-wide regulatory reform while also urging the Trump EPA to soften three contentious Obama-era air, climate, and water rules.

White House taps key climate advisers

Two Republican former officials have been tapped to serve as energy and climate advisers in the Trump White House.

CLF appeals Rhode Island stormwater case dismissal

The suit could force EPA to exercise little-used authority to subject sources to stormwater discharge requirements.

LAW360 A LexisNexis® Company **EPA Won't Ban Fluoride In US Drinking Water Supplies**

New York -- The U.S. Environmental Protection Agency denied a petition submitted by health advocates that asked the agency to issue a rule banning the practice of adding fluoride to drinking water, saying that claims the substance is harmful to humans are not based in sound science.

Community drinking water supplies often include added fluoride, and proponents of the

practice say it helps prevent tooth decay. The Centers for Disease Control and Prevention went so far as to name it one of the 10 greatest public health achievements.

Trump to order reversal of Obama water regulation rule: official

U.S. President Donald Trump is expected to sign a measure as early as Tuesday aimed at rescinding a major Obama administration water regulation and direct an end to the government's defense of the rule, a Trump official briefed on the plan said late Friday.

Trump is expected to direct the Environmental Protection Agency to withdraw the Waters of the United States (WOTUS) rule, which expands the number of waterways that are federally protected under the Clean Water Act.

The rule was finalized by the EPA and the U.S. Army Corps of Engineers in May 2015, and was blocked by a federal appeals court pending further court challenges.

The rule has faced intense opposition from Republicans in Congress, farmers and energy companies.

Critics contend the rule vastly expands the federal government's authority and could apply to ditches and small isolated bodies of water. The EPA under President Barack Obama said the rule protects waters that are next to rivers and lakes and their tributaries "because science shows that they impact downstream waters."

A White House spokeswoman did not comment on Friday.

Snyder advisor believes $20M in past Flint water loans will be forgiven

comments

FLINT, MI -- A top aide to Gov. Rick Snyder believes the state will arrange for the forgiveness of approximately $20 million in federal money borrowed for past Flint water projects by the city.

Senior Advisor Rich Baird, in discussing continuing state support for the city last week, said Flint officials have sought forgiveness of Drinking Water Revolving Fund loans, "which I believe we will be able to facilitate."

The federal Water Infrastructure Improvements for the Nation Act approved by Congress and signed into law by former president Barack Obama in December included an option for the state to forgive city debts prior to fiscal year 2017.

Flint is currently paying interest on approximately $20 million in past revolving fund loans.

Tiffany Brown, a spokeswoman for Michigan Department of Environmental Quality, which administers the loans, said in an email to MLive-The Flint Journal that the department has "no details to share at this time, but I'm told the state and city are working together to facilitate the needs of the city."

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From: Fuld, John
Sent: Mon 2/27/2017 12:39:54 PM
Subject: OW- Morning Insider

February 27, 2017

NEWS:

LAW360 A LexisNexis® Company **EPA Won't Ban Fluoride In US Drinking Water Supplies**

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From: Bravo, Antonio
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Rep. Smith urges Pruitt to withdraw CWA Pebble Mine 'veto'

Smith and other critics have long charged that EPA's proposed veto is an unprecedented step that would allow officials to halt project they oppose before permits are sought.

EPA agrees to boost transparency for competitive grants

EPA said agency program offices have already started developing "a list of discretionary grant programs and posting it on the EPA intranet and internet to ensure widespread dissemination to EPA staff and public transparency."

Industry groups detail challenge to HFC refrigerant rules

Industry coalitions are suing EPA over its expansion of refrigerant leak rules to climate-warming HFCs.

EPA release touting rollback calls draws FOIA request from NRDC

The group is seeking information on how EPA compiled statements in support of Administrator Scott Pruitt from groups critical of the agency's mission.

Quote-Unquote: All from (and about) Pruitt's EPA

This week's expanded list focuses on the early words from EPA Administrator Scott Pruitt, and reactions from various parties of interest to his confirmation.

Pruitt emails show close industry ties, watchdog says

The Center for Media and Democracy released more than 7,500 emails from Scott Pruitt's time as Oklahoma attorney general, after a state court ordered the office to turn over the documents in response to the group's records request.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

4th Circuit CWA Ruling Could Create Permit Uncertainty For Many Sectors

A federal appeals court ruling holding a coal mine liable under the Clean Water Act (CWA) for releasing pollutants that state regulators chose not to limit directly could create permitting uncertainty for many sectors by hindering permit owners' ability to ensure they are in compliance because other courts have signaled that they find the ruling persuasive.

“You can no longer look at your permit, make sure you're in compliance with those numeric limits, and feel like you have some certainty as to what your obligations are and what your potential liability is,” Erica Spitzig, deputy general counsel for the National Association of Clean Water Agencies (NACWA), said at a Feb. 10 American Law Institute-Continuing Legal Education (ALI-CLE) seminar on environmental law in Washington, D.C.

In a subsequent Feb. 16 interview with *Inside EPA*, Spitzig said that NACWA conducted an “informal survey” with the aid of the Association of Clean Water Administrators (ACWA), which represents state water regulators, and found that “many states” have used similar language in at least some of their permits -- opening the facilities operating under those permits to liability for any unforeseen violation of state water policies.

The U.S. Court of Appeals for the 4th Circuit's Jan. 4 ruling in *Ohio Valley Environmental Coalition (OVEC) v. Fola Coal* held that when a CWA permit includes both numeric effluent limits and a mandate to comply with state water quality standards, discharges that exceed the standards can be considered a permit violation even if they stay within the permit-writers' numeric thresholds.

Water quality standards express the maximum level of pollution a a waterbody can tolerate before becoming impaired. But the standards are usually not directly enforceable.

Instead, regulators use them to set limits in discharge permits, among other requirements. When those limits are not stringent enough to protect water quality, the common remedy is to tighten permits or expand the universe of permitted entities, rather than suing dischargers directly.

But *Fola Coal* threatens to cause “mass confusion” by opening the door to such direct

suits, National Mining Association (NMA) Associate General Counsel Amanda Aspatore, who also spoke at he ALI-CLE panel, said.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

Pruitt Urged To Fulfill PFOA Testing Pledge As State Advances Water Limit

Community campaigners are urging EPA Administrator Scott Pruitt to fulfill a pledge he gave during his Senate confirmation to test drinking water in communities that may contain the emerging contaminant perflouorooctanoic acid (PFOA), while New Jersey pushes ahead with developing possibly the strictest PFOA limit in the country.

PFOA, a persistent, toxic non-stick perfluorinated chemical (PFC) used in a host of consumer and industry applications, has been linked by an independent science panel to various adverse health effects, including testicular and kidney cancers. The Obama administration last year issued a health advisory for PFOA, also known as C-8, but has not announced any plans to develop a maximum contaminant level (MCL) that would set mandatory limits on the substance.

The community campaigners, under the name Keep Your Promises DuPont, launched their effort just before Pruitt's Feb. 17 Senate confirmation and installation as administrator. The group has sent EPA's Office of Ground Water and Drinking Water more than 2,500 letters asking that Pruitt keep his promise to test for PFOA water contamination in communities likely exposed to the chemical in their drinking water, a spokesman for the group says.

They cite a commitment Pruitt made during his Jan. 18 Senate confirmation hearing before the Senate Environment & Public Works Committee in response to queries from panel member Sen. Kirsten Gillibrand (D-NY).

Gillibrand “asked you about the health and economic effects of C-8 water contamination," the letter says. "We demand that you keep your promise to test the water in all communities likely affected by C-8," they add.

At the hearing, Gillibrand told Pruitt "PFOA is an example of a chemical that needs to be tested." She continued, "I need you to put it number one on your list to test it, and if it is a carcinogen, that many scientists have said it is, it needs to be banned."

The then-nominee said he would commit to that work, referencing both Toxic Substances Control Act authority and addressing it under the Safe Drinking Water Act.

Keep Your Promises DuPont is now calling on Pruitt to follow through on his pledge. "Recent reports suggest C-8 contamination from the DuPont Washington Works plant in Parkersburg, WV may have spread to many more communities -- communities without C-8 filters, " the group says in the letter -- which the group has linked to on the Action Network website as part of its letter-writing campaign.

Keep Your Promises DuPont is a community-based organization representing people who work or live in the Greater Mid-Ohio Valley seeking to hold DuPont responsible for impacts on the community from the company's Washington Works Plant. The plant has been at the center of multi-district litigation (MDL) involving more than 3,500 personal injury cases against DuPont over adverse health effects allegedly stemming from PFOA drinking water contamination.

The group in the letter to Pruitt argues, however, that PFOA-contaminated drinking water is not limited to the Mid-Ohio Valley -- Ohio, West Virginia and Kentucky. "[I]t's everywhere: New York, New Hampshire, Vermont, and beyond," they say.

Water Online

EPA Approves Wisconsin Efforts To Limit Phosphorus

Earlier this month, the U.S. EPA approved a bid by officials in Wisconsin to allow a slower paced roll out of rules that will limit the discharge of a dominant water pollutant.

The Multi-Discharger Variance (MDV) for Total Phosphorus, according to The National Law Review, "establishes an additional and less-costly compliance option for eligible point sources seeking relief from burdensome phosphorus discharge limitations." The EPA's approval of the MDV will last for a 10-year period, but could be extended if the Wisconsin Department of Natural Resources (DNR) requests.

According to the *Milwaukee Journal Sentinel*, the EPA informed the DNR that it would allow the state to put in place stronger regulations in order "to limit the discharge of phosphorus from point sources such as sewage treatment plants and factories."

Phosphorus fuels algae in many of Wisconsin's lakes. In an assessment conducted by the DNR last year, the department concluded "that 41 percent of more than 7,700 waters in the state violated water standards for phosphorus."

This plan has been in process for some time with the EPA."Our sense is that it has been working its way through the system for a while," Scott Laeser, water quality specialist with Clean Wisconsin, told the *Sentinel*.

Wisconsin did approve stronger phosphorus regulations that took effect in 2010 in the final days of the administration of then-governor Jim Doyle. The EPA approved those changes.

Business interests had disagreed with the costs, "and at the time the DNR's own analysis said the regulations could cost up to $1 billion over the next decade."

A 2015 analysis by the DNR and state Department of Administration estimated the cost at more than $7 billion over the next 20 years.

However, environmental groups have said that "the figures ignored costs of pollution of water resources and their impact on recreation, wildlife and public health."

To read more about efforts to stymie phosphorus visit Water Online's Nutrient Removal Solutions Center.

Trump executive orders to target climate, water rules: report

The White House is preparing executive orders targeting controversial Obama-era climate and water rules, The Washington Post reported Tuesday.

Through executive orders, President Trump will reportedly tell the Environmental Protection Agency (EPA) to rewrite a 2015 rule that cracks down on greenhouse gas emissions from existing power plants.

He will also instruct the EPA and the Army Corps of Engineers to redo another 2015 rule that gives the federal government more regulatory power over waterways around the country. Along the way, he will also lift an Interior Department moratorium on federal land coal leasing.

The power plant rule — called the Clean Power Plan — and the water rule are two of the most expansive and controversial environmental rules issued by the Obama administration, and ones that Trump has long promised to undo.

The Clean Power Plan was the centerpiece of Obama's climate change agenda. The measure envisions a 32 percent reduction in electricity sector carbon emissions by 2030. Environmentalists support the measure but Republicans contend it gives the government too much power and the energy sector says it imperils fossil fuel industries.

Last February, the Supreme Court halted implementation of the rule until lawsuits against it could move forward. A ruling on the measure is due soon from a federal court.

The water rule — formally titled the Clean Water Rule, but commonly known as Waters of the United States — gives the federal government regulatory jurisdiction over small waterways around the county. The measure was also stayed by a federal judge after a host of states sued against it.

Throughout his presidential campaign, Trump promised to undo both rules, as well as end the coal leasing moratorium the Interior Department issued in early 2016. So far, he has signed a congressional resolution undoing a different coal mining regulation, and the Senate could soon send him a resolution blocking methane restrictions on federal natural gas wells.

The Senate on Friday confirmed Scott Pruitt to lead the EPA. As Oklahoma's attorney

general, Pruitt sued against both the Clean Power Plan and the water rule and is expected to support efforts to undo them.

The San Joaquin Demonstrates The Importance Of Floodplain Restoration

Heavy storms and their subsequent flooding in California's San Joaquin basin highlight the importance of multi-benefit floodplain restoration.

Daniel Nylen | **February 13, 2017**

Water from heavy storms in California throughout January finally started to reach the San Joaquin Valley over the past several weeks. The delay in the flood peak was due to the last 5 years of drought. There was barely any water in the large reservoirs that feed the Lower San Joaquin River, so they had enough room to capture the runoff from this year's first series of storms. In preparation for a sequence of new storms that moved in a few weeks ago, these reservoirs had to start spilling some of this captured water to create more room for the incoming runoff. As a result, flood peaks in the San Joaquin River came more than a week after the initial storms that hit the state.

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Aerial drone images capture flooding dynamics along the San Joaquin River. | Daniel Nylen

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Wanting to document one of our floodplain restoration projects on the San Joaquin River, I closely watched the flow forecasts online to time my visit. On MLK Day, I was able to make it down close to the flood peak with a main goal of documenting flood conditions with our drone. It was impressive to be out during the highest flow since 2011. Water was only six feet below the tops of the levees that form the state floodway – a narrow corridor made up of levees along both sides of the river. This floodway was built by the state and federal governments earlier in the 20th century to contain the river and convey flood flows.

Did you know that in California we have levees that block rivers from accessing floodplain habitat on state and federal park and refuge lands? The dry triangular wedge of land in the middle of all the flooding is Great Valley Grasslands State Park. This state park, part of the largest remaining area of unplowed native grasslands in the entire Central Valley, lies approximately 1.5 hours due South of Sacramento. The aerial perspective allows for a unique view, and due to the flooding, poignantly illustrates the artificial disconnect between the river and its floodplain.

Cutting rivers off from their floodplains is very harmful and causes many problems; foremost among them is increased flood risk and habitat degradation. Levees along rivers throughout the Central Valley have constricted river corridors and cut them off from their floodplains. This artificial constriction raises water surface levels and increases flood risk because it reduces the capacity of the river to carry water. Rivers need more room in order to safely and more effectively accommodate floods. This is especially important in an era predicted to be characterized by an increased frequency of extreme flood events.

Natural flooding within the adjacent San Luis National Wildlife Refuge shows what historic floodplain wetlands within Great Valley Grasslands State Park lands used to look like. | Daniel Nylen

In partnership with California State Parks, the U.S. Fish and Wildlife Service, the local levee district, River Partners, and Ducks Unlimited, American Rivers is leading a restoration project that will remove sections of levee to reconnect up to 200 acres of historic floodplain and native grasslands within the park. By giving the river more room and re-connecting its floodplain, water will more frequently flood the floodplain. This provides multiple benefits including reductions in flood risk, re-establishment of native grasslands adapted to periodic flooding, groundwater recharge, and improved habitat for fish and wildlife. Not only will we be restoring habitat on public land, but we will also be helping the local levee district to save money by reducing maintenance costs.

This project provides a scalable example of the multi-benefit flood management approach that American Rivers and its partners are promoting and beginning to implement on a larger scale within the Central Valley. This approach not only reduces flood risk for people and communities, but can also help make tangible strides toward ecosystem recovery goals. American Rivers is also leading numerous other model projects throughout the San Joaquin and Sacramento Valleys to support state level flood management policy reform. This nature-based model of flood management is not only relevant to California's Central Valley, but is also replicable in regions elsewhere that are dealing with outdated flood management systems and infrastructure.

Antonio Bravo

Office of Wetlands, Oceans & Watersheds

202-566-1976

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From: Fuld, John
Sent: Thur 2/23/2017 12:57:17 PM
Subject: OW-Morning Insider

February 23, 2017

NEWS:

The Detroit News Flint plan for $100M in fed funding advances to EPA

Flint intends to use $100 million in federal funds to improve its water treatment plant, replace underground pipes and make other system improvements, according to a request submitted Friday by the Michigan Department of Environmental Quality.

Congress approved the funding amount last year in response to the Flint water contamination crisis. But the federal Environmental Protection Agency must still review the "intended use plan," which includes a $20 million match already appropriated by the state.

The formal funding request, submitted by the state on Feb. 17, is similar to the plan Flint Mayor Karen Weaver proposed last month, although wording was changed in some instances to fit federal categories and ensure chances for approval.

"So city officials are glad the process is moving along and we're one step closer to securing the funding that is crucial to Flint's recovery," said Weaver spokeswoman Kristin Moore.

The state would administer the federal aid through the Drinking Water Revolving Fund, providing money to the city in the form of loans it would fully forgive.

The $120 million plan includes $58.5 million to improve the Flint water treatment plan, with construction expected to begin in June, and $40 million to replace underground service lines throughout the city.

Another $10 million would be used for distribution system and transmission main improvements, $10 million for water meter replacement and $1.5 million for technical assistance provided to the city by the state.

tdn.com THE DAILY NEWS

Industry groups challenge EPA's new fish consumption rule

A fish consumption rule that could cost local industry millions of dollars may once again be open for debate.

A coalition of Washington industry groups has petitioned the U.S. Environmental Protection Agency to reconsider its water quality standards and instead adopt less stringent standards proposed by the state.

Because toxins can build up in fish, the law in part regulates water pollution by measuring people's risk of cancer from eating fish exposed to pollutants. The revised standards apply to anyone who deals with treated wastewater, including factories — such as KapStone Paper and Packaging Corp. and Nippon Dynawave paper mills — and municipal wastewater treatment plants such as the regional sewage treatment plant on Fibre Way.

Industry groups argue that new water rules are unrealistic and "cannot be met with existing or foreseeable technologies and may seriously endanger family wage jobs at facilities across the state", the coalition said in a press release. Instead, the coalition — which includes Association of Washington Business, Northwest Pulp and Paper Association and six other groups — want to see a state version of the clean water rule implemented.

The EPA and the state Department of Ecology had been working on parallel versions of

new water quality standards. The state proposed its own version of a clean water rule in August, but that was partially approved and partially rejected by the EPA in November.

The EPA agreed with Ecology on a number of key points, including significantly increasing the fish-consumption rate from 6.5 grams a day previously to 175 grams a day, roughly the size of a small fish fillet. But the EPA rejected the state's plan for regulating PCBs, arsenic and mercury. In the case of PCBs, the EPA rule is 25 times more stringent than what the state had proposed, reported the Associated Press.

Chris McCabe, executive director of Northwest Pulp and Paper Association, which represents the Longview paper mills, said it would cost factories millions or billions of dollars to upgrade their technologies to meet the new EPA standards. But in some cases, the existing technologies may not even be sufficient, he said.

"Why would you buy hundreds of millions in technology if you're not going to be meeting the standards?" McCabe said.

The same industry groups asked Ecology to hold off on issuing new water pollution permits while EPA decides how to respond to their request. McCabe said that the groups last month asked Gov. Jay Inslee to challenge the stricter EPA standards, but they have not yet heard a reply.

Trump Takes Aim At WOTUS

WOTUS is on its way out.

The "Water of the United States" rule (WOTUS) was the definitive water-policy achievement of the Obama administration. Proponents said it clarified which waterways could be regulated by the federal government under the Clean Water Act. Jurisdiction under the law had become obscured by court decisions, WOTUS supporters said.

The rule has been in Republican crosshairs for years. President Trump strongly opposed it during his campaign. The agriculture industry and the GOP say the rule amounts to government overreach.

WOTUS is currently unenforceable due to court action. "A court stayed [WOTUS] days after it was finalized," E&E News reported. "The Supreme Court agreed last month to take up the challenge brought by more than 30 states and many industry and farm groups," the publication said.

Now Trump is getting ready to do away with the policy. *The Washington Post* reported this week that Trump is preparing an executive order to kill the regulation.

The Post reported:

[The order] will instruct the EPA and Army Corps of Engineers to revamp a 2015 rule, known as the Waters of the United States rule, that applies to 60 percent of the water bodies in the country. That regulation was issued under the 1972 Clean Water Act, which gives the federal government authority over not only major water bodies but also the wetlands, rivers and streams that feed into them. It affects development as well as some farming operations on the grounds that these activities could pollute the smaller or intermittent bodies of water that flow into major ones.

Trump's actions could have a near-term impact on the utility industry, even if the battle over dismantling the rule may take some time, *The Post* reported:

While any move to undo these policies will spark new legal battles and entail work within the agencies that could take as long as a year and a half to finalize, the orders could affect investment decisions within the utility, mining, agriculture and real estate sectors, as well as activities on the ground.

Michigan Submits Flint Mayor's Spending Plan To The EPA With Few Edits.

MLive (MI) (2/22, Fonger) reports the Michigan Department of Environmental Quality submitted an intended use plan for upgrading Flint's water system for $120 million to the US Environmental Protection Agency. The proposal left Flint Mayor Karen Weaver's spending plans largely unedited. According to MLive, "One change between the city plan and the state proposal calls for the state to receive $1.5 million for technical assistance to the city, but both city and DEQ spokeswomen said the funds will still pay for what Weaver requested – a corrosion control study and asset management plan."

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From: Fuld, John
Sent: Wed 2/22/2017 12:50:49 PM
Subject: OW-Morning Insider

February 22, 2017

NEWS:

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

4th Circuit CWA Ruling Could Create Permit Uncertainty For Many Sectors

A federal appeals court ruling holding a coal mine liable under the Clean Water Act (CWA) for releasing pollutants that state regulators chose not to limit directly could create permitting uncertainty for many sectors by hindering permit owners' ability to ensure they are in compliance because other courts have signaled that they find the ruling persuasive.

“You can no longer look at your permit, make sure you're in compliance with those numeric limits, and feel like you have some certainty as to what your obligations are and what your potential liability is,” Erica Spitzig, deputy general counsel for the National Association of Clean Water Agencies (NACWA), said at a Feb. 10 American Law Institute-Continuing Legal Education (ALI-CLE) seminar on environmental law in Washington, D.C.

In a subsequent Feb. 16 interview with *Inside EPA*, Spitzig said that NACWA conducted an “informal survey” with the aid of the Association of Clean Water Administrators (ACWA), which represents state water regulators, and found that “many states” have used similar language in at least some of their permits -- opening the facilities operating under those permits to liability for any unforeseen violation of state water policies.

The U.S. Court of Appeals for the 4th Circuit's Jan. 4 ruling in *Ohio Valley Environmental Coalition (OVEC) v. Fola Coal* held that when a CWA permit includes both numeric effluent limits and a mandate to comply with state water quality standards, discharges that exceed the standards can be considered a permit violation even if they stay within the permit-writers' numeric thresholds.

Water quality standards express the maximum level of pollution a a waterbody can tolerate before becoming impaired. But the standards are usually not directly enforceable.

Instead, regulators use them to set limits in discharge permits, among other requirements. When those limits are not stringent enough to protect water quality, the common remedy is to tighten permits or expand the universe of permitted entities, rather than suing dischargers directly.

But *Fola Coal* threatens to cause “mass confusion” by opening the door to such direct suits, National Mining Association (NMA) Associate General Counsel Amanda Aspatore, who also spoke at he ALI-CLE panel, said.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

Pruitt Urged To Fulfill PFOA Testing Pledge As State Advances Water Limit

Community campaigners are urging EPA Administrator Scott Pruitt to fulfill a pledge he gave during his Senate confirmation to test drinking water in communities that may contain the emerging contaminant perflouorooctanoic acid (PFOA), while New Jersey pushes ahead with developing possibly the strictest PFOA limit in the country.

PFOA, a persistent, toxic non-stick perfluorinated chemical (PFC) used in a host of consumer and industry applications, has been linked by an independent science panel to various adverse health effects, including testicular and kidney cancers. The Obama administration last year issued a health advisory for PFOA, also known as C-8, but has not announced any plans to develop a maximum contaminant level (MCL) that would set mandatory limits on the substance.

The community campaigners, under the name Keep Your Promises DuPont, launched their effort just before Pruitt's Feb. 17 Senate confirmation and installation as administrator. The group has sent EPA's Office of Ground Water and Drinking Water more than 2,500 letters asking that Pruitt keep his promise to test for PFOA water contamination in communities likely exposed to the chemical in their drinking water, a spokesman for the group says.

They cite a commitment Pruitt made during his Jan. 18 Senate confirmation hearing before the Senate Environment & Public Works Committee in response to queries from panel member Sen. Kirsten Gillibrand (D-NY).

Gillibrand “asked you about the health and economic effects of C-8 water contamination," the letter says. "We demand that you keep your promise to test the water in all communities likely affected by C-8," they add.

At the hearing, Gillibrand told Pruitt "PFOA is an example of a chemical that needs to be tested." She continued, "I need you to put it number one on your list to test it, and if it is a carcinogen, that many scientists have said it is, it needs to be banned.”

The then-nominee said he would commit to that work, referencing both Toxic Substances Control Act authority and addressing it under the Safe Drinking Water Act.

Keep Your Promises DuPont is now calling on Pruitt to follow through on his pledge. "Recent reports suggest C-8 contamination from the DuPont Washington Works plant in Parkersburg, WV may have spread to many more communities -- communities without C-8 filters, " the group says in the letter -- which the group has linked to on the Action Network website as part of its letter-writing campaign.

Keep Your Promises DuPont is a community-based organization representing people who work or live in the Greater Mid-Ohio Valley seeking to hold DuPont responsible for impacts on the community from the company's Washington Works Plant. The plant has been at the center of multi-district litigation (MDL) involving more than 3,500 personal injury cases against DuPont over adverse health effects allegedly stemming from PFOA drinking water contamination.

The group in the letter to Pruitt argues, however, that PFOA-contaminated drinking water is not limited to the Mid-Ohio Valley -- Ohio, West Virginia and Kentucky. "[I]t's everywhere: New York, New Hampshire, Vermont, and beyond," they say.

Water Online

EPA Approves Wisconsin Efforts To Limit Phosphorus

Earlier this month, the U.S. EPA approved a bid by officials in Wisconsin to allow a slower paced roll out of rules that will limit the discharge of a dominant water pollutant.

The Multi-Discharger Variance (MDV) for Total Phosphorus, according to The National Law Review, “establishes an additional and less-costly compliance option for eligible point sources seeking relief from burdensome phosphorus discharge limitations.” The EPA’s approval of the MDV will last for a 10-year period, but could be extended if the Wisconsin Department of Natural Resources (DNR) requests.

According to the *Milwaukee Journal Sentinel*, the EPA informed the DNR that it would allow the state to put in place stronger regulations in order "to limit the discharge of phosphorus from point sources such as sewage treatment plants and factories."

Phosphorus fuels algae in many of Wisconsin's lakes. In an assessment conducted by the DNR last year, the department concluded "that 41 percent of more than 7,700 waters in the state violated water standards for phosphorus."

This plan has been in process for some time with the EPA."Our sense is that it has been working its way through the system for a while," Scott Laeser, water quality specialist with Clean Wisconsin, told the *Sentinel*.

Wisconsin did approve stronger phosphorus regulations that took effect in 2010 in the final days of the administration of then-governor Jim Doyle. The EPA approved those changes.

Business interests had disagreed with the costs, "and at the time the DNR's own analysis said the regulations could cost up to $1 billion over the next decade."

A 2015 analysis by the DNR and state Department of Administration estimated the cost at more than $7 billion over the next 20 years.

However, environmental groups have said that "the figures ignored costs of pollution of water resources and their impact on recreation, wildlife and public health."

To read more about efforts to stymie phosphorus visit Water Online's Nutrient Removal Solutions Center.

THE HILL

Trump executive orders to target climate, water rules: report

The White House is preparing executive orders targeting controversial Obama-era climate and water rules, The Washington Post reported Tuesday.

Through executive orders, President Trump will reportedly tell the Environmental Protection Agency (EPA) to rewrite a 2015 rule that cracks down on greenhouse gas emissions from existing power plants.

He will also instruct the EPA and the Army Corps of Engineers to redo another 2015 rule that gives the federal government more regulatory power over waterways around the country. Along the way, he will also lift an Interior Department moratorium on federal land coal leasing.

The power plant rule — called the Clean Power Plan — and the water rule are two of the most expansive and controversial environmental rules issued by the Obama administration, and ones that Trump has long promised to undo.

The Clean Power Plan was the centerpiece of Obama's climate change agenda. The measure envisions a 32 percent reduction in electricity sector carbon emissions by 2030. Environmentalists support the measure but Republicans contend it gives the government too much power and the energy sector says it imperils fossil fuel industries.

Last February, the Supreme Court halted implementation of the rule until lawsuits against it could move forward. A ruling on the measure is due soon from a federal court.

The water rule — formally titled the Clean Water Rule, but commonly known as Waters of the United States — gives the federal government regulatory jurisdiction over small waterways around the county. The measure was also stayed by a federal judge after a host of states sued against it.

Throughout his presidential campaign, Trump promised to undo both rules, as well as end the coal leasing moratorium the Interior Department issued in early 2016. So far, he has signed a congressional resolution undoing a different coal mining regulation, and the Senate could soon send him a resolution blocking methane restrictions on federal natural gas wells.

The Senate on Friday confirmed Scott Pruitt to lead the EPA. As Oklahoma's attorney general, Pruitt sued against both the Clean Power Plan and the water rule and is expected to support efforts to undo them.

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Sent: Tue 2/21/2017 1:16:29 PM
Subject: FYI Only: Water articles in the Press

The Washington Post **Trump to roll back Obama's climate, water rules through executive action**

President Trump is preparing executive orders aimed at curtailing Obama-era policies on climate and water pollution, according to individuals briefed on the measures.

While both directives will take time to implement, they will send an unmistakable signal that the new administration is determined to promote fossil-fuel production and economic activity even when those activities collide with some environmental safeguards. Individuals familiar with the proposals asked for anonymity to describe them in advance of their announcement, which could come as soon as this week.

One executive order — which the Trump administration will couch as reducing U.S. dependence on other countries for energy — will instruct the Environmental Protection Agency to begin rewriting the 2015 regulation that limits greenhouse-gas emissions from existing electric utilities. It also instructs the Interior Department's Bureau of Land Management (BLM) to lift a moratorium on federal coal leasing.

A second order will instruct the EPA and Army Corps of Engineers to revamp a 2015 rule, known as the Waters of the United States rule, that applies to 60 percent of the water bodies in the country. That regulation was issued under the 1972 Clean Water Act, which gives the federal government authority over not only major water bodies but also the wetlands, rivers and streams that feed into them. It affects development as well as some farming operations on the grounds that these activities could pollute the smaller or intermittent bodies of water that flow into major ones.

Trump has joined many industry groups in criticizing these rules as examples of the

federal government exceeding its authority and curbing economic growth. While any move to undo these policies will spark new legal battles and entail work within the agencies that could take as long as a year and a half to finalize, the orders could affect investment decisions within the utility, mining, agriculture and real estate sectors, as well as activities on the ground.

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The pending *NAM* suit does not test the legality of the 2015 CWA jurisdiction rule jointly issued by EPA and the Army Corps of Engineers, and instead focuses on which court should hear challenges to it.

The water law allows for suits over some agency actions to be filed in district courts while others are directed to appeals courts, but it is unclear where a rule defining the waters subject to the law should fall. Myriad suits over the regulation were filed in both federal appellate and district courts.

A U.S. Court of Appeals for the 6th Circuit panel held in early 2016 that appellate courts have authority over the rule, but that ruling was split 2-1 and relied on the appellate court's precedent that one of the majority judges wrote was wrongly decided and should be overturned.

NAM petitioned the Supreme Court to review that decision, hoping to win an order that would cancel the 6th Circuit suit, *Murray Energy, et al., v. EPA, et al.*, and re-start over a dozen district court challenges that were stayed or dismissed while the appellate litigation proceeded. And *Murray Energy* has itself been stayed until the high court issues its decision.

Delaying argument in the high court case means a decision will not come until the Senate has had a chance to consider the nomination of 10th Circuit judge Neil Gorsuch to fill the seat left vacant by the late Justice Antonin Scalia's death. Gorsuch's likely confirmation would bring the court back to full strength, meaning that unless a justice recuses him- or herself there would be no chance of a tie vote. A tie among the justices would allow the 6th Circuit decision to stand but set no wider precedent.

That precedent could be crucial to future litigation because members of the Trump administration, including newly confirmed EPA head Scott Pruitt, have opposed the jurisdiction rule and declared their intent to repeal it. Since withdrawing a promulgated rule requires another rulemaking, the rule's supporters could sue to block EPA's repeal, with the venue for any such suit determined by the high court's ruling in *NAM*.

Don't Drink The Tap Water On Airplanes

Flight attendants say there is a dirty secret about the tap water on airplanes: It's potentially contaminated.

"Flight attendants will not drink hot water on the plane. They will not drink plain coffee, and they will not drink plain tea," one flight attendant told Business Insider.

In 2004, EPA testing found that 1 in every 10 planes in the study had coliform in its water samples, an indicator of potentially harmful bacteria, the report said.

An investigation by NBC 5, relying on U.S. EPA data, found that despite federal efforts to ensure water safety on airplanes, "the water may not be much cleaner than it was when EPA conducted sample tests in 2004."

EPA rules, per NBC 5:

The EPA now requires airlines to test for coliform and E. coli on every airplane at least once year. If a plane tests positive with either bacteria, EPA requires airplanes to flush the tanks and retest the water. The airline also has to restrict access to the water on the plane until tests show it is clean.

The Huffington Post provided background on what these rules contain and how they were formed:

In 2009, the EPA issued new safety rules for aircraft drinking water. Among other things, the new rules mandated "routine disinfection and flushing of the water system [and] periodic sampling of the onboard drinking water." It also mandated firmer policies regarding notification of passengers and crew members in the event of violations.

Yet the NBC Investigation revealed that even after the new rules hit the book, tap water on aircrafts is problematic. "In 2012, 12 percent of commercial airplanes in the U.S. had at least one positive test for coliform," the report said.

The Association of Flight Attendants (AFA) says the rules should be stronger. The organization recently told Business Insider:

Water onboard is regulated under the Environmental Protection Agency to ensure safe drinking water on the aircraft. The Association of Flight Attendants-CWA pushed for this regulation over 15 years ago. The regulation gives broad discretion to airlines on how often they must test the water and flush the tanks. AFA does not believe this regulation goes far enough or is sufficiently enforced.

Airlines for America told the publication that airlines work closely with the federal government "to ensure that water received from municipalities for onboard systems is safe and to maintain that safety by following rigorous sampling and management requirements once received."

One *San Francisco Chronicle* columnist had clear-cut advice on how airline passengers should handle their drinking situation: pay for bottled water. "You might have to ante up a couple of bucks for a small bottle," he wrote.

Michigan Civil Rights Commission: "Systemic Racism" Led To Flint Water Crisis.

The AP (2/17, Karoub) reports the Michigan Civil Rights Commission released a report Friday asserting that "'systemic racism' going back decades is at the core of problems that caused a lead-contaminated water crisis in the majority black city of Flint." However, the Commission's 130-page report "did not unearth any civil rights law violations and [acknowledged] that nobody 'intended to poison Flint.'"

Flint Has Gone More Than 1,000 Days Without Safe Water.

NBC Nightly News (2/18, story 6, 3:25, Diaz-Balart) reported the city of Flint, Michigan has "now gone for more than 1,000 days without clean and safe drinking water" and is "still mired in a crisis over lead contamination." Correspondent Stephanie Gosk highlighted that area teachers have said student's are more quick "to become explosive and angry." Gosk said, "That volatility could be the first sign of what people in this city fear: the effects of lead exposure." While state officials have said the water is now safer, Gosk asks why residents are "still so afraid to drink it." She said, "In part, because they are still being told to use filters" and also because people still mistrust their local

officials.

Seagrasses Reduce Bacteria in Polluted Waters

A new study suggests the mesmerizing fields could be important for the health of humans and sea creatures alike

image: http://thumbs.media.smithsonianmag.com//filer/21/98/219850b6-7078-4d4f-8030-c142a44d6a2b/lamb4hr.jpeg__800x600_q85_crop.jpg

src="http://thumbs.media.smithsonianmag.com//filer/21/98/219850b6-7078-4d4f-8030-c142a44d6a2b/lamb4hr.jpeg__800x600_q85_crop.jpg" alt="Seagrass" itemprop="image"> Seagrass grows near a village in the Spermonde Archipelago in Indonesia. Researchers there recently discovered that coastal areas with seagrass have less bacteria than grassless areas. (Joleah Lamb)

By Erin Blakemore

smithsonian.com
February 16, 2017

Found in coastal regions around the world, seagrasses turn the ocean floor into an underwater meadow. Though mesmerizing to watch, these fields aren't just for decoration. Seagrasses have several important environmental roles to play, such as providing essential habitat and sequestering carbon. Now, new research reveals another benefit: making seawater less polluted.

For the study, recently published in the journal *Science*, a team of scientists tested seawater off the coast of four small islands at Spermonde Archipelago, Indonesia. There, ocean pollution is common due to the lack of septic systems and effective waste disposal systems. They were on the hunt for *Enterococcus*, a type of bacteria that indicates that an area has been contaminated by fecal waste. Though the bacteria don't always cause serious infections, they often indicate that other, even more harmful, pathogens are present.

They found that water samples from sites near beaches were more than ten times higher than Environmental Protection Agency recommended levels. Samples collected near seagrass meadows, however, had up to three times fewer bacteria. Similarly, they found that coral reefs located near seagrass meadows had up to two times less disease than those without grasses nearby.

That apparent bacteria-fighting power is just one of seagrasses' many jobs. They play host to thousands of underwater species, making up vital habitats for animals, and generate oxygen through photosynthesis. They also serve as a snack for grazing sea animals such as green sea turtles. Seagrasses sequester carbon, too—it's thought that they currently store nearly 20 billion tons of the gas. As a result, they're considered one of Earth's most valuable ecosystems. Now bacteria reduction can be added to that long list of benefits.

Drew Harvell, a professor of ecology and evolutionary biology from Cornell University and an author on the paper, has studied seagrass for years. But she didn't start to suspect just how much it might be able to protect human health until 2011, when her entire team got sick with dysentery and, in one case, typhoid after investigating corals in the islands' waters. "It was kind of the a-ha moment," she tells Smithsonian.com. "The decision to really focus on studying the bacteria came from that event."

Scientists have long suspected that seagrasses produce antibiotics, but the study is the first to connect seagrass presence with the health of marine organisms, including coral. And despite the role they apparently play in keeping oceans healthy, there's a catch: As Smithsonian.com reported in 2014, they're disappearing at the rate of rainforests.

Next, Harvell and her team will focus on how seagrass reduces bacteria. She suspects that the small sea creatures that live there and the fact that seagrass produces oxygen both play a role, but more research is needed. Along the way, they hope to use their research to raise awareness of the importance of seagrass—and to link a plant that couldn't be further from most people's minds with their long-term health. "A lot of marine ecosystems have benefits that we have vastly undervalued," says Harvell. "We really

need to get looking and working to find those positive solutions."

Who knows? Perhaps the knowledge that sea grass is more than just an undersea decoration will prompt people to better protect it. There's more work to be done, but for now it seems that the silent, shimmering grasses are protecting us whether we acknowledge it or not.

Antonio Bravo

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Sent: Tue 2/21/2017 1:12:16 PM
Subject: OW- Morning Insider

February 21, 2017

NEWS:

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Airlines for America told the publication that airlines work closely with the federal government "to ensure that water received from municipalities for onboard systems is safe and to maintain that safety by following rigorous sampling and management requirements once received."

One *San Francisco Chronicle* columnist had clear-cut advice on how airline passengers should handle their drinking situation: pay for bottled water. "You might have to ante up a couple of bucks for a small bottle," he wrote.

Michigan Civil Rights Commission: "Systemic Racism" Led To Flint Water Crisis.

The AP (2/17, Karoub) reports the Michigan Civil Rights Commission released a report Friday asserting that "'systemic racism' going back decades is at the core of problems that caused a lead-contaminated water crisis in the majority black city of Flint." However, the Commission's 130-page report "did not unearth any civil rights law violations and [acknowledged] that nobody 'intended to poison Flint.'"

Flint Has Gone More Than 1,000 Days Without Safe Water.

NBC Nightly News (2/18, story 6, 3:25, Diaz-Balart) reported the city of Flint, Michigan has "now gone for more than 1,000 days without clean and safe drinking water" and is "still mired in a crisis over lead contamination." Correspondent Stephanie Gosk highlighted that area teachers have said student's are more quick "to become explosive and angry." Gosk said, "That volatility could be the first sign of what people in this city fear: the effects of lead exposure." While state officials have said the water is now safer, Gosk asks why residents are "still so afraid to drink it." She said, "In part, because they are still being told to use filters" and also because people still mistrust their local officials.

John W. Fuld, Ph.D.

Media Relations Manager-Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: OW-OWOW-EVERYONE[OWOWOWEVERYONE@epa.gov]
From: Bravo, Antonio
Sent: Tue 2/14/2017 1:17:21 PM
Subject: FYI Only: Water articles in the Press

Delegating CWA Permit Powers Could Aid Weakening Of Jurisdiction Rule

The Trump administration could permanently weaken federal authority to regulate wetlands regardless of the fate of the Obama EPA's controversial Clean Water Act (CWA) jurisdiction rule by delegating dredge-and-fill permitting to states and removing direct federal power over many waters subject to the rule, an industry attorney says.

ECOS highlights states' efforts to promote environmental justice

The Environmental Council of the States is touting states' efforts to incorporate environmental justice into their permitting decisions.

EPA staff look to 'slow-walk' Trump orders

EPA career staff find ways to resist Trump environmental agenda but will largely comply with orders.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

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"I think there's people in the incoming Trump administration who see this as a very good strategy, because in their view once something is delegated to the states it never comes back to the federal government. Even if there's a new administration, the states are doing it already and it isn't going to come back," industry attorney Neal McAliley said during a Feb. 10 American Law Institute-Continuing Legal Education (ALI-CLE) panel on CWA jurisdiction and wetlands in Washington, D.C.

McAliley said delegating authority over CWA section 404 permits -- which govern dredge-and-fill activity and are commonly required for industrial operations near wetlands -- could further the administration's goal of reducing federal authority to regulate water and wetlands, especially when it involves approving or disapproving land-use decisions. Currently only Michigan and New Jersey implement their own section 404 permit programs, while the Army Corps of Engineers holds that authority in all other states and territories. EPA has the power to veto 404 permits, as it has done with a novel preemptive veto of the proposed Pebble Mine in Alaska.

TIME WARNER CABLE NEWS SPECTRUM NEWS **Governor Calls for New Drinking Water Standards from EPA**

In Supervisor David Fleming's hometown of Nassau -- and really, in the entire United States -- there is no unified "parts per billion" standard on how much of the chemical 1,4-dioxane is safe for human consumption.

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It is especially a problem at Nassau's old Dewey Loeffel Landlfill -- where for years, the Environmental Protection Agency has been filtering chemicals out of groundwater, but letting 1,4-dioxane slip through.

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In lab tests, 1,4-dioxane is known to cause cancer. At the Nassau Free Library, red pins on a chart show how many residents around the Valatie Kill have contracted cancer.

"The Valatie Kill watershed is still being contaminated by the discharge of 1,4-dioxane," Fleming said.

In his regional State of the State addresses, Governor Andrew Cuomo lamented the chemical poisoning of drinking water and proposed $2 billion to study and remedy the problem. But Saturday, Cuomo took a step directly benefitting Nassau: co-signing a letter with the Department of Health and DEC that calls on the federal government to set a "maximum contaminant level" for 1,4-dioxane.

Now, the EPA is being pushed from high places to act. Until that happens, Fleming remains undeterred.

"We'll continue our fight, and we'll continue to do they things we've been doing," Fleming said. "We applaud the governor's effort, and we'll be enlisting other elected officials at every level of government, to support that call."

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Antonio Bravo

Office of Wetlands, Oceans & Watersheds

202-566-1976

To: Loop, Travis[Loop.Travis@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Duke, Nia[Duke.Nia@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Wadlington, Christina[Wadlington.Christina@epa.gov]; Schollhamer, Mary[Schollhamer.Mary@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Jones, Enesta[Jones.Enesta@epa.gov]; Lynn, Tricia[lynn.tricia@epa.gov]
From: Fuld, John
Sent: Tue 2/14/2017 12:54:21 PM
Subject: OW-Morning Insider

February 14, 2017

NEWS:

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

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THE WALL STREET JOURNAL.
WSJ

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John W. Fuld, Ph.D.

Media Relations Manager-Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Campbell, Ann
Sent: Thur 2/9/2017 12:07:29 PM
Subject: Fwd: Revised PPT for CWR Tomorrow

Ok?

Begin forwarded message:

From: "Goodin, John" <Goodin.John@epa.gov>
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
Cc: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Able, Tony" <Able.Tony@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Subject: Revised PPT for CWR Tomorrow

Mike/Benitaâ€"attached is the revised CWR briefing reflecting your edits, our afternoon discussion, and a few resulting harmonizing edits. We will be available to make any final edits tonight or first thing tomorrow, and will bring hardcopies to the 10:00am.

In addition to any remarks you have, I was planning to briefly introduce a key point or two, and hand it to our lead staffer, Donna, to step through. We understand that OGC will be there to pitch in as needed.
Thanks
John

<Powerpoint -- Transition briefing Clean Water Rule 8Feb2017pm.pptx>

To: Goodin, John[Goodin.John@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Shapiro, Mike
Sent: Thur 2/9/2017 11:39:44 AM
Subject: Re: Revised PPT for CWR Tomorrow

John,

Thanks, I have no additional comments.

Mike

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

> On Feb 8, 2017, at 6:30 PM, Goodin, John <Goodin.John@epa.gov> wrote:
>
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> <Powerpoint -- Transition briefing Clean Water Rule 8Feb2017pm.pptx>

To: OWOW Managers Group[OWOW_Managers_Group@epa.gov]
From: Nandi, Romell
Sent: Tue 2/7/2017 5:03:22 PM
Subject: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

Just a reminder that these are due tomorrow at 10am. Thanks.

(Gale – I got yours).

Romell

From: Nandi, Romell
Sent: Friday, February 03, 2017 12:16 PM
To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>
Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8
Importance: High

OWOW Managers:

The OWOW topics below, from the original potential topic list we submitted to OW, **have been identified as needing fact sheets** for the OW AA nominee's briefing book:

Deliberative Process / Ex. 5

Clean Water Rule Status

Deliberative Process / Ex. 5

e

Deliberative Process / Ex. 5

Attached is a Word template for how the fact sheet should look (using Deliberative Process / Ex. 5 as an example) – please look at it closely.

A few general comments:

- These factsheets should be written at a fairly high level. Exhaustive detail is not necessary, just the main message in plain language.
- OW is looking for short, direct bullets. Bullets should be only one sentence in length (except in the background section) and each section should have no more than three bullets (again except for the background section). In a hearing setting, our nominee will need to have the main message in a clear and easily accessible format. Short, direct bullets achieve that.
- Factsheets should be no more than one page in length.

I will be sending the draft fact sheets to John as soon as I get them for his review. Although I am asking for these **no later than 10am on Wednesday the 8th**, obviously if you have them sooner, send them as soon as they are ready since it will allow John more time to review and for us to edit as needed.

Thanks.

Romell

566-1203

To: Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Skane, Elizabeth[Skane.Elizabeth@epa.gov]; Wall, Tom[Wall.Tom@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lynch, Mary-Kay[Lynch.Mary-Kay@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Bonanno, Gale[Bonanno.Gale@epa.gov]
From: Bonanno, Gale
Sent: Tue 2/7/2017 4:35:04 PM
Subject: RE: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8
Confirmation sheet DWH oil spill restoration 020717 (2) final.docx

Romell,

Deliberative Process / Ex. 5

I'm currently on travel, so email is best way to reach me.

Thanks,

Gale

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566-1203

To: OWOW Managers Group[OWOW_Managers_Group@epa.gov]
From: Nandi, Romell
Sent: Fri 2/3/2017 5:15:55 PM
Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8
Confirmation Hearing Factsheet Example - 02-01-17.docx

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566-1203

To: Hurld, Kathy[Hurld.Kathy@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Wall, Tom[Wall.Tom@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]
From: Wehling, Carrie
Sent: Fri 1/27/2017 2:48:42 PM
Subject: RE: HEADS UP : second article below Fwd: FYI Only: Water articles in the Press

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

-----Original Message-----
From: Hurld, Kathy
Sent: Friday, January 27, 2017 9:46 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: Re: HEADS UP : second article below Fwd: FYI Only: Water articles in the Press

Deliberative Process / Ex. 5

From: Shapiro, Mike
Sent: Friday, January 27, 2017 9:38 AM
To: McDavit, Michael W.
Cc: Goodin, John; Best-Wong, Benita; Peck, Gregory; Loop, Travis; Wall, Tom; Eisenberg, Mindy; Wehling, Carrie; Kupchan, Simma; Hurld, Kathy; Bravo, Antonio
Subject: Re: HEADS UP : second article below Fwd: FYI Only: Water articles in the Press

Deliberative Process / Ex. 5

Mike

Michael Shapiro
Deputy Assistant Administrator

US EPA, Office of Water

On Jan 27, 2017, at 9:21 AM, McDavit, Michael W. <Mcdavit.Michael@epa.gov<mailto:Mcdavit.Michael@epa.gov>> wrote:

Deliberative Process / Ex. 5

Mike

Sent from my iPhone

On Jan 27, 2017, at 9:01 AM, Goodin, John <Goodin.John@epa.gov<mailto:Goodin.John@epa.gov>> wrote:

Deliberative Process / Ex. 5

Please feel free to contact Mindy, Mike, or me with questions.

Thanks
John

Sent from my iPhone

Begin forwarded message:

From: "Bravo, Antonio" <Bravo.Antonio@epa.gov<mailto:Bravo.Antonio@epa.gov>>
Date: January 27, 2017 at 8:48:04 AM EST
To: OW-OWOW-EVERYONE <OWOWOWEVERYONE@epa.gov<mailto:OWOWOWEVERYONE@epa.gov>>
Subject: FYI Only: Water articles in the Press

<image001.gif>

<image004.png>Senators urge faster EPA study of chemical in LI water supply New York's two U.S. senators are pressuring<http://www.newsday.com/news/health/u-s-senators-call-for-faster-study-of-chemical-in-li-s-water-supply-1.13021630> federal environmental officials to speed up a health study examining the risks from exposure to 1,4-dioxane — a man-made chemical and possible carcinogen found throughout Long Island's drinking water supplies.
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Communications Director for Water
U.S. Environmental Protection Agency
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<image004.png>**Senators urge faster EPA study of chemical in LI water supply**

New York's two U.S. senators are pressuring federal environmental officials to speed up a health study examining the risks from exposure to 1,4-dioxane — a man-made chemical and possible carcinogen found throughout Long Island's drinking water supplies.

On Thursday, Sens. Chuck Schumer and Kirsten Gillibrand, both Democrats, sent a letter to acting Environmental Protection Agency Administrator Catherine McCabe, asking for faster efforts to evaluate the health risks and to provide assistance to affected Long Island communities.

Newsday earlier this month reported that 1,4-dioxane had been found in 71 percent of water districts sampled on Long Island at a level that poses a one-in-a-million cancer risk after prolonged exposure.

<image006.png>**Water: NACEPT continues to debate 'waters' rule despite Trump pledge**

An EPA advisory panel is continuing to debate with the Army Corps of Engineers on how to best help states win delegated authority to issue Clean Water Act (CWA) section 404 dredge-and-fill permits, and whether such advice should acknowledge the contours of the controversial CWA jurisdiction rule, even though the Trump administration plans to eliminate it.

During a Jan. 25 meeting, the special subcommittee of EPA's National Advisory Council for Environmental Policy and Technology 's (NACEPT) tasked with providing advice for encouraging states to win delegated 404 authority continued their long-running debate with the Army Corps of Engineers on whether the advice they provide to the agency should account for the jurisdiction rule.

Under the current law, the Corps has the authority to issue 404 permits for the discharge of dredged or fill material, but EPA has the authority to develop policy used in evaluating permit applications, approve and oversee state and tribal assumption, review individual permit applications and prohibit, deny or restrict the use of any defined area as a disposal site.

Michigan and New Jersey are the only two states to have received delegated 404 authority, but EPA has been working with 24 other states and tribes trying to assume authority.

To help the agency, EPA in 2014 tasked the NACEPT with providing advice on how it can best clarify which waters a state or tribe would oversee under delegated 404 authority and which waters should remain under the Corps' control. The full panel's final recommendations were expected to shape a new rule or policy to provide clarity for states wanting to assume authority under 404, including best practices and procedural guidance that could be tailored to each individual state.

<image007.png>

In Florida, Debate Over Pollution Limits Rages

In Florida, members of the Senate Committee on Environmental Preservation and Conservation argued with the Department of Environmental Protection (DEP) earlier this month about its handling of controversial new water pollution limits.

The *Tallahassee Democrat* reported that In May, the DEP introduced an update to human health criteria “for 43 chemical compounds that are allowed in Florida’s rivers, lakes and estuaries and [created] new limits for 39 others.”

The agency's plan received a lot of criticism from environmental groups, not only because of the relaxed standards for some of the chemicals but also because of the way the agency presented the proposal.

The Tallahassee Democrat reported that on May 15 Florida wanted to weaken its restrictions on roughly two dozen cancer-causing chemicals that it would allow in its surface waters.

DEP Secretary Jon Steverson said the coverage "inaccurately and unfairly" depicted the agency's proposal.

"The state has some of the most comprehensive water quality standards in the country, including the most advanced numeric nutrient criteria in the entire nation," Steverson told the *Tallahassee Democrat*. "We will continue to coordinate with EPA to adopt standards that will ensure our residents and natural resources enjoy clean and safe water."

Originally, the DEP stated that it would take the proposal to the state Environmental Regulation Commission (ERC) for approval in the fall but changed the meeting to July. The ERC had then voted on the plan while two of its seats set aside for environmental and local government representation were vacant. The ERC in July approved the limits in a 3 to 2 vote.

Senator Jack Latvala asked "whether the agency factored in the vacancies when it moved up its timeline for ERC approval."

"What was the rush, in other words?" Latvala asked. "Why something that is so important to our people's health, so important to our state, nothing more important than water, why would we accelerate it like that?"

<image009.png>**EPA Officials Reportedly Assure Michigan State Officials Flint Funds Will Continue.**

The Detroit News (1/26, Oosting) reports the EPA has indicated to Michigan state officials that the state will continue to receive federal funds to solve the ongoing water crisis in Flint, despite President Trump's ordering "the agency to temporarily halt all new contracts or grants, raising concerns the freeze could jeopardize or delay at least $100 million in congressionally approved funding that is expected to help Flint." According to the Detroit News, while Governor Rick Snyder's (R) administration is unclear on what effect the freeze will have on Flint's recovery process, "the EPA Office of Public Affairs sent an interagency notice to Michigan and other states on Tuesday indicating it will continue to award environmental program grants and revolving loan grants," allaying some concerns.

Scientists deploy floating wetlands at water treatment plant

"In general, the value of habitat that floating wetlands, or any type of treatment wetland, can provide has been poorly studied," said researcher William Strosnider. "We took a small step forward with our study."

By Brooks Hays | Jan. 25, 2017 at 4:23 PM

Follow @upi

<image002.gif>1 Comments

<image002.gif>

<image002.gif>

<image002.gif>

<image002.gif>

<image003.jpg>

<image002.gif>

Researchers tested the water-cleaning abilities of different floating wetland designs in a model wastewater treatment plant at the University of Oklahoma Aquatic Research Facility. Photo by William Strosnider

Jan. 25 (UPI) -- Occasionally, large chunks of wetland habitat -- mats of soil and grasses -- are dislodged and become floating islands of soggy vegetation. Recently, these floating islands became the inspiration for a new kind of water treatment technology.

When a team of researchers from Saint Francis University in Pennsylvania and the University of Oklahoma deployed floating wetlands at a model wastewater treatment plant, they measured a significant reduction in nitrogen.

Scientists tested the cleaning abilities of two wetland plants rooted in four different floating materials: burlap, mulch, utility netting and recycled plastic bottles.

"The main result is that engineered floating treatment wetlands could affect water quality in many of the same ways that naturally-occurring floating wetlands do," researcher William Strosnider said in a news release.

Researchers aren't quite sure what biological and chemical mechanisms were responsible for reducing nitrogen levels. It's likely the plants themselves absorb some of the nitrogen, but researchers believe much of it was likely processed by microbial communities living in the roots and soil of the floating wetlands.

Floating wetlands could be deployed in natural waterways, too, researchers suggest. They could help regulate temperature, preventing harmful algal blooms. They could also provide habitat.

"The area directly beneath the floating wetlands is high quality habitat, as small fish and amphibians can use the maze of roots to hide from predators," Strosnider said. "In general, the value of habitat that floating wetlands, or any type of treatment wetland, can provide has been poorly studied. We took a small step forward with our study."

Researchers detailed their experiments with floating wetland models in the

Journal of Environment Quality. Strosnider hopes to develop self-sustaining floating wetland designs, or "extensive designs."

"The next step is to take the lessons learned and test improved extensive designs," he concluded. "The really big thing that we're working on here is the ability for them to grow and maintain themselves, and hence become a sustainable low-maintenance part of a treatment system. That really was the most interesting and novel part of this work."

Antonio Bravo

Office of Wetlands, Oceans & Watersheds

202-566-1976

From: Penman, Crystal
Location: 3233 WJCE
Importance: Normal
Subject: CWR Weekly Update
Start Date/Time: Wed 1/25/2017 4:00:00 PM
End Date/Time: Wed 1/25/2017 4:45:00 PM
Agenda -- CWR Update 25 Jan 2017 v1.docx

This meeting is taking place today @ 11am. Not 10am.

To: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Fuld, John[Fuld.John@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Dennis, Allison
Sent: Wed 1/25/2017 4:11:24 PM
Subject: FW: 6th Circuit puts WOTUS case on hold

FYI

From: POLITICO Pro [mailto:politicoemail@politicopro.com]
Sent: Wednesday, January 25, 2017 11:04 AM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Subject: 6th Circuit puts WOTUS case on hold

By Annie Snider

01/25/2017 10:57 AM EDT

The 6th Circuit Court of Appeals has placed challenges to the Obama administration's controversial water rule on hold while the Supreme Court reviews where they should be heard.

An obscure provision of the Clean Water Act allows some challenges to leapfrog district courts and head straight to appellate courts, but legal experts disagree about whether the Waters of the U.S. rule qualifies for that provision. The Supreme Court earlier this month accepted industry groups' petition asking it to rule on just that question — a case that lawyers expect to be argued this spring.

Appellate challenges were consolidated before the 6th Circuit, which ruled it has jurisdiction over the issue, and the Department of Justice and three separate sets of plaintiffs finished up the majority of briefings last week, just before President Donald Trump's inauguration. A variety of supporters of the rule also got amicus briefs on the record.

Trump has repeatedly vowed to kill the water rule, and the White House website named it as one of its top two regulatory targets, along with the Clean Power Plan. It is unclear, though, whether the Trump administration will seek to halt litigation around the rule or allow it to play out.

To view online:
https://www.politicopro.com/energy/whiteboard/2017/01/6th-circuit-puts-wotus-case-on-hold-082834

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Yes, very	Somewhat	Neutral	Not really	Not at all

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This email was sent by: **POLITICO, LLC**
1000 Wilson Blvd. Arlington, VA, 22209, USA

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Wehling, Carrie[Wehling.Carrie@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Wendelowski, Karyn
Sent: Wed 1/25/2017 3:18:46 PM
Subject: Fw: WOTUS - 6th Cir. order granting abeyance
ENV_DEFENSE-#794085-v1-WOTUS_order_granting_abeyance_pending_supreme_court_review.PDF

FYI - 6th Circuit just granted Business Petitioners' motion to hold the briefing in abeyance until the S.Ct. rules.

From: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Sent: Wednesday, January 25, 2017 10:13 AM
To: Samuels, Stephen (ENRD); Doyle, Andrew (ENRD); martha.mann@usdoj.gov; Dertke, Daniel (ENRD); Dona, Amy (ENRD); McCune, Devon Lehman (ENRD); Lipshultz, Jon (ENRD); Boyd, Milt HQ02; Inkelas, Daniel HQ02; David.R.Cooper@usace.army.mil; Bregman, Lauren R CIV USARMY HQDA OGC (US); Neugeboren, Steven; Wendelowski, Karyn; Wehling, Carrie; Lundman, Robert (ENRD); Neumann, Jennifer Scheller (ENRD); Gunter, David (ENRD); Kupchan, Simma; 'Timbrook, Shahara T (Tennaile) MAJ USARMY USAR LEGAL CMD (US)'; Catherine.b.roy.mil@mail.mil; Craig.r.schmauder.civ@mail.mil; McArdle, Kevin (ENRD)
Subject: WOTUS - 6th Cir. order granting abeyance

All – please see the attached order from the Sixth Circuit granting the petitioners' motion for an abeyance pending Supreme Court review.

Thanks,

Jessica

Jessica O'Donnell

Senior Counsel for Appellate Matters

Environmental Defense Section

202.305.0851

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: January 25, 2017

Re: Case No. 15-3751/15-3799/15-3817/15-3820/15-3822/15-3823/15-3831/15-3837/15-3839/15-3850/15-3853/15-3858/15-3885/15-3887/15-3948/15-4159/15-4162/15-4188/15-4211/15-4234/15-4305/15-4404, *In re: Murray Energy Corporation v. EPA, et al*
Originating Case No. : EPA-HQ-OW-2011-0880

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Amy E. Gigliotti
Case Manager
Direct Dial No. 513-564-7012

cc: Ms. Loren L. AliKhan
Mr. Benjamin D. Battles
Mr. Philip Bein
Ms. Lorelei M Bensel
Mr. Timothy S. Bishop
Mr. Adam Franklin Blalock
Mr. Daniel Paul Bock
Mr. Edward Grant Bohlen
Mr. Andrew Lynn Brasher
Ms. Janette K. Brimmer
Mr. Craig A. Bromby
Mr. Nicholas Bronni
Ms. Karma B. Brown
Ms. Kristy A. N. Bulleit
Mr. John J. Bursch
Mr. Charles C. Caldart
Mr. Jeffrey A. Chanay
Ms. Jennifer C. Chavez
Mr. David William Childs
Mr. Douglas M. Conde
Mr. John Michael Connolly
Mr. William Spencer Consovoy
Mr. Christopher Kaltman DeScherer
Ms. Amy J. Dona
Mr. Parker Douglas
Mr. Andrew J. Doyle
Mr. P. Clayton Eubanks
Mr. Thomas Molnar Fisher
Mr. Royal Gardner
Mr. Paul Garrahan
Mr. Kevin A. Gaynor
Mr. Gaetan E. Gerville-Reache

Mr. Jonathan A Glogau
Ms. Heather A. Govern
Mr. Burke W. Griggs
Mr. Joel Mitchell Gross
Mr. Warren W. Harris
Mr. Sam M Hayes
Ms. Kimberly S. Hermann
Ms. Megan Hinkle
Mr. Andrew J. Hirth
Mr. Timothy Hoffman
Mr. M. Reed Hopper
Mr. Richard A. Horder
Mr. Mohammad O Jazil
Mr. Steven Beauregard Jones
Mr. Alan L. Joscelyn
Mr. Sam Kalen
Ms. Melinda Kassen
Mr. James Kaste
Ms. Lara Katz
Mr. Scott Allen Keller
Mr. Duncan Stuart Kemp, IV
Mr. Michael B. Kimberly
Ms. Lisa Ann Kirschner
Mr. Justin D. Lavene
Mr. Ronald Lavigne
Mr. Steven J. Lechner
Ms. L. Rachel Lerman
Mr. Elbert Lin
Mr. Benjamin S. Lippard
Mr. Jon Michael Lipshultz
Mr. John R. Lopez IV
Ms. Martha Mann
Mr. S. Peter Manning
Mr. Jeremy C Marwell
Ms. Elizabeth P. McCarter
Ms. Kerry L. McGrath
Mr. Charles David McGuigan
Mr. John K. McManus
Mr. Andre Monette
Mr. Eric E. Murphy
Mr. Joseph Anthony Newberg
Ms. Jessica O'Donnell
Ms. Margaret I. Olson
Mr. Christopher Dominic Peloso
Mr. Erik E. Petersen
Ms. Lee Ann Rabe
Mr. Peter T. Reed
Mr. Craig W. Richards
Mr. Gregory C. Ridgley
Mr. John Quentin Melcher Riegel
Ms. Kirsten S. P. Rigney
Mr. Lowell Mark Rothschild
Mr. Richard Abbott Samp
Mr. James N. Saul
Mr. Matthias L. Sayer
Mr. Seth Schofield
Mr. Paul Martin Seby
Ms. Linda B. Secord
Ms. Jennifer Anne Simon
Ms. Deborah Ann Sivas
Mr. Brooks Meredith Smith
Mr. James Emory Smith Jr.
Ms. Jennifer Ann Sorenson
Mr. Wayne K. Stenehjem
Ms. Stephanie Tai
Ms. Alicia E. Thesing
Mr. Misha Tseytlin
Mr. Andrew Turner
Mr. Lawrence VanDyke
Ms. Jennifer L. Verleger
Mr. Ryan Walsh
Ms. Catherine Wannamaker
Ms. Sarah Hawkins Warren
Ms. Susannah Weaver
Mr. Justin T. Wong
Ms. Mary Jo Woods
Mr. Frederick Richard Yarger
Ms. Tamara Zakim

Enclosure

Case Nos. 15-3751/15-3799/15-3817/15-3820/15-3822/15-3823/15-3831/15-3837/15-3839/15-3850/15-3853/15-3858/15-3885/15-3887/15-3948/15-4159/15-4162/15-4188/15-4211/15-4234/15-4305/15-4404

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

In re: ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE, FINAL RULE: CLEAN WATER RULE: DEFINITION OF "WATERS OF THE UNITED STATES" 80 FED.REG.37,054, PUBLISHED ON JUNE 29, 2015. (MCP NO. 135)

MURRAY ENERGY CORPORATION, et al

Petitioners

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; GINA MCCARTHY; UNITED STATES ARMY CORPS OF ENGINEERS; JOHN MCHUGH; JO-ELLEN DARCY

Respondents

BEFORE: KEITH, MCKEAGUE and GRIFFIN, Circuit Judges

Upon review and consideration, the motion to hold the briefing in abeyance is **GRANTED**.

Briefing will be held in abeyance pending the Supreme Court decision in *National Association of Manufacturers v. U.S. Department of Defense*, No. 16-299 (S. Ct.), or further order of this court.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

Issued: January 25, 2017

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
Cc: Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Albores, Richard[Albores.Richard@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Wendelowski, Karyn
Sent: Mon 1/23/2017 7:11:06 PM
Subject: Re: URGENT - before 3 pm - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir. on CWR

Thanks - I'll let DOJ know.

Karyn

From: Minoli, Kevin
Sent: Monday, January 23, 2017 2:10 PM
To: Neugeboren, Steven
Cc: Prabhu, Aditi; Albores, Richard; Wehling, Carrie; Wendelowski, Karyn; Shapiro, Mike; Best-Wong, Benita; Goodin, John; Eisenberg, Mindy
Subject: Re: URGENT - before 3 pm - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir. on CWR

Attorney Work Product / Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jan 23, 2017, at 1:54 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Attorney Work Product / Ex. 5

I am copying OW management too.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Wendelowski, Karyn
Sent: Monday, January 23, 2017 1:43 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir.

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]
Cc: Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Albores, Richard[Albores.Richard@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Minoli, Kevin
Sent: Mon 1/23/2017 7:10:20 PM
Subject: Re: URGENT - before 3 pm - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir. on CWR

Attorney Work Product / Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jan 23, 2017, at 1:54 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Attorney Work Product / Ex. 5

I am copying OW management too.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Wendelowski, Karyn
Sent: Monday, January 23, 2017 1:43 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir.

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Albores, Richard[Albores.Richard@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Neugeboren, Steven
Sent: Mon 1/23/2017 6:54:36 PM
Subject: URGENT - before 3 pm - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir. on CWR

Attorney Work Product / Ex. 5

I am copying OW management too.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Wendelowski, Karyn
Sent: Monday, January 23, 2017 1:43 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR - EPA's views needed on Business Petitioners' request for abeyance in 6th Cir.

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

From: Edwards, Crystal
Location: 3233 WJCE
Importance: Normal
Subject: FW: CWR Briefing Follow up
Start Date/Time: Mon 3/20/2017 3:30:00 PM
End Date/Time: Mon 3/20/2017 4:00:00 PM

This meeting has been added to your calendar today per Mike Shapiro

Crystal N. Edwards

United States Environmental Protection Agency

Office of Water

William Jefferson Clinton East Building

Room 3223B

(202)564-1661

-----Original Appointment-----
From: Penman, Crystal **On Behalf Of** Shapiro, Mike
Sent: Monday, March 20, 2017 8:29 AM
To: Shapiro, Mike; Campbell, Ann; Best-Wong, Benita; Goodin, John; Eisenberg, Mindy; Downing, Donna; Kwok, Rose; Christensen, Damaris; Neugeboren, Steven; Wehling, Carrie; Kupchan, Simma; Wendelowski, Karyn; Nickerson, William
Subject: CWR Briefing Follow up
When: Monday, March 20, 2017 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3233 WJCE

Poc Ann Campbell

From: Penman, Crystal
Location: 3233 WJCE
Importance: Normal
Subject: CWR Briefing Follow up
Start Date/Time: Mon 3/20/2017 3:30:00 PM
End Date/Time: Mon 3/20/2017 4:00:00 PM

Poc Ann Campbell

From: Penman, Crystal
Location: 3219A WJCE
Importance: Normal
Subject: CWR Briefing Follow up
Start Date/Time: Mon 3/20/2017 3:30:00 PM
End Date/Time: Mon 3/20/2017 4:00:00 PM

From: Penman, Crystal
Location: 3219A WJCE
Importance: Normal
Subject: CWR call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Tue 3/14/2017 8:00:00 PM
End Date/Time: Tue 3/14/2017 9:00:00 PM

From: Penman, Crystal
Location: 3219A WJCE
Importance: Normal
Subject: CWR call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Tue 3/14/2017 8:00:00 PM
End Date/Time: Tue 3/14/2017 9:00:00 PM

AGENDA
OST Bi-Weekly w/ Mike
June 15, 2017
4pm – 4:45 pm

Suggested Topics

1. Mike's Topics
2. Deliberative Process / Ex. 5
3.
4.
5.
6.
7.
8.
9.
10.
11.

Previous Biweekly Topics (6/15/2017)

1. Mike's Topics
2. Deliberative Process / Ex. 5
3.
4.
5.
6.
7.
8.

From: Best-Wong, Benita
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Accepted: WOTUS options discussion
Start Date/Time: Wed 5/31/2017 7:00:00 PM
End Date/Time: Wed 5/31/2017 8:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Best-Wong, Benita
Sent: Mon 5/15/2017 9:58:13 PM
Subject: Re: New WOTUS website is live

Nice work!

Sent from my iPhone

On May 15, 2017, at 5:06 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Hi Everyone,

I wanted to announce that EPA's new waters of the US website is live. Please check it out at https://www.epa.gov/wotus-rule. Many thanks to Brittany Bennett for developing the new site and thanks to all who provided comments quickly. Attached is the press release announcing the new site.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

<2017-05-15 Final WOTUS Website Release.docx>

To: Lape, Jeff[lape.jeff@epa.gov]
From: Best-Wong, Benita
Sent: Tue 5/2/2017 12:04:14 PM
Subject: RE: OW staff meeting highlights (5/1/17)

Thanks Jeff.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Lape, Jeff
Sent: Monday, May 01, 2017 3:44 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: OW staff meeting highlights (5/1/17)

Fyi... OW staff meeting notes, before you arrived...

From: Christensen, Christina
Sent: Monday, May 01, 2017 3:43 PM
To: OST-MGR <OSTMGR@epa.gov>
Cc: Connors, Sandra <Connors.Sandra@epa.gov>

Subject: OW staff meeting highlights (5/1/17)

OW Staff Meeting (5/1/17) -- Highlights

Mike:

•□□□□□□□□ From Senior Staff meeting:

o Personnel announcements: Nancy Beck is new political deputy in OCSPP. Christian Powit (?) is deputy in OCIR. Patrick Davis is moving to OLEM to be political Deputy Assistant Administrator.

o OGC/Kevin:

▪· DC Circuit Court decision granted abeyance for 60 days – Clean Power Plan. Court reserved right to remand to Agency after 60 days.

▪· Final decision on Title 6 case in Alabama from 2003 – wasn't sufficient evidence to demonstrate violation of title 6.

o EVS should start appearing in inboxes tomorrow.

o Budget updates:

Deliberative Process / Ex. 5

o R2: ongoing meetings with Puerto Rico on SRFs; ready to Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

o R5: Working to Deliberative Process / Ex. 5

o JP Freire (OPA) noted that Agency is in process of 'updating its websites'.

o WOTUS proposal moving to OMB.

Benita:

•□□□□□□□□ Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

•□□□□□□□□ Wednesday Ice Cream Social as part of Public Service Recognition Week. Invitation coming out shortly.

Macara Lousberg:

•□□□□□□□□ OW Virtual Listening Session is tomorrow. OW prefers each office set up central place for people to listen rather than tying up multiple individual lines.

Sheila Frace/OWM:

•□□□□□□□□ Good feedback on permitting BCs meeting last week in Chicago; will share take aways and next steps.

Peter Grevatt/OGWDW:

•□□□□□□□□ Successful meetings last week in Puerto Rico; additional discussions this week in DC (at USDA) Deliberative Process / Ex. 5

•□□□□□□□□ Discussions last week with Region 2 re: Deliberative Process / Ex. 5

•□□□□□□□□ Michigan file review: staff have reviewed; senior EPA team has not yet been briefed.

John Goodin/OWOW:

•□□□□□□□□ R3 will file a report this week re: Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

•□□□□□□□□ Monitoring branch provided some language that will be part of Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Steve Neugeboren/OGC:

•□□□□□□□□ Deliberative Process / Ex. 5

Betsy Southerland/OST:

•□□□□□□□□ Deliberative Process / Ex. 5

•□□□□□□□□ Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Denis Borum/OCIR:

•□□□□□□□□ Thanks to drinking water folks for helping with HEC request; possible hearing on May 19th.

Tim Fontaine/RMS:

•□□□□□□□□ House hearing this month; Senate in latter part of June.

•□□□□□□□□ Press conference on May 22nd; includes fact sheets.

Latosha Thomas/Communications:

•□□□□□□□□ May 11th brownbag w/Water Utility Group will be rescheduled.

•□□□□□□□□ Grant Announcement Series for NEPs **Deliberative Process / Ex. 5**

Sharon:

•□□□□□□□□ Windows 10 coming end of May.

•□□□□□□□□ Mobile phone devices being replaced (moving to iPhone 6s).

•□□□□□□□□ EZ Tech refresh is coming (between now and 2019).

•□□□□□□□□ BPA in place to get new versions of Project and Vizio.

****

Christina Christensen

Special Assistant to the Office Director (On Detail)

Office of Science and Technology

(202) 566-0537

To: Campbell, Ann[Campbell.Ann@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/25/2017 1:01:14 PM
Subject: Fwd: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting
image002.gif
ATT00001.htm
steve revisions WOTUS-2 Step 1 working preamble for review 4-24.docx
ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Goodin, John" <Goodin.John@epa.gov>
Date: April 24, 2017 at 5:43:30 PM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>
Cc: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Subject: FW: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting

To: allison.mallick@bakerbotts.com[allison.mallick@bakerbotts.com]
From: Best-Wong, Benita
Sent: Fri 4/21/2017 9:50:53 PM
Subject: Re: Invitation to speak on DC Bar panel on WOTUS Rule

Hi Alison,
Unfortunately, we are not available to participate on this panel.
Thanks for the invitation,
Benita

Sent from my iPhone

On Apr 21, 2017, at 5:21 PM, Elizabeth Horner <e **Personal Address / Ex. 6** > wrote:

Benita,
I am writing to let you know that I am not involved in this event planning. Please direct any future follow-up only to Allison.

Thank you and have a nice weekend,

Elizabeth

On Apr 19, 2017 9:00 AM, <allison.mallick@bakerbotts.com> wrote:

Hi Benita,

Thanks so much for following up. I appreciate your efforts to reach out to your colleagues and look forward to hearing from you later this week.

Best,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA

<image006.jpg>

<image007.png><image008.png><image009.png><image010.png><image011.png>

From: Best-Wong, Benita [mailto:Best-Wong.Benita@epa.gov]
Sent: Wednesday, April 19, 2017 8:46 AM
To: Mallick, Allison Watkins
Cc: Personal Address / Ex. 6
Subject: RE: Invitation to speak on DC Bar panel on WOTUS Rule

Hi Alison – I received your voice message. I am not available to participate on the panel. I am checking with others on their availability but have been unable to get a firm commitment since many are out of the office on spring break. I hope to have a response to you before the end of week.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: allison.mallick@bakerbotts.com [mailto:allison.mallick@bakerbotts.com]
Sent: Monday, April 10, 2017 10:44 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: e Personal Address / Ex. 6 n; allison.mallick@bakerbotts.com
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

We plan to focus on what the future has in store for the WOTUS Rule reconsideration, along with a Rapanos "refresher" in light of the Administration's reference to Justice Scalia's proposed test for determining jurisdictional waters. The panel will address WOTUS from diverse perspectives, and we have secured the following speakers:

- Steve Samuels, recently retired from DOJ ENRD
- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition
- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA

<image007.png><image008.png><image009.png><image010.png><image011.png>

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To: Thomas, Latosha[Thomas.Latosha@epa.gov]
From: Best-Wong, Benita
Sent: Thur 4/20/2017 7:59:54 PM
Subject: Fwd: ECOS

Sent from my iPhone

Begin forwarded message:

From: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
Date: April 19, 2017 at 4:34:40 PM EDT
To: "Hill, Glynis" <Hill.Glynis@epa.gov>
Subject: Re: ECOS

Given the size of the room, we generally limit EPA attendance to the OW Office Directors and staff that are presenting materials. A staff person from OCIR sometimes attends but not always. In addition to a discussion on the EO, we also plan to cover the following: EPA Transition; Budget Update; Cooperative Federalism (How is it going to be implemented by the states? Should the states be working on their priorities now?); Status of Drinking Water Needs Survey; Proposed Status of National UIC Grants to States Funding for 2017/2018; Clean Water Rule/WOTUS (What are the plans for engaging with the states?); What process will OW employ with regard to engaging the states as it implements EO 13771, Reducing Regulation and Controlling Regulatory Costs?). These were all topics suggested by the state associations.

If you're interested in hearing what rules are recommended for reg reform, it's probably best for you to attend our webinar on May 2.

On Apr 19, 2017, at 3:53 PM, Hill, Glynis <Hill.Glynis@epa.gov> wrote:

Thanks for getting back to me so quickly! So does that mean I cannot attend?

Glynis Hill – Environmental Scientist | Office of the Administrator | Office of Policy | Office of Regulatory Policy & Management

(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

From: Best-Wong, Benita
Sent: Wednesday, April 19, 2017 3:40 PM
To: Hill, Glynis <Hill.Glynis@epa.gov>
Subject: Re: ECOS

Hi Glynis - the meeting we are having with our state associations is not a public meeting to exclusively discuss the reg reform executive order. We hold quarterly meetings with our state associations. One of the agenda items is to provide an update on the executive order. This meeting was inadvertently added to the website as one of our public meetings. We're working with OP to get that meeting removed from the website.

Sorry for the confusion,

Benita

Sent from my iPhone

On Apr 19, 2017, at 1:22 PM, Hill, Glynis <Hill.Glynis@epa.gov> wrote:

> Good afternoon Benita:
>
> Who can I contact to get an invite to the trade association public meeting on April 26, 2017? I left you a voice mail about the same topic, as well. Thanks in advance.
>
> Humbly requested,

Glynis Hill – Environmental Scientist | Office of the Administrator | Office of Policy | Office of Regulatory Policy & Management

(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

To: Hill, Glynis[Hill.Glynis@epa.gov]
From: Best-Wong, Benita
Sent: Wed 4/19/2017 8:34:40 PM
Subject: Re: ECOS

Given the size of the room, we generally limit EPA attendance to the OW Office Directors and staff that are presenting materials. A staff person from OCIR sometimes attends but not always. In addition to a discussion on the EO, we also plan to cover the following: EPA Transition; Budget Update; Cooperative Federalism (How is it going to be implemented by the states? Should the states be working on their priorities now?); Status of Drinking Water Needs Survey; Proposed Status of National UIC Grants to States Funding for 2017/2018; Clean Water Rule/WOTUS (What are the plans for engaging with the states?); What process will OW employ with regard to engaging the states as it implements EO 13771, Reducing Regulation and Controlling Regulatory Costs?). These were all topics suggested by the state associations.

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Humbly requested,

Glynis Hill – Environmental Scientist | Office of the Administrator | Office of Policy | Office of Regulatory Policy & Management

(202) 564-1139 | 3512V WJC North | Mail Code 1803 | 1200 Pennsylvania Avenue, NW | Washington, DC 20460

From: Best-Wong, Benita
Location: HQ-Room-WJCE-1117A-50pp
Importance: Normal
Subject: FW: WOTUS Federalism Meeting
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM
WOTUS Letter.pdf

-----Original Appointment**-----**
From: Shapiro, Mike
Sent: Thursday, April 13, 2017 1:16 PM
To: Shapiro, Mike; Best-Wong, Benita; Christensen, Damaris; Greenwalt, Sarah; Eisenberg, Mindy; Goodin, John; Downing, Donna; Jennifer.A.Moyer@usace.army.mil; Brown, Byron; Wesson, Dolores
Cc: Campbell, Ann; Lamont, Douglas W SES (US); David.F.Dale@usace.army.mil; Schmauder, Craig R SES (US); Smith, Charles R CIV (US); Peck, Gregory; Lousberg, Macara; Connors, Sandra
Subject: WOTUS Federalism Meeting
When: Wednesday, April 19, 2017 2:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: HQ-Room-WJCE-1117A-50pp

From: Best-Wong, Benita
Location: HQ-Room-WJCE-1117A-50pp
Importance: Normal
Subject: Tentative: WOTUS Federalism Meeting
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM

To: allison.mallick@bakerbotts.com[allison.mallick@bakerbotts.com]
Cc: Personal Address / Ex. 6
From: Best-Wong, Benita
Sent: Wed 4/19/2017 12:45:38 PM
Subject: RE: Invitation to speak on DC Bar panel on WOTUS Rule

Hi Alison – I received your voice message. I am not available to participate on the panel. I am checking with others on their availability but have been unable to get a firm commitment since many are out of the office on spring break. I hope to have a response to you before the end of week.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: allison.mallick@bakerbotts.com [mailto:allison.mallick@bakerbotts.com]
Sent: Monday, April 10, 2017 10:44 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Personal Address / Ex. 6 allison.mallick@bakerbotts.com
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

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- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition
- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

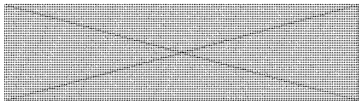
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



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To: Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/18/2017 8:59:22 PM
Subject: Fwd: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: April 18, 2017 at 4:38:08 PM EDT
To: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Peck, Gregory
Sent: Tuesday, April 18, 2017 2:18 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Right?

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 1:32 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Peck, Gregory
Sent: Tuesday, April 18, 2017 12:39 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan,

Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

Damaris

To: Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/18/2017 8:55:55 PM
Subject: Fwd: Carper slams talk of outsourcing EPA water rule

Sent from my iPhone

Begin forwarded message:

From: POLITICO Pro <politicoemail@politicopro.com>
Date: April 18, 2017 at 4:41:10 PM EDT
To: <best-wong.benita@epa.gov>
Subject: Carper slams talk of outsourcing EPA water rule
Reply-To: POLITICO subscriptions <reply-fe92127375650d7e72-553241_HTML-789040879-1376319-90863@politicoemail.com>

By Annie Snider

04/18/2017 04:25 PM EDT

The top Democrat on the Senate Environment and Public Works Committee is calling on EPA Administrator Scott Pruitt to disavow any discussions among some industry groups about whether the agency could hire private lawyers to rewrite the Waters of the U.S. regulation.

"I urge you in the strongest possible terms to disavow this reported industry plan, if true, and recommit yourself to ensuring that EPA's budget and workforce are maintained at levels necessary to perform its vital mission of protecting human health and our environment," Sen. Tom Carper (D-Del.) said in a letter.

The letter comes after POLITICO reported that some industry groups with close ties to Pruitt are exploring whether EPA could outsource work on the contentious regulation.

Asked about the issue, EPA spokeswoman Liz Bowman said: "To my knowledge, we are not contracting with an outside firm at this time for WOTUS."

Multiple industry sources said the discussion was fed by the fact that key positions at EPA are sitting empty, with no moves yet by the Trump administration to fill them. But Carper said that wasn't a sufficient reason for EPA to "devolve its regulatory obligations to industry."

"I question the legal validity of allowing industry to assist the agency in writing a rulemaking proposal, and consider it an utter and complete abdication of EPA's responsibility to protect the water and people of this country," he wrote, requesting a spate

of documents and information from Pruitt on the issue.

To view online:
https://www.politicopro.com/agriculture/whiteboard/2017/04/carper-slams-talk-of-outsourcing-epa-water-rule-086443

Was this Pro content helpful? Tell us what you think in one click.				
Yes, very	Somewhat	Neutral	Not really	Not at all

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This email was sent by: **POLITICO, LLC**
1000 Wilson Blvd. Arlington, VA, 22209, USA

To: Lousberg, Macara[Lousberg.Macara@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/18/2017 6:03:28 PM
Subject: RE: CMS OW 17-000-7252 WOTUS created

Hi Macara,

Deliberative Process / Ex. 5

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Lousberg, Macara
Sent: Tuesday, April 18, 2017 1:53 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: CMS OW 17-000-7252 WOTUS created

From: Jones-Coleman, Diane
Sent: Monday, April 10, 2017 11:42 AM
To: Ruf, Christine <Ruf.Christine@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: RE: CMS OW 17-000-7252 WOTUS created

Signed letter attached.

Diane

Diane C. Coleman

OW Correspondence Team Leader
(202) 564-0379
(202) 564-0500 FAX
E-mail: Jones-Coleman.Diane@epa.gov

From: Ruf, Christine
Sent: Friday, April 07, 2017 7:57 AM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>
Subject: CMS OW 17-000-7252 WOTUS created

Good morning John, see below. Christine

Christine Ruf

Associate Director, Water Policy Staff

Office of Water US EPA 20460

202.566.1220

http://water.epa.gov
´¯`·.¸¸.´¯`·.´¯`·.¸¸.´¯`·.¸ ><((((º>

From: Jones-Coleman, Diane
Sent: Friday, April 07, 2017 7:48 AM
To: Lousberg, Macara <Lousberg.Macara@epa.gov>; WigginsLewis, Miriam <WigginsLewis.Miriam@epa.gov>
Cc: Ruf, Christine <Ruf.Christine@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>
Subject: RE: ACTION: create CMS for Federalism invite letter

Good morning all,

A CMS assignment (OW-17-000-7252) has been created re WOTUS Federalism and forwarded to OEX this morning. Cynthia Gaines is aware.

From: Hanson, Andrew
Sent: Thursday, April 06, 2017 10:08 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: WOTUS letter - signature process

Hi John,

Please keep in mind that the scanned digital version we (OCIR) send to our targeted Big 10 reps -- attached to an electronic scheduler -- will be the primary (most effective and expedient) means of ensuring the invitation letter gets to the right intergov association participants, incl. the water association reps. The greeting should be "Dear Intergovernmental Association Colleague".

The signed/mailed hard copy letters referred to below will be, as a practical matter, a superfluous part of the actual notification process.

EOn Apr 6, 2017, at 5:41 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks

John

From: Knapp, Kristien
Sent: Thursday, April 06, 2017 5:28 PM
To: Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: WOTUS letter - signature process

Deliberative Process / Ex. 5

Lincoln, please keep us all posted on your end, especially if you have timing needs so that we can help you meet them. Susan Burden will be your main point of contact in the Administrator's Office tomorrow. She will make sure this gets signed and follows all the necessary process points.

Please flag any missing points or questions.

To: Mike Shapiro (Shapiro.Mike@epa.gov)[Shapiro.Mike@epa.gov]
From: Best-Wong, Benita
Sent: Fri 4/14/2017 12:29:03 PM
Subject: RE: OW-Morning Insider

Inside EPA said they interviewed me. I must have been asleep when that happened. I haven't spoken to Inside EPA. Funny!!

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Fuld, John
Sent: Friday, April 14, 2017 7:41 AM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>; Duke, Nia <Duke.Nia@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>; Schollhamer, Mary <Schollhamer.Mary@epa.gov>; Lalley, Cara <Lalley.Cara@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>; Lynn, Tricia <lynn.tricia@epa.gov>
Subject: OW-Morning Insider

April 14, 2017

NEWS:

GREENWIRE EPA will rethink 2015 toxics rule for power plants

U.S. EPA will indefinitely postpone deadlines for a regulation aimed at reducing toxic metals in power plants' wastewater while the agency reconsiders the rule.

Administrator Scott Pruitt wrote in a letter Tuesday to Environmental Council of the States President John Linc Stine that the agency will take a second look at the discharge guidelines, which were finalized in September 2015.

Those guidelines are the first federal standards in over 30 years to curb toxics and other pollutants in power plant discharges.

The regulation states that, beginning in 2018, power plants would have to certify they are in compliance with the regulation as their National Pollutant Discharge Elimination System permits come up for renewal. The rule gives plants until 2023 to install and begin operating new wastewater treatment technology to remove heavy metals from discharges.

Now, Pruitt writes, EPA "intends to consider the petitioner's request for relief from the deadlines

in the Final Rule for both direct and indirect discharges along with the request for reconsideration of certain substantive aspects of the Rule."

The agency has also filed a notice with the *Federal Register* saying "justice requires" it to stay the regulation's deadlines "in light of the capital expenditures that facilities incurring costs under the Rule will need to undertake in order to meet the compliance deadlines for the new, more stringent limitations and standards in the rule."

EPA's moves come the same day the Justice Department informed attorneys that it will ask the 5th U.S. Circuit Court of Appeals to delay a lawsuit concerning the regulation in order to give EPA time to review the petition.

The lawsuit was filed by Union Electric Co., Southwestern Electric Power Co. and the Utility Water Act Group, a nonprofit representing electric companies.

Thomas Cmar, an attorney with Earthjustice representing the Sierra Club and other environmental groups in the lawsuit, said he fears that the Justice Department's attempts to delay the lawsuit signal EPA's intent to ultimately grant the industry petition.

"We are obviously concerned that they want this additional time to invent a record that doesn't exist now that would support changes to the rule," he said.

Cmar added that Earthjustice will oppose the request to stay the case, saying the scientific and technical record for the regulation supports the Obama administration's regulation.

"The political leadership of EPA has changed, but the record hasn't," he said. "We do intend to oppose any attempt by the EPA to weaken or delay these standards."

Chicago Tribune

Dunes officials await EPA water test results after carcinogenic chemical spill near Lake

Officials from the Indiana Dunes National Lakeshore are awaiting the test results from three beaches closed this week because of the spill of a carcinogen into Burns Waterway, but the beaches are likely to remain closed until several days' worth of samples test negative for a carcinogen and officials can determine whether there's any long-term damage to the park.

The U.S. Environmental Protection Agency and park officials on Wednesday collected sand and water samples from West Beach, Portage Lakefront and Riverwalk, and the beach at Cowles Bog but those results were not in by late Thursday afternoon.

An EPA official has said that low levels of hexavalent chromium were found in Lake Michigan near the mouth of Burns Waterway from the spill.

In an release Thursday, an EPA spokeswoman said that preliminary data suggested hexavalent chromium from the spill was not present near drinking water intakes and that results from 200 water samples taken over the past two days will start coming in Friday.

The city of Chicago conducted its own sampling at its water intake and in Lake Michigan one mile from the U.S. Steel facility where the spill occurred, the spokeswoman said, and reported that samples taken about a mile north of Burns Waterway detected a hexavalent chromium level of 2 parts per billion. According to the EPA website, the current federal drinking water standard for the chemical is 100 parts per billion.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

EPA Hears Competing Arguments Over Denial of OTC Expansion Petition

EPA officials at an April 13 public hearing heard competing arguments over whether the agency should finalize its proposed disapproval of a petition to expand the 12-state Ozone Transport Commission (OTC) and impose stricter ozone controls on other states, with environmentalists opposing the denial but the petroleum industry backing it.

At the hearing in Washington, D.C., representatives from OTC members states reiterated their support for an expansion of the region to include nine additional states, including expanding the part of Virginia covered by the existing OTC to include the whole state. They say this would help them reduce ozone-forming emissions from upwind states that are hindering OTC members' ability to attain EPA's ozone national ambient air quality standards (NAAQS).

But a Virginia air regulator at the event expressed the state's opposition to full inclusion in the OTC. Separately, an American Petroleum Institute (API) official said the additional controls an expansion would include are unnecessary because all parts of the country should meet the standards by using existing Clean Air Act rules.

The Obama EPA on Jan. 11 proposed to deny the petition filed by OTC members under section 176A of the air law that asked for the expansion to include Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and the rest of Virginia, subjecting them to the stricter ozone control mandates of the OTC.

The OTC currently comprises 12 Mid-Atlantic and Northeast states that have historically had problems with high levels of ozone pollution and faced more-stringent requirements than other parts of the United States to curb emissions: Connecticut, Delaware, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and part of Virginia as well as the District of Columbia.

Nine of the OTC member states -- Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont -- filed the petition, and Connecticut Gov. Dan Malloy (D) in an April 12 statement in the *Connecticut Post* appeared to threaten a lawsuit over the issue if EPA finalizes the plan to reject the petition. “There will be a court fight; we are not getting anywhere with this,” he said.

EPA is taking written comment on the OTC expansion petition until May 15 and then will review those comments before issuing a final version, which could then be challenged in federal appeals court.

Connecticut already sent EPA a March 9 letter giving 60 days' notice of the state's intent to file suit over the agency's failure to respond to a petition filed under section 126 of the air law, which allows states to ask EPA to directly regulate individual pollution sources in other states hindering their NAAQS attainment.

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

Rapid Pace of CWA Rule Development Poses Regulatory, Legal Challenges

The Trump administration's aggressive timeline for its forthcoming Clean Water Act (CWA) jurisdiction rule risks creating problems that could hinder its implementation or leave it vulnerable to lawsuits, such as rushing EPA's response to public comments or inadequately justifying the regulatory and scientific basis for the rule, sources say.

Administration officials are pushing to "move quickly" to craft a new CWA rule, Acting Principal Deputy Assistant Administrator for Water Benita Best-Wong told *Inside EPA* in a recent interview, and EPA and the Army Corps of Engineers have already started meeting with states and other stakeholders. The rule would replace the Obama administration's CWA jurisdiction policy which is currently stayed from implementation due while lawsuits over the rule proceed.

The EPA-Corps meetings on crafting a replacement rule -- which is expected to subject far fewer waters to the law's reach than the Obama-era version -- followed publication of a *Federal Register* notice signaling that the Trump administration will invoke authority to issue a new rule based purely on revising the Obama administration's legal interpretations, rather than developing a new scientific record to justify a new version.

After the Supreme Court announced April 3 that it will not halt litigation over the correct venue for challenging the Obama-era rule while the agencies develop its replacement, there is new pressure to release a revised rule soon. The pressure is because the high court's decision could otherwise lead to reinstating the now-stayed regulation in many states, because one outcome of the complicated litigation could be the justices lifting the stay of the existing rule.

But an industry attorney says the agency's quick timeline for a replacement rulemaking could leave little time to craft a justification for where the rule will draw the line between protected and unprotected waters -- meaning that line is likely to be either vague, or set without reliable scientific grounding.

"Maybe the regulation just refers to that concept in the rule, and leaves it to out-in-the-field staff to determine on a case-by-case basis. . . . It could be that they're going to set out a framework for what is jurisdictional and leave it up to field work to make those site-specific determinations," says one industry attorney.

An attorney for an environmentalist group agrees that a speedy rulemaking process will lead to a final rule with less grounding and less ability to set a clear test for which waters are jurisdictional -- a tradeoff that the attorney says the Obama administration also faced over the four-year process of developing its policy, termed the Clean Water Rule.

"I think they will find that just as the Clean Water Rule could not answer every question for the future, a replacement rule will not be able to do so. And yes, the less thinking that goes into developing the rule, probably the more prevalent those calls are going to have to be," the environmental attorney says.

But a vague rule that requires site-specific findings in order for property owners to be certain on whether they need to seek CWA permits could undercut one of the Trump administration's stated goals for its new policy of providing certainty to regulated entities by establishing a clear test for jurisdiction.

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: 202-815-6408

Fuld.john@epa.gov

To: Personal Email / Ex. 6
From: Best-Wong, Benita
Sent: Wed 4/12/2017 9:04:57 PM
Subject: Fwd: Materials for WOTUS Schedule
DRAFT schedule considerations.docx
ATT00001.htm
schedule 4-12.xlsx
ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Date: April 12, 2017 at 8:47:22 AM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>
Cc: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>
Subject: Materials for WOTUS Schedule

Hello All,

In preparation for today's 5:00 discussion on the rulemaking schedule and considerations, attached is a 1-pager that we will walk through as well as a table that lays out the key

Deliberative Process / Ex. 5

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----
From: Shapiro, Mike
Sent: Monday, April 10, 2017 12:17 PM
To: Shapiro, Mike; Greenwalt, Sarah; Dravis, Samantha; Fotouhi, David; Neugeboren, Steven; Peck, Gregory; Eisenberg, Mindy; Wehling, Carrie; Nickerson, William; Campbell, Ann; Best-Wong, Benita
Subject: WOTUS Schedule
When: Wednesday, April 12, 2017 5:00 PM-5:45 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6

Poc Ann Campbell

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Best-Wong, Benita
Sent: Wed 4/12/2017 1:32:13 PM
Subject: Re: For review - two documents for 5:00 meeting

Thanks. I'll call in. It looks like Mike won't get there in time.

Sent from my iPhone

On Apr 12, 2017, at 9:30 AM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Will do.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Best-Wong, Benita
Sent: Wednesday, April 12, 2017 9:29 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: For review - two documents for 5:00 meeting

Mindy - Personal Matters / Ex. 6 Please chair the WOTUS meeting.

Sent from my iPhone

On Apr 12, 2017, at 7:47 AM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 11, 2017, at 10:04 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

Mindy,

Deliberative Process / Ex. 5

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Eisenberg, Mindy
Sent: Tuesday, April 11, 2017 7:40 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-

Wong.Benita@epa.gov>
Subject: For review - two documents for 5:00 meeting

In preparation for the Wednesday 5:00 schedule considerations meeting, we have prepared a 1-pager that we will talk from (received feedback from Greg, OP, and OGC) and a schedule to show Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Please let me know if you have any edits to either and any other feedback for the meeting.

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Best-Wong, Benita
Sent: Wed 4/12/2017 1:29:28 PM
Subject: Re: For review - two documents for 5:00 meeting

Mindy - Personal Matters / Ex. 6 Please chair the WOTUS meeting.

Sent from my iPhone

On Apr 12, 2017, at 7:47 AM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 11, 2017, at 10:04 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

Mindy,

Deliberative Process / Ex. 5

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Eisenberg, Mindy
Sent: Tuesday, April 11, 2017 7:40 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: For review - two documents for 5:00 meeting

In preparation for the Wednesday 5:00 schedule considerations meeting, we have prepared a 1-pager that we will talk from (received feedback from Greg, OP, and OGC) and a schedule to show **Deliberative Process / Ex. 5**
Please let me know if you have any edits to either and any other feedback for the meeting.

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/11/2017 6:56:30 PM
Subject: Fwd: Invitation to speak on DC Bar panel on WOTUS Rule

Steve/Carrie,
Are you interested in participating on this panel? If so, I can let Allison know that someone is available. I have no takers in OW.
Thanks,
Benita

Sent from my iPhone

Begin forwarded message:

From: <allison.mallick@bakerbotts.com>
Date: April 10, 2017 at 10:44:04 AM EDT
To: <Best-Wong.benita@Epa.gov>
Cc: <Personal Address / Ex. 6>, <allison.mallick@bakerbotts.com>
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

We plan to focus on what the future has in store for the WOTUS Rule reconsideration, along with a Rapanos "refresher" in light of the Administration's reference to Justice Scalia's proposed test for determining jurisdictional waters. The panel will address WOTUS from diverse perspectives, and we have secured the following speakers:

- Steve Samuels, recently retired from DOJ ENRD

- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition

- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

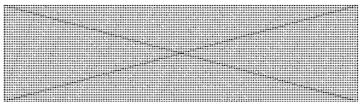
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



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To: John Goodin (Goodin.John@epa.gov)[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Mike Shapiro (Shapiro.Mike@epa.gov)[Shapiro.Mike@epa.gov]
From: Best-Wong, Benita
Sent: Mon 4/10/2017 2:46:49 PM
Subject: FW: Invitation to speak on DC Bar panel on WOTUS Rule
removed.txt

John/Mindy – I know we have participated on this panel in the past. Please let me know what your recommendation is.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: allison.mallick@bakerbotts.com [mailto:allison.mallick@bakerbotts.com]
Sent: Monday, April 10, 2017 10:44 AM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Personal Address / Ex. 6 allison.mallick@bakerbotts.com
Subject: Invitation to speak on DC Bar panel on WOTUS Rule

Dear Ms. Best-Wong,

I am writing to invite you, or one of your colleagues, to speak on a D.C. Bar panel on the WOTUS Rule. Elizabeth Horner (cc'd) and I are planning a program on WOTUS from the D.C. Bar Environment, Energy, and Natural Resources Section that will be held on May 11, 12:30-2:00, at the D.C. Bar offices.

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- Steve Samuels, recently retired from DOJ ENRD
- Kerry McGrath, Partner, Hunton & Williams, Counsel to the Waters Advocacy Coalition
- Jon Devine, Senior Attorney, Water Program, NRDC

We would very much like to include EPA's perspective on the panel and would be honored to host a panelist from the Agency. Would you be available to join us, or would you be able to recommend an EPA colleague who would be well-suited to this? As this is a D.C. Bar event, the program will have a legal focus, so a legal perspective would be helpful but is not required.

Please feel free to give me a call if you have any questions or would prefer to chat by phone – 202.639.7754. I look forward to hearing from you.

Regards,

Allison

Allison Watkins Mallick

Senior Associate

Baker Botts L.L.P.

allison.mallick@bakerbotts.com

T +1.202.639.7754

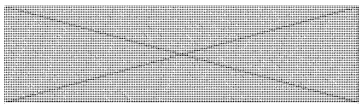
F +1.202.508.9317

The Warner

1299 Pennsylvania Ave., NW

Washington, DC 20004

USA



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To: Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Best-Wong, Benita
Sent: Thur 4/6/2017 7:47:25 PM
Subject: RE: Comms support for WOTUS roll out

Hi Macara,

Deliberative Process / Ex. 5

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Lousberg, Macara
Sent: Thursday, April 06, 2017 3:05 PM
To: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Comms support for WOTUS roll out

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Macara

Deliberative Process / Ex. 5

To: Campbell, Ann[Campbell.Ann@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/4/2017 8:44:35 PM
Subject: Fwd: ECOS Meeting Materials - April 6-7
ECOS 2017 Spring Mtg Agenda.pdf
ATT00001.htm
Closed Session Agenda_4-7-17.pdf
ATT00002.htm
ECOS Attendee List_as of 4-4-7.pdf
ATT00003.htm

Sent from my iPhone

Begin forwarded message:

From: "Barbery, Andrea" <Barbery.Andrea@epa.gov>
To: "Flynn, Mike" <Flynn.Mike@epa.gov>, "Wagner, Kenneth" <wagner.kenneth@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "OBrien, Kathy" <Obrien.Kathy@epa.gov>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "Bowles, Jack" <Bowles.Jack@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Osinski, Michael" <Osinski.Michael@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Hindin, David" <Hindin.David@epa.gov>, "Lee, Charles" <Lee.Charles@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Sheehan, Charles" <Sheehan.Charles@epa.gov>, "Benjamin, Kent" <Benjamin.Kent@epa.gov>, "Breen, Barry" <Breen.Barry@epa.gov>, "Cheatham, Reggie" <cheatham.reggie@epa.gov>, "Clark, Becki" <Clark.Becki@epa.gov>, "Harwood, Jackie" <Harwood.Jackie@epa.gov>, "Johnson, Barnes" <Johnson.Barnes@epa.gov>, "Salyer, Kathleen" <Salyer.Kathleen@epa.gov>, "Bowles, Scott" <Bowles.Scott@epa.gov>, "Debell, Kevin" <debell.kevin@epa.gov>, "Kenny, Shannon" <Kenny.Shannon@epa.gov>, "Shaw, Nena" <Shaw.Nena@epa.gov>, "Kavlock, Robert" <Kavlock.Robert@epa.gov>, "Matthews, Lisa" <Matthews.Lisa@epa.gov>, "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Robbins, Chris" <Robbins.Chris@epa.gov>, "Watkins, Tim" <Watkins.Tim@epa.gov>, "Bates, William" <bates.william@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Grevatt, Peter" <Grevatt.Peter@epa.gov>, "Shah, Surabhi" <Shah.Surabhi@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Szaro, Deb" <Szaro.Deb@epa.gov>, "Mccabe, Catherine" <McCabe.Catherine@epa.gov>, "Rodrigues, Cecil" <rodrigues.cecil@epa.gov>, "Lapierre, Kenneth" <Lapierre.Kenneth@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>, "Kaplan, Robert" <kaplan.robert@epa.gov>, "Coleman, Sam" <Coleman.Sam@epa.gov>, "Chu, Ed" <Chu.Ed@epa.gov>, "Thomas, Deb" <thomas.debrah@epa.gov>, "Bohan, Suzanne" <bohan.suzanne@epa.gov>, "Strauss, Alexis" <Strauss.Alexis@epa.gov>, "Pirzadeh, Michelle" <Pirzadeh.Michelle@epa.gov>
Cc: "Cheatham-Strickland, Latonia" <Cheatham-Strickland.Latonia@epa.gov>, "Anderson, Denise" <anderson.denise@epa.gov>, "Burley, Veronica" <Burley.Veronica@epa.gov>, "Kennedy, Chandra" <Kennedy.Chandra@epa.gov>, "Prabhu, Aditi"

<Prabhu.Aditi@epa.gov>, "Hill, Teresa" <Hill.Teresa@epa.gov>, "Kenely, Caroline" <Kenely.Caroline@epa.gov>, "Penman, Crystal" <Penman.Crystal@epa.gov>, "Melanson, Kate" <Melanson.Kate@epa.gov>, "McGowan, Michael" <McGowan.Michael@epa.gov>, "Shore, Berry" <Shore.Berry@epa.gov>, "saxe, jennie" <saxe.jennie@epa.gov>, "Brown, Kinshasa" <Brown.Kinshasa@epa.gov>, "Hamilton, Brian" <Hamilton.Brian@epa.gov>, "Ferrell, Mark" <Ferrell.Mark@epa.gov>, "Zieba, Kyle" <Zieba.Kyle@epa.gov>, "Wise, Allison" <Wise.Allison@epa.gov>, "Delli-Gatti, Dionne" <Delli-Gatti.Dionne@epa.gov>, "Myers, Bryan" <Myers.Bryan@epa.gov>, "Beckmann, Ronna Erin" <beckmann.ronna@epa.gov>, "Fortin, Denise" <Fortin.Denise@epa.gov>, "Deamer, Eileen" <deamer.eileen@epa.gov>, "Assunto, Carmen" <Assunto.Carmen@epa.gov>, "Washburn, Ben" <washburn.ben@epa.gov>, "Ostendorf, Jody" <ostendorf.jody@epa.gov>, "Vuong, Stephanie" <Vuong.Stephanie@epa.gov>, "Maier, Brent" <Maier.Brent@epa.gov>, "Higuchi, Dean" <Higuchi.Dean@epa.gov>, "Schuster, Cindy" <Schuster.Cindy@epa.gov>, "Tyler, Kendra" <Tyler.Kendra@epa.gov>, "Nitsch, Chad" <Nitsch.Chad@epa.gov>
Subject: ECOS Meeting Materials - April 6-7

Hello,

Please find, attached, agendas & registered attendees for the **ECOS 2017 Spring Meeting**, this Thursday and Friday at the Mayflower Hotel (map – closest metro: Farragut North). Topics for the closed session on Friday (3:30 p.m.) include Superfund, Brownfields, NAAQS, and water infrastructure. All EPA attendees are welcome to attend the closed session; at the table (in "listening-mode") will be:

- **Ken Wagner,** Senior Advisor for State and Regional Affairs and Director of Regional Operations

- **Troy Lyons**, Associate Administrator, Office of Congressional and Intergovernmental Relations

- **Tate Bennett**, Senior Advisor, Office of Congressional and Intergovernmental Relations

- **Byron Brown**, Senior Advisor for Policy

Registrations continue to roll in; for the latest list of attendees and other meeting materials (including presentations for the water, community engagement, and SMM sessions), please visit:

https://www.ecos.org/news-and-updates/2017-spring-meeting-materials/

Thanks,

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Best-Wong, Benita
Sent: Tue 4/4/2017 11:19:10 AM
Subject: RE: Draft WOTUS Rule Text

Draft text was not attached to this message.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Shapiro, Mike
Sent: Monday, April 03, 2017 9:49 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Draft WOTUS Rule Text

Sarah,

Deliberative Process / Ex. 5

In summary this text:

Deliberative Process / Ex. 5

Again, please contact us if you have any questions or concerns.

Thank you,

Mike

Michael Shapiro

Acting Assistant Administrator

US EPA, Office of Water

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Best-Wong, Benita
Sent: Mon 4/3/2017 2:51:25 PM
Subject: RE: SCt denied US motion for abeyance

Attorney Client / Ex. 5

Regards,
Benita

Benita Best-Wong
Acting Deputy Assistant Administrator
Office of Water
US EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460
202-566-1159

-----Original Message-----
From: Neugeboren, Steven
Sent: Monday, April 03, 2017 10:35 AM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: SCt denied US motion for abeyance

Adding david Fotuouhi from our front office to the email.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

-----Original Message-----
From: Wendelowski, Karyn
Sent: Monday, April 03, 2017 9:57 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: SCt denied US motion for abeyance

In CWR 509 case. Unless briefing schedule is modified again their brief is due April 13 and ours is due May 31st. **Attorney Work Product / Ex. 5**.

Karyn Wendelowski
Attorney Advisor
Office of General Counsel
(202) 564-5493

To: Goodin, John[Goodin.John@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Nandi, Romell[Nandi.Romell@epa.gov]; Edwards, Crystal[Edwards.Crystal@epa.gov]
From: Best-Wong, Benita
Sent: Mon 3/27/2017 2:30:37 PM
Subject: RE: ACTION: Invitation to IMCC April 3 in Williamsburg

Are we being asked to provide a name of someone in the event a political representative is not available? OD level is fine for this meeting especially since OLEM has already committed Barnes.

Regards,

Benita

Benita Best-Wong

Acting Deputy Assistant Administrator

Office of Water

US EPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-566-1159

From: Goodin, John
Sent: Monday, March 27, 2017 9:08 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>
Subject: Re: ACTION: Invitation to IMCC April 3 in Williamsburg

If they want political then why consider an OD? Is OCIR hacking calendars?

Sent from my iPhone

On Mar 27, 2017, at 8:56 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

Folks, I'm told that the IMCC has specifically requested that a member of the political team participate in the IMCC meeting. OCIR is teeing this up for Samantha to attend a well. Thus, I don't feel this can be delegated below the OD level. Please let me know who will attend this morning. OCIR needs to get back to the IMCC.

Thanks.

From: Campbell, Ann
Sent: Thursday, March 23, 2017 8:03:18 AM
To: Best-Wong, Benita; Goodin, John
Cc: Nandi, Romell; Edwards, Crystal
Subject: ACTION: Invitation to IMCC April 3 in Williamsburg

Benita, John – the Administrator has declined this invitation. OCIR is hoping we can send someone down to Williamsburg to cover this. They are interested in WOTUS. OLEM is sending Barnes Johnson (OD level).

Can you get back to me with your interest/availability by the end of the week. Thank you.

Ann

From: Barbery, Andrea
Sent: Wednesday, March 22, 2017 2:42 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: IMCC

Hi Ann,

Yes, IMCC has on the agenda for the state/federal session two things: hard rock mining and WOTUS.

OLEM/ORCR will send Barnes Johnson to address the mining topic. If OW can send a senior-level person (Barnes is an OD, that's fine, too) to talk WOTUS - update and opportunities for state/local engagement - that would be good.

Once I hear back from you on OW's participation, I'll get back to IMCC.

Thanks!

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

From: Campbell, Ann
Sent: Wednesday, March 22, 2017 1:53 PM
To: Barbery, Andrea <Barbery.Andrea@epa.gov>
Subject: Re: FYI - ECOS call tomorrow

I'm sorry. I misunderstood. Barry is in the lead but you'll need someone from Water to sit in on the session?

On Mar 22, 2017, at 1:43 PM, Barbery, Andrea <Barbery.Andrea@epa.gov> wrote:

> I see. I'm asked to RSVP to IMCC re: who from EPA will participate; if you can send a name my way, that'd be helpful!
>
> Sent from my iPhone
>
> On Mar 22, 2017, at 1:38 PM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

Ok. Thanks.

I haven't seen anything besides what you sent on the IMCC. Barry/OLEM has been added to the workgroup now though so they are in the loop on that. WOTUS is rapidly evolving though so things will be much further along 2 weeks from now.

On Mar 22, 2017, at 1:28 PM, Barbery, Andrea <Barbery.Andrea@epa.gov> wrote:

> Referenced the FRN as the beginning of the process and said we'd be sure to get states' comments as part of that process.
>
> Any word on IMCC?
>
> **From:** Campbell, Ann
> **Sent:** Wednesday, March 22, 2017 1:27 PM
> **To:** Barbery, Andrea <Barbery.Andrea@epa.gov>
> **Subject:** Re: FYI - ECOS call tomorrow
>
> Thanks Andrea. Nothing about CWR/WOTUS?
>
> On Mar 22, 2017, at 1:24 PM, Barbery, Andrea <Barbery.Andrea@epa.gov> wrote:
>
> > Hi all – just wanted to circle back w/you all and LYK how this call shook out. The Administrator was very brief with remarks; he touched on:
> >
> > - Air: ozone NAAQS, compliance & assistance, and monitoring over modeling
> >
> > - Water: infrastructure, streamlining permitting, keeping the SRF levels in the budget
> >
> > - Land: hinted at changes coming to superfund, brownfields

On cooperative federalism, he introduced Tate Bennett who joined OCIR staff on Monday as Senior Advisor; sounds like she'll be working both with Congress and Governors.

We did not really get to the questions – think it's too early for us to have substantive discussions about any of those issues. The Administrator did emphasize that we intend to work with the states on all these issues they were asking about but we did not go into any details.

Please keep this close – I'm around to chat if you have any questions.

Thanks,

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

From: Barbery, Andrea
Sent: Monday, March 20, 2017 2:37 PM
To: Kadish, Rochele <Kadish.Rochele@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Matthews, Lisa <Matthews.Lisa@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: FYI - ECOS call tomorrow

Friends of ECOS,

You may be aware but I wanted to be sure you know the Administrator is speaking tomorrow, via phone, with ECOS' full membership. The list of questions he's asked to address is attached. Please, not for further distro.

Thanks,

Andrea Barbery, OCIR

202-564-1397

Monthly All-Member Call

Tuesday, March 21, 2017

3:00 – 4:00 p.m. Eastern

I. Roll Call & Opening Remarks (300-305)

John Linc Stine, ECOS President & Commissioner, Minnesota Pollution Control Agency

II. Remarks from Administrator Pruitt (305-320)

Scott Pruitt, Administrator, U.S. Environmental Protection Agency

III. Discussion with Administrator Pruitt (320-330)

Moderated by ECOS Officers

Martha Rudolph, Director of Environmental Programs, Colorado Department of Environment & Public Health

Todd Parfitt, Director, Wyoming Department of Environmental Quality

Becky Keogh, Director, Arkansas Department of Environmental Quality

IV. Welcome and Introduction to Layne Bangerter (330-345)

Moderated by John Linc Stine

Layne Bangerter, Deputy Associate Administrator, Office of Intergovernmental Relations, U.S. Environmental Protection Agency

V. ECOS Business, Closing Remarks, & Adjourn (345-400), Stine

To: Campbell, Ann[Campbell.Ann@epa.gov]
From: Best-Wong, Benita
Sent: Tue 3/21/2017 12:43:08 PM
Subject: Re: Meeting Sarah

Mike asked me to run the meeting. I will spend a few minutes relaying the basic points from our meeting with the Administrator and then leave it to John and company to discuss the one pager. I'm hoping they will have a new one pager by this afternoon. Unfortunately, I am out of the office for most of today. I think John will be at NAWCA this afternoon. I will catch up with him then.

Sent from my iPhone

On Mar 21, 2017, at 8:38 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

> Benita, as you know Mike will not be available for tomorrow's CWR Weekly. How would you like to be prepped ahead of tomorrow's meeting?
>
> **From:** Best-Wong, Benita
> **Sent:** Tuesday, March 21, 2017 8:37 AM
> **To:** Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> **Cc:** Campbell, Ann <Campbell.Ann@epa.gov>
> **Subject:** Meeting Sarah
>
> I would encourage you reaching out to Sarah today to see if she has time to discuss how we expect to move forward with the Administrator's direction. I agree wit Steve that it is important for you all to develop a relationship with her. You may also want to include Byron in the discussion.
>
> Sent from my iPhone

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]
From: Best-Wong, Benita
Sent: Mon 3/20/2017 12:22:24 PM
Subject: Re: CWR Briefing Follow-up

We can meet right after the briefing for 30 minutes.
Thanks

Sent from my iPhone

On Mar 20, 2017, at 8:12 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

> Mike's recommending we put 30-45 minutes on the calendar right after your briefing with the Administrator this morning to report out to John and staff. Do you agree?
>
> Ann

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Best-Wong, Benita
Sent: Tue 3/14/2017 9:47:23 PM
Subject: Just ran into

Alex Dunn and John Stine. They were coming from a meeting with Pruitt on WOTUS. Pruitt

Deliberative Process / Ex. 5

Sent from my iPhone

From: Bolen, Brittany
Location: 3513E
Importance: Normal
Subject: Call-in Number for the 2:00 WOTUS call: Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 6/5/2017 5:50:00 PM
End Date/Time: Mon 6/5/2017 6:00:00 PM

From: Shapiro, Mike
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort
Importance: Normal
Subject: Fwd: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1- Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Tue 4/18/2017 1:00:00 PM
End Date/Time: Tue 4/18/2017 1:45:00 PM
mime-attachment.ics
ATT00001.htm
OW Meeting Request Form_econ.docx
ATT00002.htm
Proposed Framework for Economic Analysis for New Two-Step WOTUS.clean.docx
ATT00003.htm
Proposed Framework for Economic Analysis one-pager.clean.docx
ATT00004.htm

Are you going to this 9am tomorrow? Could use your input here.

Sent from my iPhone

Begin forwarded message:

From: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Date: April 17, 2017 at 3:05:08 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "McGartland, Al" <McGartland.Al@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "jennifer.a.moyer@usace.army.mil" <jennifer.a.moyer@usace.army.mil>, "stacey.m.jensen@usace.army.mil" <stacey.m.jensen@usace.army.mil>, "David.F.Dale@usace.army.mil" <David.F.Dale@usace.army.mil>, Cindy Barger <cindy.s.barger.civ@mail.mil>, "douglas.w.lamont2.civ@mail.mil" <douglas.w.lamont2.civ@mail.mil>, "craig.r.schmauder.civ@mail.mil" <craig.r.schmauder.civ@mail.mil>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Nandi, Romell" <Nandi.Romell@epa.gov>, "Washington, Valerie" <Washington.Valerie@epa.gov>, "Hewitt, Julie" <Hewitt.Julie@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Penman, Crystal" <Penman.Crystal@epa.gov>
Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in Nonresponsive Conference Code/ Ex. 6

From: Shapiro, Mike
Location: HQ-Room-WJCE-1117A-50pp
Importance: Normal
Subject: WOTUS Federalism Meeting
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM
WOTUS Letter.pdf

From: Shapiro, Mike
Location: 3233 WJCE
Importance: Normal
Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Wed 4/12/2017 2:00:00 PM
End Date/Time: Wed 4/12/2017 2:45:00 PM
Agenda -- WOTUS 12 April 2017 v2.docx

From: Dravis, Samantha
Location: 3513A
Importance: Normal
Subject: WOTUS
Start Date/Time: Wed 3/15/2017 7:45:00 PM
End Date/Time: Wed 3/15/2017 8:15:00 PM

Topic: WOTUS

Date: Today

Location: 3513A

Time: 3:45 – 4:15 (note David K. will cover the meeting on her calendar for that time)

Required: Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Nickerson, William Nickerson.William@epa.gov

Cc: Burley, Veronica <Burley.Veronica@epa.gov>

From: Burton, Tamika
Sent: Fri 6/9/2017 5:54:41 PM
Subject: Region and Program office Weekly report for 06/09/2017
Weekly report 06092017.docx

Good Afternoon,

Please see the Weekly Report attached, have a great weekend!

Best regards,

Tamika Burton

Staff Assistant

Office of the Deputy Administrator

MC 1104A Room 3412 WJC North

(202) 564-4771 (d)

Personal Phone / Ex. 6 *(c)*

burton.tamika@epa.gov

To: Greaves, Holly[greaves.holly@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]
From: Bolen, Brittany
Sent: Mon 6/5/2017 11:58:31 PM
Subject: RE: Updates to the Administrator's binder
Accomplishments - 6.5.2017.docx
SIP FIP Metrics-BB.docx

Holly – attached is an updated accomplishments handout. I also edited and added some info to the SIP/FIP one-pager. Let me know if you need anything else!

From: Greaves, Holly
Sent: Monday, June 5, 2017 4:13 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Updates to the Administrator's binder

Mandy,

Thanks - I've shortened the SIP/FIP metrics OAR provided Mandy to a one-page fact sheet. Please see attached and let me know what you think, as well as an appropriate talking point.

Thanks,

Holly

From: Gunasekara, Mandy
Sent: Monday, June 5, 2017 1:00 PM
To: Greaves, Holly <greaves.holly@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Updates to the Administrator's binder

Attached is some info on SIP/FIP metrics OAR has provided. We can glean from that what is useful.

From: Greaves, Holly
Sent: Monday, June 5, 2017 12:30 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Updates to the Administrator's binder

Ryan has asked that the updates discussed in today's budget prep be available for the Administrator before he leaves.

Can you please provide me edits discussed/requested for his briefing book by COB today? Items I noted include the following list; if there are others I have forgotten to include please let me know.

1. Sarah - permitting in OW

2. Mandy/Brittany – factsheet on SIP backlog

3. Mandy – fact sheet that explores solutions for achieving attainment and what we are doing to help states meet standards

4. Nancy – 1) top ten for TSCA; 2) IRIS 3) Flame Retardants

5. Sam/Brittany – Updates to accomplishments

6. Troy – Q&As

Thanks,

Holly

EPA IN ACTION: ACCOMPLISHMENTS WITH PRUITT'S LEADERSHIP

Updated June 5, 2017

FIRST 100 DAYS:

- Since being sworn in, I have spearheaded nearly two dozen significant regulatory reform actions and have taken meaningful steps to restore our relationship with state and local partners in the name of cooperative federalism.
- I am implementing President Trump's executive orders to protect the environment, save manufacturing jobs, streamline our permitting processes, and promote American energy independence.

TOP JOB NUMBERS:

- Jobs: Over 1.4 million jobs threatened by the actions of the Obama administration.
- Overall Regulatory Impact: $204 billion from the Obama EPA's regulatory actions.
- CAFE standards: 1.1 million jobs
- Clean Power Plan: 400,000 jobs threatened.
- ELG Rule: 100 jobs saved at a chemical processing plant in Florida.

EXAMPLES:

- **ELG** – Costs about $480 million annually, $1.2 billion per year in the first five years.
- **Hard Rock Mining** – Could cost American businesses $171 million annually.
- **CCR rule** – Costs power plants between $500 and $745 million – per year.
- **CAFE** –$200 billion by 2025 to comply.
- **WOTUS** – Between $600 million and $1.2 billion.
- **Methane ICR** – Compliance costs exceeding $37 million.
- **RMP Rule** – Costs about $131.8 million annually, $1.3 billion over ten years.

DETAILS on KEY REGULATORY REFORM ACTIONS:

- ✓ **TSCA Implementation:** Clearing the backlog of new chemicals that were waiting for approval from EPA, so they can go to market, and companies can create jobs and continue to innovate. We also are on track to meet the deadlines outlined in the Lautenberg Chemical Safety Act. Our significant rules on prioritizing chemicals that need to be reviewed for safety as well as a companion final rule that establishes the Agency's TSCA Risk Evaluation Process are currently under OMB review.
- ✓ **WOTUS:** EPA is restoring states' important role in the regulation of water by reviewing the "Waters of the U.S." or WOTUS. A rule with a regulatory impact analysis of between $600 million and $1.2 billion. Our draft to rescind the WOTUS rule is currently under OMB review.
- ✓ **CPP:** Launched a review of the so-called Clean Power Plan that threatens over 125,000 U.S. jobs. Our draft to rescind the CPP is currently under OMB review.
- ✓ **Oil and Gas Methane NSPS:** EPA announced a decision to reconsider the Oil and Gas Methane New Source Performance Standards for new and modified sources, delaying a costly compliance requirement. We issued a 90-day administrative stay on the rule's compliance deadlines June 2nd. Our proposed long-term stay of the rule is currently

under OMB review.

- ✓ **ELG Rule:** EPA announced a decision to reconsider the effluent limitations guidelines and standards for the steam electric power generating category under the Clean Water Act (ELG Rule), which costs an estimated $480 million annually, and about $1.2 billion per year in the first five years of compliance. We issued a 90-day administrative stay on the rule's compliance. Our proposed long-term stay of the rule has been published in the Federal Register and is currently open for public comment.
- ✓ **Coal Combustion Residuals (CCR Rule):** CCR rule is estimated to cost power plants between $500 and $745 million – per year. We developed draft guidance for the states on the CCR rule that is currently under OMB review.
- ✓ **Landfill Methane Rules:** EPA announced a decision to review the New Source Performance Standards and Emission Guidelines for Landfills. On May 5, EPA convened a proceeding for reconsideration of the rules and issued a 90-day stay of the effectiveness of these rules. Our proposed long-term stay of the rules is currently under OMB review.
- ✓ **Methane ICR:** We rescinded the overly burdensome, unnecessary information collection request to more than 15,000 owners and operators in the oil and gas industry. This rescission saved an estimated $37 million.
- ✓ **CAFE Standards:** EPA rescinded an unjustified, premature evaluation of greenhouse gas and fuel economy standards for model year 2022-2025 vehicles, and is working with DOT to conduct a collaborative and robust review of the standards. According to the Auto Alliance, "no agency has ever set emission limits so far into the future," and the previous administration's determination would have put 1.1 million jobs at risk and cost the industry $200 billion by 2025.
- ✓ **New Source Performance Standards for EGUs:** Reviewing the New Source Performance Standards for coal-fired power plants, which prevents companies from building new plants.
- ✓ **GHG Federal Plan/Trading Rules for EGUs:** On March 28, EPA signed a notice withdrawing these proposed rules.
- ✓ **Ozone Standard:** Requested delay of oral arguments on the ozone standard.
- ✓ **Hard Rock Mining:** EPA extended the comment period on the Hard Rock Mining proposed rule that could cost American businesses $171 million annually.
- ✓ **Energy Independence EO:** Following the President's Energy Independence Executive Order, Administrator Pruitt signed four notices to review and, if appropriate, to revise or rescind major, economically significant, burdensome rules the last Administration issued. Per the EO, EPA submitted a draft regulatory review plan to OMB on May 12. We are on schedule to provide OMB a draft report due in July.
- ✓ **Flint, Michigan:** The Agency is allocating funds for vital environmental projects that go directly to the health of our citizens, such as providing $100 million to upgrade drinking water infrastructure in Flint, Michigan.
- ✓ **Chlorpyrifos:** EPA denied a petition from the NRDC and the Pesticide Action Network North America, which was seeking a ban on a pesticides used on 40,000 farms and 50 different crops because there was never enough science to justify the ban.
- ✓ **Certified Pesticide Applicators Rule:** EPA extended the effectiveness of this rule and initiated a review.
- ✓ **Formaldehyde Emission Standards for Composite Wood Products:** EPA extended the compliance deadlines and a direct final rule to address key issues with the rule.

- ✓ **Regulatory Reform:** Launched the EPA Regulatory Reform Task Force to undergo extensive reviews of the misaligned regulatory actions from the past administration, and opened a public comment period to get public feedback on opportunities to rescind or revise existing regulations. Per the President's Executive Order 13771, EPA's Task Force also delivered a 90-day progress report to the Administrator on May 25.
- ✓ **Risk Management Rule (RMP Rule):** EPA estimates the RMP rule to cost $131.8 million annually, or $1.3 billion over ten years. EPA delayed the RMP rule to make sure that any additional regulations actually make chemical facilities safer, without duplicating regulations or opening our country up to dangerous national security threats.
- ✓ **Superfund Sites:** We are getting real results at cleaning up Superfund sites, including: East Chicago (IN), West Oakland (CA) and Pompton Lake (NJ). First EPA Administrator to visit East Chicago site.
- ✓ **Superfund Plan:** We announced new plans to get better results at Superfunds, including a new task force and a new authority for the Administrator to decide remedies that cost over $50 million.
- ✓ **Water Infrastructure:** Opened the application process for EPA's WIFIA program; a low-risk loan for businesses that will provide $1 billion in credit to finance over $2 billion in water infrastructure investments.
- ✓ **Meetings with National/International Leaders:** EPA Administrator Scott Pruitt has consulted 22 bipartisan governors, 25 bipartisan members of congress, three foreign leaders, four state agriculture departments, and over a dozen bipartisan organizations.
- ✓ **EPA Originalism:** EPA Administrator Pruitt launched a "Back-to-Basics" Agenda, touring a Pennsylvania coal mine, a Missouri power plant, and visiting a contaminated "Superfund" site in E. Chicago, to discuss how EPA is refocusing the agency on its core mission of protecting the environment through sensible regulations developed in cooperation with state, local and tribal partners.
- ✓ **MATS Rule:** DoJ has obtained abeyance of a challenge to the rule to allow time for policy review. Given the broad-reaching economic implications of the Mercury and Air Toxics Rule (MATS rule), we are reviewing the costs of the rule to determine whether it complies with our statutory mandate, abides by sound regulatory principles, and is in line with the pro-jobs, pro-growth directives of this Administration.
- ✓ **Clean Air Act/SSM SIP:** Asked the court to postpone oral arguments over an Obama-era rule making 36 states rework their Clean Air Act compliance plans.
- ✓ **Pebble Mine:** Entered into a settlement agreement with the Pebble Limited Partnership to resolve litigation from 2014 relating to EPA's prior work in the Bristol Bay watershed in Alaska. This will provide Pebble a fair process for their permit application and help steer EPA away from costly and time-consuming litigation.
- ✓ **Presidential Directive on Permit Streamlining and Reducing Regulatory Burdens for Domestic Manufacturers:** Per this Presidential memorandum, EPA submitted to the Department of Commerce a detailed account of the Agency's permitting programs and identified opportunities for reducing regulatory burdens on domestic manufacturers. EPA is currently working with the Department of Commerce to finalize its report to the President.

From: Kime, Robin
Location: 3513E
Importance: Normal
Subject: Call-in Number for the 2:00 WOTUS call: Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Mon 6/5/2017 5:50:00 PM
End Date/Time: Mon 6/5/2017 6:00:00 PM

To: Bolen, Brittany[bolen.brittany@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Kime, Robin
Sent: Mon 6/5/2017 3:06:37 PM
Subject: Today's 2:00 EEOB WOTUS Nonresponsive Conference Code/ Ex. 6

Good morning,

We have this number for the 2:00 p.m. call.

From: Eisenberg, Mindy
Sent: Monday, June 05, 2017 10:58 AM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: Re: Call-in number for today's 2:00 EEOB WOTUS meeting/call

Hi Robin,

It's Nonresponsive Conference Code/ Ex. 6

Mindy

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Packard, Elise[Packard.Elise@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Fine, Steven[fine.steven@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Rodrigues, Cecil[rodrigues.cecil@epa.gov]; Strauss, Alexis[Strauss.Alexis@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Minoli, Kevin
Sent: Fri 6/2/2017 1:58:22 AM
Subject: OGC's Weekly Report
OGC Weekly Report 06.01.17.docx

All- Attached is our report for June 1, 2017. Feel free to reach out to me, Elise, Justin, or David with questions. Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

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Direct Dial: 202-564-5551

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov]; 2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]
From: Burden, Susan
Sent: Fri 5/26/2017 6:16:08 PM
Subject: Weekly Reports - May 26
Weekly Report 26 May 2017.docx

Good afternoon,

Attached are the weekly reports.

Thanks,

Susan

Susan Burden, Ph.D.

Special Assistant (ORD, OCSPP, OCHP, SAB)

Office of the Administrator

U.S. Environmental Protection Agency

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To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Fine, Steven[fine.steven@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Coleman, Sam[Coleman.Sam@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]
From: Packard, Elise
Sent: Thur 5/25/2017 11:07:18 PM
Subject: OGC's Weekly Report
OGC Weekly Report 5.25.17.docx

Here is OGC's report. Thanks, Elise

Elise B. Packard

Acting Principal Deputy General Counsel

U.S. EPA Office of General Counsel, Rm. 4020

(202) 564-7729

To: Beck, Nancy[Beck.Nancy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]; Ford, Hayley[ford.hayley@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Graham, Amy[graham.amy@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Henderson, Austin[henderson.austin@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Hupp, Sydney[hupp.sydney@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Kelly, Albert[kelly.albert@epa.gov]; Konkus, John[konkus.john@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; McMurray, Forrest[mcmurray.forrest@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Palich, Christian[palich.christian@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Wilcox, Jahan[wilcox.jahan@epa.gov]
From: Hupp, Sydney
Sent: Fri 5/19/2017 4:55:24 PM
Subject: WEEKLY REPORTS MAY 19th
WeeklyReport051917.docx

Sydney Hupp

Executive Scheduler

Office of the Administrator

Personal Phone / Ex. 6 (C)

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov]; 2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]
From: Burley, Veronica
Sent: Fri 5/19/2017 4:31:19 PM
Subject: WEEKLY REPORTS MAY 19th
WeeklyReport051917.docx

Attached are the weekly reports for May 19th.

Thank you and have a great weekend!

Veronica Burley

Office of the Administrator

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202-501-1480 (fax)

burley.veronica@epa.gov

To: Beck, Nancy[Beck.Nancy@epa.gov]; Kelly, Albert[kelly.albert@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Davis, Patrick
Sent: Fri 5/19/2017 2:32:43 PM
Subject: Fwd: Your Advice Requested: Regulatory Reform Underway at EPA
image001.png
ATT00001.htm
image001.png
ATT00002.htm
NAM Comments on EPA regulatory reform request.pdf
ATT00003.htm

Deliberative Process / Ex. 5

Patrick

Sent from my iPhone

Begin forwarded message:

From: Leland Frost <LFrost@nam.org>
Date: May 17, 2017 at 4:25:27 PM EDT
To: "Davis, Patrick" <davis.patrick@epa.gov>
Subject: RE: Your Advice Requested: Regulatory Reform Underway at EPA

Hi Patrick,

Hope all well. You have likely seen it already, but the comments we filed this week in response are attached. Thanks again for the outreach.

Best,

Leland P. Frost

National Association of Manufacturers

Associate General Counsel

Email: lfrost@nam.org

Direct: (202) 637-3475

Mobile: (205) 478-1717

NATIONAL ASSOCIATION OF
Manufacturers

Ross E. Eisenberg
Vice President
Energy & Resources Policy

May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator, Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 6101A
Washington, DC 20460

Re: Evaluation of Regulations, Docket ID No. EPA-HQ-OA-2017-0190

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, submits the following comments in response to the request by the Environmental Protection Agency (EPA) for input on regulations that may be appropriate for repeal, replacement or modification, in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda"

Manufacturers deeply appreciate the opportunity to assist the EPA as it reviews the regulations within its jurisdiction. These comments focus on EPA regulations of concern to manufacturers and recommend ways to improve them. These comments also identify improvements to the process by which the regulations listed were made: too often it has been inflexible, unresponsive to stakeholder input, and wedded to outcomes that seemed predetermined. For the Agency to truly reform the way it regulates, it must look not only at individual regulations but also the whole regulatory system.

Our environmental indicators are steadily improving. Since 1990—a period spanning four different presidential administrations and 14 different Environmental Protection Agency (EPA) Administrators—national pollutant concentrations have dropped dramatically. Carbon monoxide concentrations are down 77 percent; lead 99 percent; nitrogen dioxide 54 percent; ozone 22 percent; coarse particulate matter 39 percent; fine particulate matter 37 percent; and sulfur dioxide 81 percent.[1] The United States has reduced more greenhouse gases (GHGs) over the past decade than any other nation on earth. Manufacturers have done their part as well, reducing our emissions 10 percent over the past decade while increasing our value to the economy by 19 percent.

However, the incremental gains we are achieving are coming at an ever-increasing cost. Federal environmental regulations—many based on statutes that are decades old—are increasingly rigid, costly and harm our global competitiveness. Several recent regulations threaten to set new records for compliance costs, collectively strapping manufacturers with hundreds of billions of dollars in new regulatory burdens per year. We have lost the critical

[1] U.S. EPA, "Our Nation's Air: Status and Trends Through 2015," *available at* https://gispub.epa.gov/air/trendsreport/2016/.

balance in our federal environmental policies between furthering progress and limiting unnecessary economic impacts. The state of our national economy, the manufacturing sector and the environment are considerably different than they were 20, 30 or 40 years ago. However, we are still operating with policies designed to address the environmental challenges of a previous era. It is time to modernize our environmental policies to better reflect and address current issues, technologies and opportunities to ensure a more sustainable future.

Take ozone, for instance. The major improvements to ozone that have occurred over the years have largely come at the expense of two types of sources: electric utilities and manufacturers. We are now at a point in time where those two industrial categories have installed just about every cost-effective technology available to them. The only ozone left to control in many regions come from sources the Clean Air Act makes it difficult to regulate, such as small emitters. Making matters worse, in many areas the NAAQS program has been so effective that concentrations have been reduced to natural background levels. Why, then, must the EPA go back to the same well every five years—electric utilities and manufacturers—when it seeks to implement an ever-tighter ozone NAAQS? This is why EPA continues to see diminishing returns at astronomical costs every time it tightens the ozone standard.

Manufacturers will continue to lead by minimizing environmental footprints, reducing emissions, conserving critical resources, protecting biodiversity, limiting waste and providing safe products and solutions so others in the economy can do the same. However, we need better regulations. We need a regulatory process that is not opaque. We need the EPA to look to manufacturers as partners, not just as regulated entities.

Ultimately, we hope this regulatory review process yields a structure that will drive real, sustained reductions in pollution in a manner that provides more transparency, flexibility and collaboration than has been the case in the past. EPA will always be judged by its ability to keep the trend lines for each pollutant heading in a downward direction. This Administration has a unique opportunity to prove that it can accomplish this goal through an improved regulatory structure. Manufacturers look forward to working with EPA to achieve this goal.

Discussion of Individual Regulations

The NAM's Chairman of the Board directly contacted each of our 14,000 members with the request that they identify regulations that are affecting their companies. The list below is largely a compilation of the information we received in response. In accordance with EPA's instructions, we will also identify which of the EO 13777 criteria the regulation meets, and how the NAM recommends the regulation be addressed.[2]

[2] EO 13777 specifically requested EPA to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;
(ii) Are outdated, unnecessary, or ineffective;
(iii) Impose costs that exceed benefits;
(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
(v) Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or
(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

1. National Ambient Air Quality Standards (NAAQS)

Every five years, EPA must decide whether the National Ambient Air Quality Standards (NAAQS) are sufficiently protective of public health. As NAAQS (for particulate matter, ozone, sulfur dioxide, carbon monoxide, lead and nitrogen oxides) have dropped closer to background levels, it is becoming increasingly difficult to pass the test and get an approved permit. Similarly, new technologies needed to meet ever-stringent NAAQS are getting more expensive. Compliance costs for manufacturers are skyrocketing and regulated industries are approaching a permitting gridlock.

The NAM recommends the following actions on NAAQS regulations:

A. <u>National Ambient Air Quality Standards (NAAQS) for Ozone.</u> The 2015 ozone regulation could be one of the most expensive regulations ever issued by the U.S. government. The previous standard of 75 parts per billion (ppb) – the most stringent standard ever – was never even fully implemented, while emissions are as low as they have been in decades and air quality continues to improve. The EPA itself admitted that implementation of the previous standard of 75 ppb, when combined with the dozens of other regulations on the books that will reduce ozone precursor emissions from stationary and mobile sources, will drive ozone reductions below 75 ppb (and close to 70 ppb, the current standard set in 2015) by 2025. The massive costs of a stricter standard are simply not necessary.

- <u>EO 13777 Justification</u>: This regulation could eliminate jobs or inhibit job creation; it is ineffective and potentially unnecessary considering ozone concentrations will likely reach 70 ppb in 2025 by simple operation of other laws; and its costs could exceed its benefits.
- <u>NAM Recommendation</u>: The litigation over the 2015 Ozone NAAQS is being held in abeyance as EPA reviews its position on the rule. The NAM does not engage on the scientific side and leaves that decision to the experts at the Agency. However, we do recommend the EPA take whatever measures are available to ease implementation of the 2015 rule. These should include: a reevaluation of how background ozone is calculated; revocation of the 2008 standards once the 2015 standards are effective; the establishment of procedures for states to demonstrate eligibility for relief under Section 179B when emissions from outside the United States cause the state to fall into nonattainment; and changes to the recently-finalized Exceptional Events Rule[3], where EPA elected to prevent states from considering certain events and sources from exceptional events determination.

B. <u>NAAQS Process Changes.</u> The process of setting a new NAAQS can be frustrating for the regulated community, which lacks meaningful input on the formation of new standards before they are proposed. For instance, because new data and analysis often causes EPA to miss the five-year deadline to promulgate a new NAAQS, outside stakeholders are able to force a rushed timeline through a lawsuit or settlement agreement. Doing so creates a risk that EPA will miss key details or make mistakes it would not make if it had more time. Similarly, while the EPA relies on its

[3] 81 Federal Register 68216 (October 3, 2016)

Clean Air Science Advisory Committee (CASAC) for scientific advice on a new NAAQS, it has refused to ask CASAC to opine on economic or energy effects from a new NAAQS, even though Section 109(d) of the Clean Air Act requires it. On the implementation side, the challenges with the ever-tighter NAAQS is exacerbated by a lack of (or inappropriate) emission measurement methods, poor estimates of emissions, use of unrealistic air dispersion models, and several rigid permitting policies.

- EO 13777 Justification: Aspects of the NAAQS setting process rely in whole or in part on data, information or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.
- NAM Recommendation: The NAM recommends the EPA perform an audit of the NAAQS process and identify improvements that can be made. Some potential changes include: require CASAC to comply with Section 109(d) of the Clean Air Act and "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS; provide flexibility to NAAQS nonattainment areas so that offset requirements are tied to reasonable and available reduction opportunities, with consideration to reasonable cost thresholds; EPA should establish a new permitting process and adjust its modeling criteria to be more reflective of actual impacts; and, with the help of Congress, modify the NAAQS review cycle to more closely align with the pace of implementation of existing standards and consider cost and technological feasibility when conducting NAAQS policy assessments and during implementation.

2. Greenhouse Gases

Manufacturers are committed to addressing climate change through improved efficiency, greater sustainability and reductions in GHG emissions. Manufacturers are leading the way, reducing our GHG emissions by 10 percent over the past decade while increasing our value to the economy by 19 percent. Manufacturers of all shapes and sizes are setting GHG targets to 2020, 2025 and beyond—and are often beating them several years early. They are doing this by innovating, taking risks, driving efficiencies, and streamlining their processes, and relying on internal experts who know their businesses best.

The conundrum manufacturers now face is an oncoming series of GHG regulations that appear to take a piecemeal approach to different aspects of their businesses. For instance, a manufacturer may have set a target to reduce its GHG emissions by 20, 30 or even 50 percent through system improvements that are specific to that manufacturer's operations. A heavy-handed regulation that forces this same manufacturer to switch out its boiler in the name of climate change could be fundamentally at odds with that manufacturer's own internal plan (which did not include the boiler). It also could force the manufacturer to divert expenses that would otherwise be used to meet its GHG targets to comply with the new regulation, which would result in less overall GHG reductions.

As the EPA rethinks the regulatory framework to address GHG emissions, it should constructively engage the manufacturing sector to better understand what we are doing, what we have planned for the future, and what measures we have undertaken that are delivering cost-effective results. The Agency should then work with manufacturers to construct a set of flexible policies that set are reasonable and technically achievable, allow credit for early action,

promote an "all of the above" energy strategy that avoids unnecessary retirements of any fuel source that would not happen absent regular market forces, and are cost-effective, attainable and protect American jobs and the economy.

The NAM recommends taking action on the specific GHG regulations:

A. Clean Power Plan. The final Clean Power Plan would fundamentally shift how electricity is generated and consumed in this country, effectively picking winners and losers in terms of both technologies and fuels. The rule also represents an attempt to vastly expand the EPA's traditional authority to regulate specific source categories by setting reduction requirements that reach into the entire electricity supply-and-demand chain. The requirements will be substantial, potentially costing billions of dollars per year to comply. Some studies estimate that compliance with the rule would cost well over $300 billion and cause double-digit electricity price increases for ratepayers in most states. Manufacturers are concerned about these potential costs and reliability challenges as electric power fleets are overhauled in compliance with the regulations. Manufacturers are also keenly aware that the EPA is using this regulation as a model for future direct regulations on other manufacturing sectors—meaning manufacturers could potentially be hit twice by GHG regulations.

- EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; its costs could exceed its benefits; and it derives from a Presidential directive that has been rescinded and substantially modified.
- NAM Recommendation: The President and has already taken strong action to reexamine this regulation, which manufacturers welcomed. The NAM encourages the EPA to replace the Clean Power Plan with a Section 111(d) regulation that better reflects the statute's requirements. In addition, the NAM requests that the EPA delineate what constitutes "significant" endangerment for GHGs, which is a higher threshold than the "cause and contribute" endangerment determination the Agency made for mobile sources under Title II of the Clean Air Act.

B. NSPS for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units. This rule, a precursor to the Clean Power Plan, set performance standards for GHG emissions under Section 111(b). In its final rule, the EPA inappropriately concluded that carbon capture and sequestration (CCS) was "adequately demonstrated" for utility-scale applications and its utilization is the basis for the mandated standard for all new coal-fired power plants. As a matter of fact, CCS had not been adequately demonstrated at the utility scale—making a standard that requires it for all new coal plants an effective ban on those plants. Manufacturers need access to all energy sources to keep energy affordable and reliable. Even the manufacturers of CCS, who would presumably benefit from a rule like this, filed comments with EPA that CCS was not adequately demonstrated and that mandating it in the rule would chill demand for development of this technology. Finally, a regulation requiring technologies that are not commercially available would set a damaging precedent for future regulation of manufacturers' operations.

- EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; its costs could exceed its benefits; and it derives from a Presidential directive that has been rescinded and substantially modified.

- NAM Recommendation: Like the Clean Power Plan, the President and has already taken strong action to reexamine this regulation, which manufacturers greatly appreciate. The NAM recommends that EPA issue a new 111(b) rule that bases its standard on a more realistic definition of the Best System of Emissions Reduction (BSER) for GHGs that has been adequately demonstrated. One potential option could be the definition proposed by the NAM-supported Whitfield-Manchin bill in the 113th Congress, which stated that a technology can be BSER once it has been achieved over a one-year period by at least six units located at different commercial power plants in the United States.

C. **Fuel Economy and GHG Emissions Standards for Light-Duty Vehicles.** The EPA, National Highway Traffic Safety Administration (NHTSA) and the California Air Resources Board (CARB) manage a three-headed regulatory program of fuel economy and GHG regulations on light-duty vehicle manufacturers, using authority under the Clean Air Act, CAFE and California's Zero Emissions Vehicle (ZEV) statute. The current regulatory structure stretches to 2025. While these programs were intended to form "One National Program," in practice manufacturers are forced to comply with a patchwork of requirements. In late 2016, EPA made a highly political decision to rush a mid-term evaluation of the requirements for model year 2022-2025 vehicles, cutting short the technical review and opportunity for stakeholder input.
   - EO 13777 Justification: The 2016 midterm determination was insufficiently transparent and relied on outdated data.
   - NAM Recommendation: The EPA has returned the midterm review process to its original schedule, and the Administrator will decide whether the standards remain appropriate by April 1, 2018. The NAM supports the Administrator's decision to reevaluate the 2016 midterm determination and looks forward to working with the Agency on this issue. The NAM also recommends that the EPA take steps within its jurisdiction to harmonize its regulations with the other agencies involved.

D. **GHG Threshold Rule.** The EPA proposed a rule on October 3, 2016, "Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program," (RIN 2060-AS62) (81 FR 68110), more commonly known as the "GHG Threshold Rule." The GHG Threshold Rule was intended to cure defects in the GHG Tailoring Rule identified by the U.S. Supreme Court in *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014). The NAM supported the EPA's proposal to establish a significant emission rate (SER) for GHG emissions under the PSD permitting program based on the conclusion that GHG emissions below this threshold would be *de minimis*; however, we are very concerned with the EPA's decision to set the *de minimis* threshold at 75,000 tons per year (tpy). The rule also did not adequately recognize that sustainable biomass is a valued energy input for manufacturers and a vital part of an "all of the above" energy strategy. The forest products industry, among others, uses forest product manufacturing residuals for energy.
   - EO 13777 Justification: This rule as originally proposed would interfere with regulatory reform initiatives and policies, and it derives from Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

- NAM Recommendation: The EPA should establish a *de minimis* GHG threshold above 75,000 tpy, and it should only rely on technologies that are truly commercially available as the basis for establishing a *de minimis* threshold. The NAM further recommends that EPA assess the potential to remove barriers for manufacturers who use sustainable biomass energy, provided it does not advantage one fuel source over another in the competitive marketplace.

3. Other Air Issues

A. New Source Review. U.S. industry and regulators continue to struggle with the complex requirements of the New Source Review (NSR) program. NSR often triggers evaluations that can last for several years when a particular facility attempts to upgrade or install technologies that lead to increased energy efficiency, thus potentially undermining the achievement of appropriate air quality and environmental policy goals. Such obstacles undercut improved air quality by delaying the installation of more efficient technology.

- EO 13777 Justification: NSR as it currently operates is ineffective, and it creates a serious inconsistency with other potential regulatory reform efforts that may be underway.
- NAM Recommendation: The NAM supports ways to streamline and reform NSR requirements, including the development of practical routine repair, replacement and maintenance exemption provisions

B. Air Permitting. Several EPA policies and statutory interpretations have unnecessarily limited flexibility in permitting, making construction of new facilities exceedingly difficult. These include the treatment of emissions during startup, shutdown and malfunction (SSM) events, better and more timely guidance to states when a federal standard changes, the inappropriate aggregation of minor sources under the Clean Air Act, the "once in, always in" treatment of facilities for MACT and NSPS rules, and the overly conservative and unrealistic assumptions used in modelling by the agency for permitting decisions.

- EO 13777 Justification: Air permitting as it currently functions is partially ineffective, and creates inconsistencies with other potential regulatory reform efforts that may be underway.
- NAM Recommendation: The EPA should consider withdrawing the SSM SIP call and not act on any of the recent SIPs that have been submitted until it makes lasting changes to the treatment of SSM events. It should take a more practical view than the last Administration with respect to aggregation. It should perform a comprehensive review of its air models to remove any biases.

C. Risk Management Plan Rule Amendments (RMP Rule). Issued in late 2016, the RMP Rule imposes new disclosure requirements on more than 10,000 facilities, potentially exposing sensitive business and security data. Additionally, the rule opens the door to frivolous lawsuits and requirements that are intended to dictate manufacturers' formulas and processes. This is an unnecessary regulation—one that would not actually have prevented the fertilizer plant explosion in West, Texas that gave rise to the RMP Rule—and will cost manufacturers of all sizes and in many industries valuable time and substantial resources to comply.

- EO 13777 Justification: The RMP Rule imposes costs that exceed benefits and could inhibit job creation. It is also unnecessary and duplicative of other agencies' programs.
- NAM Recommendation: The NAM recommends the EPA undergo a new rulemaking to reconsider the RMP Rule, and make changes to protect sensitive business and security data and limit additional burdens.

D. **Regional Haze.** States have been working to implement the Regional Haze (RH) program under the Clean Air Act based on EPA guidance to improve visibility, especially in National Parks. The statute gives states the primary role for implementing air quality programs, including for regional haze. Recently, ENGOs have sued EPA for failing to act on state RH proposals. As a result, EPA is now second-guessing state judgments in Texas, Oklahoma and Arkansas by issuing Federal Implementation Plans (FIPs) that could result in billions of additional expenses for an imperceptible visibility improvement.
- EO 13777 Justification: Recent Regional Haze regulations impose costs that exceed benefits, eliminate jobs or inhibit job creation, and create inconsistencies or otherwise interfere with regulatory reform initiatives and policies.
- NAM Recommendation: EPA should leave states to implement the Regional Haze program (RIN 2060-AS55) unless there are egregious oversights by states. Recent EPA amendments to the program have made it even more cumbersome.

E. **Boiler MACT.** The U.S. Court of Appeals for the District of Columbia has directed EPA to revise certain standards of the Boiler MACT rule to account for additional "best performing" boilers while upholding the core framework and methodology of the rule. It is time for EPA to conclude this 20-year rulemaking and provide regulatory certainty to manufacturers.
- EO 13777 Justification: Failure to complete the Boiler MACT could interfere with regulatory reform initiatives and policies.
- NAM Recommendation: Within the next six months, EPA should propose revisions to the Boiler MACT emission limits that are cost-effective and meet the court obligations.

F. **Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Tier 4.** In June 2004, the EPA published its final rule on emission standards for nonroad diesel engines, with the goal of reducing emissions from these sources by more than 90 percent. In June 2013, the EPA issued a direct final rule (78 Fed. Reg. 36370) to assist in the transitioning to Tier 4 standards, but withdrew provisions of the rule due to adverse public comment. The updated final rule (79 Fed. Reg. 7077) was published in February 2014. The rule's aggressive compliance timelines have been very difficult to meet, and are causing manufacturers to divert much-needed research and development (R&D) resources toward developing compliance technologies to meet the new Tier 4 standard. In industries such as farm and construction equipment, where manufacturers must continually develop new products for ever-changing customer needs, any decrease in R&D spending is potentially very damaging. Complicating this situation is the U.S. requirement to recertify engines and vehicles each and every year, even if there is no change to the engine nor change in the standards. This is called Model Year certification. Almost every other major market in the world (EU, China, Brazil, India) requires certification once to the standard, known as Type Approval.

- EO 13777 Justification: Tier 4 is inhibiting job creation and imposing costs that exceed benefits for some manufacturers.
- NAM Recommendation: EPA should explore improvements to the Tier 4 rule and work with manufacturers to identify ways to ease the burden of compliance.

G. **National Emissions Standards for Hazardous Air Pollutants.** National standards establishing limits on hazardous air pollutants are important and supported by manufacturers. However, some of the standards, residual risk and technology reviews (RTRs) and other policies adopted in recent years have exceeded congressional authority and implemented requirements that provide unnecessary regulation burdens. For example, the NESHAP 6X regulations requires ongoing, indefinite, quarterly visual emissions monitoring for welding operations and for abrasive blasting operations, even after months or years of "zero visible emissions" have been recorded. For one manufacturer, this means having a dedicated employee climb on the roof of eight different manufacturing plants at the required interval (daily/weekly/monthly/quarterly) to do multiple 15-minute observations on each roof, and perform visual emissions of the on-site sandblasting booth at the required interval, only to document that zero visible emissions occurred at every observed location during every monitoring event. Since 2011, this manufacturer has made over 700 visual observations consuming over 1,000 man-hours to comply with this regulation, despite having not once observed a "visible emission" at any of the plants. Additional concerns have been raised by manufacturers with regards to the EPA's Brick MACT, Reciprocating Internal Combustion Engines (RICE) MACT and Plywood and Composite Wood Product MACT, among other industry-specific MACT regulations.
   - EO 13777 Justification: Various NESHAP regulations are inhibiting job creation, imposing costs that exceed benefits, and rely on data that was not publicly available or is insufficiently transparent.
   - NAM Recommendation: EPA should take immediate action to correct the NESHAP 6X, possibly limiting the number of inspections needed after a site demonstrates a consistent record of zero visible emissions. The other MACT standards will need time to untangle, and the NAM recommends EPA work with the regulated entities subject to each MACT to resolve unnecessary burdens. At a minimum, EPA must base any NESHAP regulations on sound scientific data that clearly demonstrate a need to protect public health and consideration of welfare, energy and economic impacts. The EPA's inability to meet arbitrary deadlines should not trigger automatic regulation.

H. **Co-location.** Manufacturers struggle with the co-location provision for determining major source status for the various source categories identified in the NESHAP program. This imposes a competitive disadvantage for area sources that happen to be located at major sources compared to the competition, which may have located their area sources as stand-alone operations, which would not have to comply with a corresponding major source rule. As currently interpreted, the Agency must expend major source compliance demonstration resources on sources emitting only area source quantities of HAPs. True area source operations do not emit HAPs at higher rates or have higher impacts because they are located at a distinctly different major source. Major source determinations should be based solely on emissions from each source category operation at a facility site, not by location or siting decisions made decades before these regulations were even put into place.

- EO 13777 Justification: This regulation is unnecessary and ineffective; it creates a serious inconsistency and otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: A potential solution is for EPA to require area sources to comply with area source MACT rules, rather than a major source rule. The EPA could also remove the co-location provision altogether.

I. **Testing and Diagnostics Requirements for Heavy-Duty On Road Engines.** EPA and California require manufacturers of engines for heavy duty trucks to equip their engines with complex and costly software and emissions sensor systems, and undergo a variety of emissions testing. There are several requirements that are becoming increasingly costly, while less expensive, more efficient alternatives are available.
   - EO 13777 Justification: The costs of this regulation potentially exceed its benefits.
   - NAM Recommendation: The EPA should initiate a process to streamline these requirements and eliminate those that are duplicative and unnecessary.

4. Water Issues

The Federal Water Pollution Control Act, as amended by the Clean Water Act (CWA), established the objective to restore and maintain the quality of the nation's waters. Through limitations on wastewater discharges, water quality in the U.S. has significantly improved. Manufacturers have made major contributions to this national effort and will continue to support this objective. Both federal and state entities should be encouraged to publicly acknowledge these significant improvements and recognize the need to more carefully consider the cost and benefit of all future efforts to improve water quality.

The principle of cooperative federalism is the foundation on which the CWA is built. Congress purposefully allocated varying levels of regulatory and enforcement responsibility to the states, in recognition of the states' historic role as the established guardians of local lands and waters and the geographic, climatic and habitat differences between states that must be taken into account in environmental regulation. The NAM supports this principle and continued federal-state partnerships as an effective means of implementing the goals of the CWA and opposes attempts to further federalize water quality regulations.

The NAM recommends the EPA take action on the following water regulations:

A. **Definition of "Waters of the United States."** On May 27, 2015, the EPA and Army Corps of Engineers finalized a rule to greatly expand federal jurisdiction under the CWA well beyond traditional navigable waters to cover ephemeral tributaries, flood plains, adjacent features and vaguely-defined "other waters." The rule gives federal agencies direct authority over land-use decisions that Congress had intentionally reserved to the states. Its vague definitions subjects countless ordinary commercial, industrial and even recreational and residential activities to new layers of federal requirements under the CWA. For manufacturers, the uncertainty over whether a pond, ditch or other low-lying area near their property is now subject to federal CWA permitting requirements can introduce new upfront costs, project delays and threats of litigation.

- EO 13777 Justification: This regulation is unnecessary and ineffective; it creates a serious inconsistency and otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: As directed by EO13778, the NAM fully supports a rulemaking to rescind the old rule. Additionally, manufacturers deserve clarity and recommend EPA propose a new rule that clearly limits federal jurisdiction to the text of the statute and Constitution.

B. Best Available Technology (BAT) Economically Achievable. The CWA was designed to be implemented in a manner that protects human health and the environment while avoiding costly treatments and other restrictions on industrial discharges that result in little, if any, additional benefit to the quality of U.S. waters. EPA should clarify that BAT limitations should be required only where there is a significant toxics problem.

- EO 13777 Justification: This program creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: The NAM recommends that the EPA should clearly define "significant toxics problem" as situations where present limitations are not protecting receiving waters and where further abatement of toxics would have a measurable, positive effect on receiving waters. Situations where a pollutant is present in the effluent solely as a result of its presence in intake waters should not be considered a significant toxics problem. Additional requirements of non-conventional pollutants should not be applied unless required to meet water quality standards. EPA should promulgate guidance and rulemaking where appropriate to prevent imposing costs that exceed benefits or require non-responsible parties to shoulder an unfair burden.

C. Selenium Criteria. EPA continues to develop more stringent selenium criteria to use as the basis for state water quality standards and federal effluent limit guidelines. However, there are currently no proven treatment technologies for selenium and the ones that are being proposed are not cost effective.

- EO 13777 Justification: This regulation imposes costs that exceed benefits, and requires technologies too expensive to be effective.
- NAM Recommendation: EPA should not implement more stringent criteria for selenium independent of the development of cost effective and proven technologies. Absent the availability of commercially demonstrated technologies, the criteria are ineffective and impose costs that exceed benefits.

D. Stormwater Management. Most manufacturers operate under multi-sector general permits and must implement best management practices (BMPs) to meet stormwater benchmark concentration levels. If a benchmark level is exceeded, facilities must review their BMPs and detemine if additional BMPs must be implemented of if other corrective measures are needed. However, many of the benchmark concentration levels have been set so low that it may not be possible for all operations to meet the benchmarks. In fact, many are so low that nearly all residential and commercial stormwater discharges would exceed them. As a result, many manufacturers could face unnecessary enforcement issues, even though their stormwater discharges are effectively controlled with BMPs.

- EO 13777 Justification: This regulation imposes costs that exceed benefits, creates serious inconsistencies, and is not effective.

- NAM Recommendation: The NAM recommends EPA promulgate guidance or rules as appropriate that adopt a flexible approach to establishing and enforcing permit levels based upon technology and process-specific limitations instead of abstract benchmarks. This will ensure the costs do not exceed benefits and that unnecessary burdens are not placed on manufacturers for no appreciable environmental benefit.

E. **Spill Prevention, Control and Countermeasure Plans (SPCC)** When lined surface impoundments are used to hold treated produced water until the water is reused for a company's subsequent operations in the immediate area, there is confusion as to whether the impoundments should be included in SPCC plans. In 2008, the Bush administration exempted produced water containers from SPCC plans. However in 2009, the Obama EPA indicated that even 1 mg/L can be harmful. EPA's guidance (in form of preamble language and guidance documents) suggests that treated produced water must be included in SPCC plans and that the capacity of the produced water container is to be treated as oil for purposes of the regulation unless there is "no oil." EPA has suggested that there is no amount of treatment that would satisfy EPA that a produced water container is not oil. This uncertainty and lack of clear guidance creates an ineffective control mechanism and often imposes costs that exceed benefits.
   - EO 13777 Justification: This regulation imposes costs that exceed benefits and is ineffective.
   - NAM Recommendation: The NAM recommends EPA establish an analytical method and detection limit so that if the concentration of oil is below, then the impoundment would not be subject to the SPCC plan requirements

F. **Ballast Water.** The current set of state rules for ballast water creates a patchwork of standards that increase the cost and complexity of complying with the rules. Different jurisdictions have different ballast water treatment standards and different recordkeeping and reporting requirements. This system lacks transparency, consistency, and predictability in the formation and enforcement of scientific standards, thereby creating confusion, imposing additional costs and inhibiting job growth.
   - EO 13777 Justification: The patchwork of state standards creates a serious inconsistency that could interfere with regulatory reform initiatives and policies.
   - NAM Recommendation: The NAM recommends that EPA adopt a nationwide standard for ballast water discharges.

G. **Water Quality Criteria.** Manufacturers support the development of water quality criteria based on a probabilistic risk assessment approach. These criteria serve as recommendations that state and tribal governments may use directly or as guidance in developing their own water quality criteria. The EPA should comply with its existing regulations that provide states with the flexibility to depart from national criteria as long as the state criteria are scientifically sound or based on site-specific conditions, and with existing guidance that provides states discretion to establish acceptable risk levels. Its development of water quality criteria has not always been consistent.
   - EO 13777 Justification: Water quality criteria regulations have been inconsistent.
   - NAM Recommendation: EPA should promulgate guidance or rulemaking as appropriate to ensure the adoption of a risk-based approach to the regulation of effluent discharges. As part of the development of Total Maximum Daily Loads

(TMDLs), EPA should provide guidance that states should assess the technical feasibility and economic practicability of attaining the designated water quality standard based on the social and economic impacts of the costs of compliance. This includes use attainability analyses and the possible modification of a water's designated uses. TMDL allocations should be developed for individual pollutants only where appropriate. EPA should encourage the use of alternative approaches to achieve compliance with applicable water quality standards and reinforce that states can continue to make progress towards nutrient related water quality improvements in a way that does not have to include numeric nutrient criteria.

H. **National Pollutant Discharge Elimination System (NPDES) Permits.** Pipelines require a NPDES permit to discharge hydrostatic test water to waters of the U.S. after using the water to test even new pipelines. Some EPA regions have been slow to issue general NPDES permits that could authorize the discharge of hydrostatic test water following submittal of a Notice of Intent to be covered by the terms of the general NPDES permit. Yet, other EPA regions have issued such general permits. As a result, companies must undertake the time and expense of preparing an application for each location where a discharge is expected to occur and wait until EPA reviews and issues individual NPDES permits. If the location of the discharge moves beyond a short distance, the company has to file an application to amend and wait for the amended NPDES permit to be issued. Issuance typically takes a few to several months.
   - EO 13777 Justification: NPDES permits have been inconsistent and ineffective.
   - NAM Recommendation: The EPA should streamline this process by ensure all regions utilize general permits to the maximum extent practicable.

I. **Safe Drinking Water Act Study.** EPA, along with several other federal agencies and numerous state agencies, is evaluating the potential for linkages between produced water disposal and seismicity. This issue continues to draw attention and may lead to additional regulatory initiatives under the SDWA. Most action, currently, is taking place at the state regulatory level.
   - EO 13777 Justification: This study could create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.
   - NAM Recommendation: The EPA should work more closely with states that exercise primacy over related SDWA programs and find ways to support state efforts.

5. Waste Issues

Waste products are generated by all segments of society, including industrial facilities, commercial establishments, residences and federal, state and local government agencies. To help ensure environmental protection and public health, the NAM supports a comprehensive, efficient and effective hazardous and non-hazardous waste management regulatory system that includes an accessible and affordable infrastructure. These systems should be implemented in ways that ensure effective environmental protection, but minimize complexity and administrative burden. Manufacturers support minimizing natural resource and environmental impacts by increasing efficiencies and conservation to optimize raw material input and to reduce waste output.

The EPA has developed a comprehensive regulatory program for the management of hazardous and non-hazardous wastes pursuant to the Resource Conservation and Recovery Act (RCRA). In addition, the NAM supports significant voluntary industrial waste minimization initiatives that minimize volume, reduce toxicity and encourage recycle, reuse and reclaim processes to minimize waste. It is imperative that the distinction between hazardous and non-hazardous waste, as well as the distinction between waste and non-waste, is clarified. The NAM recommends that EPA tailor regulations to address the different types of waste appropriately. Responsible management of hazardous and non-hazardous waste demands that government, the public and industry cooperate in assessing and managing risk and ensuring regulations support various waste activities accordingly.

The NAM recognizes the primary rights and responsibilities of states regarding land use decisions. The EPA should encourage and support states in their efforts to locate private and public waste management facilities properly within their own jurisdictions. Economic development is dependent on adequate and properly safeguarded waste management facilities, including incineration, landfills and other treatment, storage, disposal facilities. Private ownership and operation of such facilities is desirable. State responsibility for providing adequate waste disposal and treatment capacity is also recognized by federal law. Sanctions requiring states to meet this duty to public health and the environment are appropriate and should be vigorously enforced.

The NAM recommends the EPA take action on the following waste regulations:

A. <u>Proposed CERCLA 108(b) Rule</u>. This proposed rule, written under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), could require billions of dollars of additional financial assurances for miners of things like gold, silver, iron and copper—critical materials for countless manufactured products. This would represent billions of dollars that cannot be used for research and development, investing in new processes and projects, or used to spur economic growth and create new jobs. According to the EPA, this will be just the first of several policies potentially tying up huge amounts of capital for chemical manufacturers, the petroleum industry and electric utilities. EPA's obligation under the consent decree spurring the 108(b) rule is to make a final determination, not to issue any specific form of final rule. It is under no obligation to finalize the rule as proposed, and a decision to finalize a new rule would be a logical outgrowth of the proposal.

- <u>EO 13777 Justification</u>: the regulation imposes costs that exceed benefits.
- <u>NAM Recommendation</u>: Before EPA moves forward with any 108(b) rules, the agency should undertake a rulemaking to establish a framework for identifying and classifying industry sectors based upon prospective risk-assessments based on current best practices. Financial assurance under section 108(b) should only be required where the degree and duration of the risk associated with hazardous substances at particular types of facilities justifies it, and should not be required where other financial assurance mechanisms are already in place.

B. <u>RCRA.</u> Where a waste is inappropriately classified as hazardous, regulations unnecessarily discourage reuse, recycling and reclamation, and create other barriers for manufacturers. Manufacturers have found that some RCRA regulations implement duplicative requirements.

- <u>EO 13777 Justification</u>: Some RCRA regulations are ineffective.

- NAM Recommendation: EPA should consider reviewing several of its RCRA Subtitle C determinations to ensure that the classification is appropriate for that category of waste. Additionally, the NAM recommends EPA review existing and proposed policies that may unnecessarily implement duplicative requirements for products and wastes that are already being regulated by other agencies or statutes—there is currently a pending rule for the pharmaceuticals industry that should be reviewed, for example.

C. **CERCLA/Superfund.** NAM members have a substantial interest and concern regarding the requirements and operations of the Superfund program. While the NAM supports Superfund's goal of protecting human health and the environment, the Superfund program can at times require an extraordinary investment of resources to obtain limited environmental benefits. Private sector spending on superfund also uses funds that could be invested in people, plants and equipment. The current regulatory requirements under CERCLA do not allow contaminated properties to be resolved in an efficient manner. Despite completing the remediation activities, the property owners are often unable to get clearance from the regulatory agencies in a timely manner to sell or develop their properties. While legislative reform is needed, EPA can make meaningful progress under existing law to speed safe, effective remediation.
   - EO 13777 Justification: Some CERCLA policies are outdated and in need of reform.
   - NAM Recommendation: The EPA should interpret regulatory requirements under the Superfund program in a manner that would speed the remediation of these sites in a timely manner while reducing costs and ensuring the necessary environmental protections. The Administrator should move final remediation decisions from EPA regional offices to EPA headquarters to promote consistency as well as consistently apply cleanup criteria. Remedy selection should be based on sound science and acceptable risk based assessments. EPA should eliminate the current practice of re-allocating cleanup costs to the lone surviving company (or companies) when one or more responsible party files for bankruptcy or refuses to participate after cost allocation decisions have been made commensurate with each party's level of contribution to the site's contamination

6. Chemical Issues

Manufacturers are committed to manufacturing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment. Since the Toxic Substances Control Act (TSCA) was first enacted in 1976, manufacturers have revolutionized the way we make and use chemicals, yet the failed to keep up with those changes. State laws enacted to fill the void resulted in a patchwork of confusing, often contradictory, regulations for manufacturers and consumers to navigate.

After years of uncertainty and nearly a decade of draw-out work and debate in Congress, the passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) marked a much-needed overhaul of our nation's chemical laws. Manufacturers have long advocated for these risk-based reforms. Chemicals are the building blocks for lifesaving products, the newest technologies and everyday products that make life better. By delivering clear, modernized rules, the LSCA reforms will make it easier for manufacturers to ensure the

safety of our products and deliver quality goods to our customers. EPA must rely on the best available scientific information regarding hazard and exposure, employ consistent and objective methods and models, utilize transparent procedures for evaluating data quality and be uninfluenced by policy. If done right, the regulations on chemicals will be clearer and more straightforward, meaning time and resources that would have been spent trying to navigate outdated, confusing rules can now be spent on driving innovation.

The regulation of chemicals should be administered in a manner that protects health and the environment while avoiding unnecessary adverse economic impacts. The ability to systematically and effectively identify hazards, assess risks and manage those risks is critical to successful industrial activity. Those processes include the application of scientifically sound hazard identification and prioritization, objective, credible risk assessment, benefit-cost analysis, flexible, efficient and cost-effective risk management, and adequate opportunity for meaningful public participation in the risk assessment process.

The NAM recommends the EPA take action on the following chemical regulations:

A. **Proposed Procedures for Prioritization of Chemicals for Risk Evaluation.** The NAM recommends the EPA move forward with a final rule, but recommends modifications.
   - EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
   - NAM Recommendation: The EPA should ensure that prioritization under TSCA is based on a clearly articulated weight of evidence approach that relies on the best available science. Chemicals posing the greatest demonstrated risk should be targeted through predictable prioritization of chemicals active in commerce. Risk to sensitive subpopulations, such as children, should be considered in this process. Tiered and targeted testing should be conducted if necessary information is lacking, and a risk-based process should be used to assess if a chemical is safe for its intended uses. Regulation and prioritization should consider the degree of hazard and reasonable exposure potential associated with intended uses; provide reasonable timeframes for compliance; and ensure transparency, clarity and stakeholder participation. To this end, the agency should provide more clarity to the prioritization process by including definitions of key terms, updating related agency guidance, and ensuring that the rigorous standards required by Section 26 of LCSA are closely followed. This requires a heightened level of transparency to demonstrate compliance with the letter and spirit of the critical reforms. As EPA sorts through chemicals active in commerce, a transparent process that avoids bias, focuses on the substances demonstrating the greatest risk, and seeks to quickly expand the identification of low priority substances will ensure that the reforms are successful. Such a process should be clearly required under the final rule

B. **Proposed Procedures for Chemical Risk Evaluation.** In finalizing this rule, the Agency should provide an approach for implementing risk evaluations that goes beyond the existing EPA guidance to explain how the agency would meet the science requirements and implement the new elements outlined in LCSA. As currently written, the proposal falls short of providing meaningful insight into the process that EPA will use in the future.
   - EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.

- NAM Recommendation: The EPA should provide more clarity to the risk assessment process by including definitions of key terms, updating related agency guidance, and ensuring that the rigorous scientific standards required by Section 26 of LSCA are closely followed. This requires a heightened level of transparency to demonstrate compliance with the letter and spirit of the critical reforms. Sufficient time must also be allowed to ensure an opportunity for meaningful stakeholder engagement; a minimum of 60 days must be given for comment on scoping and a minimum of 90 days for comment on draft risk evaluations. As EPA assesses priority substances active in commerce, a transparent process that avoids bias and focuses on conditions of use demonstrating the greatest risk will help EPA better steward limited resources and maximize efficiency. Risk evaluations must consider controls already in place to control or mitigate risks related to environmental and health exposures including regulations under other statutes, regulations, and industry standards. Section 2608 of LCSA requires that EPA consider whether risks can be prevented or reduced under other laws such as the Occupational Safety & Health Act, the Clean Air Act, the Clear Water Act, and the Consumer Product Safety Improvement Act before taking risk management action under LCSA. When risk-management actions are warranted, EPA must only "impose the least burdens of duplicative requirements." The EPA should also require measures in the final rule to avoid unnecessary efforts to evaluate risks of exposures that are already controlled under other statutes or regulations.

C. **Proposed TSCA Inventory Notification (Active-Inactive) Requirements.** In the proposal, EPA lays out two purposes: First, to refresh the TSCA Inventory to distinguish between active or inactive chemicals in commerce. This will enable EPA to focus on the chemicals that are active in commerce and can then be prioritized for risk evaluation. This reset is a critical first step, as it will help EPA better steward limited resources and maximize efficiency. Second, EPA sets out to ensure that confidential business information (CBI) claims for chemicals on the confidential portion of the Inventory are current. However, substantiation of CBI claims should remain in a separate process, as EPA proposes.

- EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
- NAM Recommendation: In finalizing the rule, EPA should not require reporting of information not needed to achieve the overall purpose of the inventory reset, which is to identify substances as either active or inactive. Requiring the regulated community to report unnecessary information is burdensome, and in some cases, redundant. Consequently, substances whose identities were claimed as confidential on the 2016 chemical data reporting (CDR) rule should be included on the interim active confidential inventory by EPA without an additional reporting burden. The NAM recommends that the language clarifying "activities for which notification is not required" should include all substances that are exempt from and all substances not currently subject to pre-manufacture notification requirements. Further, the Agency must allow for a correction process for manufacturers and importers up until the time that the active inventory is finalized.

D. **Chemical Data Reporting Rule.** The NAM supports chemical reporting requirements that reduce complexity and ensure that reporting occurs at the point of raw materials import in order to coordinate efforts and make global supply chains

more transparent. Under current EPA interpretation of TSCA Chemical Data Reporting (CDR) rule, most inorganic manufacturing byproducts sent for recycling are treated as new chemicals and therefore are subject to extensive reporting requirements. Inorganic byproducts present a relatively low risk of environmental harm; reporting duplicates other EPA reporting requirements under RCRA and the Toxic Release Inventory (TRI) and discourages recycling. Under LCSA passed last year, EPA is required to conduct a negotiated rulemaking and propose a regulation to reduce the reporting burden for byproducts sent for recycling.

- EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
- NAM Recommendation: The NAM recommends the EPA provide ample time and resources to encourage robust stakeholder engagement in the negotiation and subsequent speedy proposal of a rule.

E. **Worker Protection Rule.** On November 2, 2015, EPA revised the Worker Protection Rule (WPS) to implement stronger protections for agricultural workers, handlers and their families. The previous WPS regulations were sufficient and the new rules only add extra burdens and costs to businesses. For example, the new WPS rules require that there be a 100-ft zone around pesticide application equipment in which no one but the applicator can be present. This is a *de facto* "buffer zone" which directly conflicts with existing pesticide labels, in which there are already these protective zones, newly implemented, and are workable for crop growers. When fully implemented, the new WPS could reduce a grower's ability to effectively treat all of the grower's crop production land; i.e., in some areas, a significant portion of the available land will not be able to receive pest control practices and these areas will be less productive and less able to compete with foreign crop producers who are not held the old WPS, let alone the new WPS rules.

- EO 13777 Justification: The 2015 WPS is partially ineffective and must be corrected.
- NAM Recommendation: The NAM recommends EPA eliminate the duplicative and confusing WPS and a return to the previous WPS that were in effect prior to November 2015.

F. **Perchlorate.** For several years, numerous stakeholders representing manufacturers, water interests, agriculture interests, and members of Congress have engaged in good faith efforts through a variety of public and regulatory venues to work with EPA on this matter, and ensure regulations are based on the best available science. Regrettably, despite these repeated efforts, the EPA's actions have continued to heighten rather than alleviate concerns about the agency's scientific approach to perchlorate. In particular, the agency is relying on outdated occurrence data; its models were highly criticized by peer reviewers, and the decision-making process has lacked transparency throughout.

- EO 13777 Justification: Among other things, the perchlorate regulatory structure relies on data, information and methods that are not publicly available and are insufficiently transparent to meet the standard of reproducibility.
- NAM Recommendation: The EPA must do a better job of subjecting the scientific and occurrence data underlying its perchlorate decisions to peer review, and must be more transparent, adhere to reasonable timelines, and be based on the best available science.

G. **Lead Repair, Renovation and Painting Rule.** EPA issued new requirements on firms performing renovation, repair and painting projects in homes built before 1978. In doing so, the EPA ignored many of industry's concerns and rushed to finalize a rule before a reliable lead testing apparatus was available, among other problems. NAM members are complying with this rule but continue to struggle with it.
   - EO 13777 Justification: This regulation created inconsistencies that have not entirely been corrected.
   - NAM Recommendation: Manufacturers strongly support lead paint protections and recommend only that the EPA perform a retrospective review of the rule and, if justified, make changes to make the rule more effective and ensure cost imposed do not exceed benefits.

H. **Pre-Manufacturing Notifications (PMNs).** EPA policy shifted without notice, requiring PMNs for any new chemical substance that is persistent, bioaccumulative and toxic (PBT). Many manufacturers may have a substance used as a precursor to a product that is used in very small volume and reacted to become the new product, which is not a PBT. However, EPA is now requiring the filing of a PMN. This is a change in policy without any formal public hearing and goes far above and beyond what other countries require for low volume raw materials. Some manufacturers could consider moving to Canada or Europe, where limited notifications are required for low volumes (<1000 kg), particularly raw materials.
   - EO 13777 Justification: EPA's PMN policy creates serious inconsistencies and otherwise interferes with regulatory reform initiatives and policies.
   - NAM Recommendation: The NAM recommends EPA reverse this change in policy until it undertakes a transparent rulemaking process with adequate stakeholder engagement.

I. **Vapor Intrusion Guidance.** EPA Region 9 issued guidance on Vapor Intrusion as applied to federal Superfund sites in the states and territories covered by that regional office. Although the Guidance was not promulgated as a regulation through notice-and-comment procedures, it is being implemented similarly to a regulation. The NAM's California affiliate, the California Manufacturers & Technology Association, estimate the costs of remediation at commercial buildings just at Silicon Valley Superfund sites are expected to increase by $48 million and the costs of remediation at residential buildings are expected to increase by over $100 million. CMTA further estimates that if the Vapor Intrusion Guidance were implemented nationwide, the aggregate additional costs could be upwards of 100 times greater than the costs at the nine Silicon Valley Superfund sites. In addition, the key study used by EPA Region 9 to justify the Vapor Intrusion Guidance may not be reproducible.
   - EO 13777 Justification: The Vapor Intrusion Guidance imposes costs significantly in excess of benefits and is based on data that is not reproducible.
   - NAM Recommendation: EPA should withdraw the Region 9 Vapor Intrusion Guidance (and that of any other regions) and should consider instead referring the matter to the National Academy of Sciences for further guidance.

7. General Regulatory Issues

In addition to the following general issues, the NAM recommends revising the terms and conditions in the U.S. EPA's standard Administrative Orders which would provide for fair dispute

resolution opportunities, more flexible and efficient settlement and remediation options, and improved, science based methodologies for determining environmental harm and associated penalties.

A. **Consent Decree Termination.** The EPA has not prioritized the termination of consent decrees by processing the termination paperwork. EPA cannot demonstrate an effective enforcement division without showing that consent decrees terminate once companies show substantial compliance.
   - EO 13777 Justification: Current practice is ineffective.
   - NAM Recommendation: EPA should prioritize the process for consent decree terminations so companies do not have to conduct unnecessary monitoring and reporting requirements.

B. **The Process of Evaluating Science.** A common complaint among manufacturers in recent years has been a process at the EPA for evaluating science that is not transparent and minimizes third-party stakeholder input. We routinely hear complaints of this nature across the spectrum of EPA programs, from air and water to chemicals and pesticides.
   - EO 13777 Justification: EPA's process often relies on data, information and methods that are not publicly available and are insufficiently transparent to meet the standard of reproducibility.
   - NAM Recommendation: The NAM recommends the EPA take a hard, honest look at how the agency evaluates science and propose reforms to improve transparency and better involve the public.

Thank you for the opportunity to provide these comments in support of the EPA's Regulatory Reform Agenda. Please do not hesitate to contact me if the NAM can be of further assistance.

Sincerely,

Ross Eisenberg
Vice President
Energy and Resources Policy

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Fine, Steven[fine.steven@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Coleman, Sam[Coleman.Sam@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]
From: Minoli, Kevin
Sent: Thur 5/18/2017 10:52:36 PM
Subject: OGC's Weekly Report
OGC Weekly Report 5.18.17.docx

Here is our report. Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

To: Beck, Nancy[Beck.Nancy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]; Ford, Hayley[ford.hayley@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Graham, Amy[graham.amy@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Henderson, Austin[henderson.austin@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Hupp, Sydney[hupp.sydney@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Kelly, Albert[kelly.albert@epa.gov]; Konkus, John[konkus.john@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; McMurray, Forrest[mcmurray.forrest@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Palich, Christian[palich.christian@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Wilcox, Jahan[wilcox.jahan@epa.gov]
From: Hupp, Sydney
Sent: Wed 5/17/2017 1:07:02 PM
Subject: EPA - Cabinet Affairs 30 Day Report 5.16.17
EPA Cabinet 30 Day Report 5.16.17.docx

Sydney Hupp

Executive Scheduler

Office of the Administrator

Personal Phone / Ex. 6

To: Beck, Nancy[Beck.Nancy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Kelly, Albert[kelly.albert@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Chmielewski, Kevin[chmielewski.kevin@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Graham, Amy[graham.amy@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Konkus, John[konkus.john@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; McMurray, Forrest[mcmurray.forrest@epa.gov]; Palich, Christian[palich.christian@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Wilcox, Jahan[wilcox.jahan@epa.gov]; Hupp, Sydney[hupp.sydney@epa.gov]
Cc: Ford, Hayley[ford.hayley@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Munoz, Charles
Sent: Mon 5/15/2017 8:05:43 PM
Subject: 30-Day Update Reminder
EPA Cabinet 30 Day Report 5.9.17 FINAL.docx

All,

This is your friendly reminder to please send Hayley and I your updated 30-day reports for Cabinet Affairs if you haven't done so already. I've attached the previous report to help with any questions.

Charles Munoz

White House Liaison

Environmental Protection Agency

Personal Phone / Ex. 6

To: Brown, Byron[brown.byron@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Dravis, Samantha
Sent: Mon 5/15/2017 12:29:10 PM
Subject: FW: tracker
Issues Tracker - May 8 Update.xlsx
ATT00001.htm

If you have updates to this spreadsheet, please send them to me via email in a bulleted list (not in the excel document) in the next 30 minutes. Thanks.

To: Brown, Byron[brown.byron@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Dravis, Samantha
Sent: Thur 5/11/2017 8:52:19 PM
Cover Letter with Dravis Edits v3 5pm.docx
EO 13783 Plan as of May 11 5pm.docx

These are ready to be sent to OMB and uploaded through OEX. Can you please review and make any last minute edits

?

From: Nickerson, William
Sent: Thursday, May 11, 2017 4:51 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: latest versions of EO 13783 docs

Here they are. Same docs, with headers removed.

From: Dravis, Samantha
Sent: Thursday, May 11, 2017 4:35 PM
To: Nickerson, William <Nickerson.William@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: latest versions of EO 13783 docs

Great. Can you remove the draft watermarks and get these ready/final?

From: Nickerson, William
Sent: Thursday, May 11, 2017 3:57 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: latest versions of EO 13783 docs

These incorporate revisions from Samantha and Brittany since 2pm.

From: Nickerson, William
Sent: Thursday, May 11, 2017 1:26 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: revised EO 13783 docs

Same as before, but this cover letter includes a few additional edits from Samantha.

From: Nickerson, William
Sent: Thursday, May 11, 2017 1:17 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: reading through the report now..

New version of the plan attached, in redline and clean copy, that condenses the introductory material down to less than 1 page.

Latest cover letter also attached with all of Samantha's edits included, just so all the documents are in one e-mail.

From: Dravis, Samantha
Sent: Thursday, May 11, 2017 12:47 PM

To: Nickerson, William <Nickerson.William@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: reading through the report now..

Please collapse the introduction and the Overview of EO 13783 into one section, and make it more concise. The stuff at the very beginning, is that just our editorializing, or is that a restatement of the EO? It seems like we don't need to mention that the Trump Administration is focused on energy policy that lowers costs.. since we are sending this right to them. I think we just give a brief intro and overview and launch right in.

From: Kime, Robin
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Daily Hot Topics - Material Attached
Start Date/Time: Mon 5/8/2017 9:00:00 PM
End Date/Time: Mon 5/8/2017 9:30:00 PM
Daily Hot Topics 05-08-2017.docx

To: Lyons, Troy[lyons.troy@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]; Ford, Hayley[ford.hayley@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Graham, Amy[graham.amy@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Konkus, John[konkus.john@epa.gov]; Hupp, Sydney[hupp.sydney@epa.gov]; Wilcox, Jahan[wilcox.jahan@epa.gov]
From: Bennett, Tate
Sent: Mon 5/1/2017 9:16:21 PM
Subject: RE: U.S. Congress negotiators set spending plan to avert shutdown, bolster defense | Article [AMP] | Reuters

Just wanted to flag also r.e. budget:

The legislation rejects the previous Administration's proposed increase in staffing, holding the EPA to the current capacity of 15,000 positions, the lowest since 1989. It supports recent Executive Orders to encourage economic growth by providing flexibility for the Administration to review and rewrite the "Waters of the United States" rule, the "Clean Power Plan," and other environmental regulations.

-----Original Message-----
From: Lyons, Troy
Sent: Monday, May 1, 2017 7:31 AM
To: Bennett, Tate <Bennett.Tate@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Perrotta, Pasquale <Perrotta.Pasquale@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>; Woodward, Cheryl <Woodward.Cheryl@epa.gov>; Konkus, John <konkus.john@epa.gov>; Hupp, Sydney <hupp.sydney@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: U.S. Congress negotiators set spending plan to avert shutdown, bolster defense | Article [AMP] | Reuters

Notable EPA Items

- funds the EPA at $8.06 billion

-a reduction of $81.4 million below the fiscal year 2016 enacted level

-$209 million below President Obama's budget request.

- EPA's research and regulatory programs are reduced by $52 million below the current level and over $300 million below the previous administration's request.

-Superfund: provides an additional $7.5 million to accelerate the cleanup of Superfund sites.

-Caps agency staffing at 15,000

-Note: includes a "Buy American" provision for drinking water infrastructure

-----Original Message-----

From: Bennett, Tate

Sent: Monday, May 1, 2017 6:00 AM

To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Perrotta, Pasquale <Perrotta.Pasquale@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>; Woodward, Cheryl <Woodward.Cheryl@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Konkus, John

<konkus.john@epa.gov>; Hupp, Sydney <hupp.sydney@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>

Subject: U.S. Congress negotiators set spending plan to avert shutdown, bolster defense | Article [AMP] | Reuters

Funds gov until Oct. 1.

https://www.google.com/amp/mobile.reuters.com/article/amp/idUSKBN17X0YF

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Graham, Amy[graham.amy@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Bowman, Liz
Sent: Fri 4/21/2017 9:55:50 PM
Subject: 100 Days EPA Accomplishments
WSJ2.png
Times.png
USAtoday.png
WSJ1.png
PA Coal Mine.jpg
100 Days Template DRAFT.DOCX
2017-04-21 EPA in Action-DRAFT 5pm for WH.docx

Attached, for your review, please find the following, for the WH to support the 100 days:

•□□□□□□□□ The 100 days template provided by the WH, with topline messages, and then top accomplishments and key numbers of jobs and economic growth, please note, these are prioritized based on #s, per the WH request

•□□□□□□□□ The full list of accomplishments and supporting statements (the document we have been working off of)

•□□□□□□□□ A few examples of national front pages of newspapers (per WH request)

•□□□□□□□□ Photo for WH coverage

Let us know what else you need! Thank you for everyone's help!

To: Bennett, Tate[Bennett.Tate@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Greenwalt, Sarah
Sent: Fri 4/21/2017 10:37:31 AM
Subject: Re: Senate EPW WOTUS Hearing Next Week

Just FYI we know one of the witnesses is Misha Tseytlin

Sent from my iPhone

On Apr 21, 2017, at 6:34 AM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

Deliberative Process / Ex. 5

On Apr 21, 2017, at 6:21 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Have they reached out to us?

Ryan Jackson
Chief of Staff
U.S. EPA
Personal Phone / Ex. 6

On Apr 21, 2017, at 6:21 AM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

Can we/ do we need to do anything?

Wednesday April 26, 201710:00 AMEST

"A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule." Witnesses have yet to be announced for the April 26session.

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Nishida, Jane[Nishida.Jane@epa.gov]
Cc: Burden, Susan[Burden.Susan@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Hope, Brian[Hope.Brian@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]
From: Fonseca, Silvina
Sent: Thur 4/20/2017 8:54:26 PM
Subject: Signed - Initiation of consultation and coordination with federally recognized Indian tribes on "waters of the United States"
Tribal Consultation and Coordination Letter on WOTUS 4-20-2017.pdf

Good afternoon,

Today the Administrator signed a letter that formally initiates consultation and coordination with federally recognized Indian tribes on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." The anticipated timeline for the consultation and coordination period is expected to extend from April 20, 2017, to June 20, 2017. Additionally, the letter includes a consultation and coordination plan with a timeline.

A copy is attached. Please let me know if you have questions or concerns.

Silvina Fonseca

Special Assistant (OLEM, OARM, OHS, OSBP and OCR)

Office of the Administrator

U.S. Environmental Protection Agency

Desk: 202.564.1955

Cell: 202.306.6844

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 20, 2017

THE ADMINISTRATOR

Dear Tribal Leader:

The U.S. Environmental Protection Agency is initiating consultation and coordination with federally recognized Indian tribes on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). The EPA has invited the Department of Army to participate in this consultation and coordination.

This action follows the February 28, 2017, Presidential Executive Order 13778 on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of the Congress and the states under the Constitution. It also directs the agencies to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. Further, the EO directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the Clean Water Rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the EO. Justice Scalia's *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

With this letter, the EPA is formally initiating consultation on the revised definition of "waters of the U.S." with federally recognized Indian tribes. This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). The EPA invites you and your designated consultation representative(s) to participate. The EPA's anticipated timeline for the consultation and coordination period is expected to extend from April 20, 2017, to June 20, 2017. In addition, the coordination may extend through the end of the public comment period on the second rulemaking.

Internet Address (URL) ● http://www.epa.gov
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Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process the EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. *This information is also available on the EPA's Tribal Portal.*

The official EPA contact person for this consultation and coordination process is Karen Gude, Office of Water Tribal Program Coordinator, at (202) 564-0831 or gude.karen@epa.gov. Please do not hesitate to contact Karen should you have any questions or if you would like to request alternate arrangements to the process outlined in the consultation plan.

Whether or not you participate in this consultation process, you will still have the opportunity to provide input on any regulatory action during the public comment period. The proposed rule will be published in the *Federal Register* and accessible at https://www.regulations.gov. I look forward to working with you on this important matter.

Respectfully yours,

E. Scott Pruitt

Enclosure

cc: Tribal Environmental Directors
Regional Indian Coordinators
Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works

Consultation Plan

Background information on this initiative

From the 1970s through the 1990s, the majority of federal courts as well as the EPA and the Department of Army (the agencies) consistently interpreted a broad scope of Clean Water Act jurisdiction as necessary to and consistent with the Act's goals of protecting water quality. Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The Justices in the *Rapanos v. United States*, 547 U.S. 715 (2006) decision were split on how this was to be accomplished. The agencies have been working since the 2006 Supreme Court decision to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act. The 2015 Clean Water Rule, and the proposed new rulemaking effort, reflect the agencies' efforts to provide that needed clarification and predictability.

The February 28, 2017, executive order says that the EPA and the Army Corps "shall consider interpreting the term "navigable waters" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*. Justice Scalia's opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

Since the EO was issued, the agencies have taken two actions. First, we published a *Federal Register* notice on March 6, 2017, called "Intention to Review and Rescind or Revise the Clean Water Rule." The notice announces the EPA and Army's intention to review and rescind or revise the 2015 Clean Water Rule, consistent with Justice Scalia's opinion. Second, at the EPA's request, on March 6, 2017, the Department of Justice advised the Sixth Circuit Court of Appeals that the agencies intend to consider rescinding or revising the Clean Water Rule. The notice is called for by the EO and is appropriate because of the ongoing Clean Water Rule-related litigation currently before that court. These items, as well as a link to the executive order, are on the EPA's Clean Water Rule website at www.epa.gov/cleanwaterrule.

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit stay of the 2015 rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a rulemaking to revise the definition of "waters of the U.S." consistent with direction in the February 28, 2017, EO to interpret the term "navigable waters" in a manner consistent with the opinion of Justice Scalia in *Rapanos*.

The definition of "waters of the U.S." affects the implementation of Clean Water Act programs on tribal lands and lands upstream of tribal waters, including section 401 tribal and state certification requirements, under which tribes can request accommodation for environmental and cultural values within a federal permit; section 402 National Pollutant Discharge Elimination System permits, which regulate discharges of pollutants that may directly or indirectly reach jurisdictional waters; section 404 permits, which regulate the discharge of dredged or fill material; section 303, which calls for water quality standards; and section 311, which requires oil spill response and prevention plans.

The Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule can be found at www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic.

The Federal Register Notice of Intention to Review and Rescind or Revise the Clean Water Rule can be found at www.federalregister.gov/documents/2017/03/06/2017-04312/intention-to-review-and-rescind-or-revise-the-clean-water-rule.

Potential impacts to tribes

The EPA understands that decisions concerning whether a water body is subject to the Clean Water Act have consequences for tribal, state and local governments and for private parties. The agencies intend the first rulemaking is to preserve the status quo. Under the second proposed rulemaking, the EPA expects that the number of waters protected under the Clean Water Act will decrease compared both to current practice and the scope of the 2015 Clean Water Rule. As a result, businesses and governments that, for example, build homes and roads may face some decreased costs of the permitting process from offsetting the effects to aquatic resources from development. Those tribes that have 401 certification authorities may find that the number of permits requiring 401 certification decreases.

The Clean Water Act is one of the nation's most effective environmental laws, calling for the federal government, tribes and states to work together to achieve the act's goals. While tribes may request approval from the EPA to administer their own Clean Water Act section 402 and/or Clean Water Act section 404 permit program, to date no tribes have requested approval of a tribal 402 or 404 program. As a result, the EPA issues 402 permits and the Corps issues 404 permits in Indian country, and thus the burden for processing permit applications and conducting associated analyses will generally fall on the agencies.

Opportunities for tribes to participate

The tribal consultation process table below lays out the process and timeline for government-to-government consultation and coordination. The agencies are also looking for opportunities to discuss the rulemaking at in-person meetings.

Tribes may also participate in any public review and comment process. For more information, see the EPA's website at www.epa.gov/cleanwaterrule.

Tribes may access this letter and related consultation information via the EPA's Tribal Consultation Opportunities Tracking System, located at tcots.epa.gov.

The combined goal for all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Tribal Consultation Process and Timeline

April 20, 2017	Initiation of tribal consultation via mail and by electronic announcement	EPA Contact: Karen Gude, (202) 564-0831
April 27, 2017	Tribes-only Information Webinar	Webinar time: 2:00-3:30 Eastern Time To register: https://epawebconferencing.acms.com/wotus2/event/registration.html; Call-in 1-866-299-3188, code 202-566-0657 EPA Contact: Rose Kwok, (202) 566-0657
May 18, 2017	Tribes-only Information Webinar	Webinar time: 1:30-3:30 Eastern Time To register: http://epawebconferencing.acms.com/cwa_wotus/event/registration.html ; Call-in 1-866-299-3188, code 202-566-0657 EPA Contact: Rose Kwok, (202) 566-0657
Public comment period	Tribes will be welcome to make additional comments and raise additional questions during the public comment period following rule proposal.	Once the rule has been proposed, EPA's website will contain information on the public comment process.
Additional meetings or webinars may be scheduled.		

From: Greenwalt, Sarah
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort
Importance: Normal
Subject: Fwd: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1- Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Tue 4/18/2017 1:00:00 PM
End Date/Time: Tue 4/18/2017 1:45:00 PM
mime-attachment.ics
ATT00001.htm
OW Meeting Request Form_econ.docx
ATT00002.htm
Proposed Framework for Economic Analysis for New Two-Step WOTUS.clean.docx
ATT00003.htm
Proposed Framework for Economic Analysis one-pager.clean.docx
ATT00004.htm

Are you going to this 9am tomorrow? Could use your input here.

Sent from my iPhone

Begin forwarded message:

From: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Date: April 17, 2017 at 3:05:08 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "McGartland, Al" <McGartland.Al@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "jennifer.a.moyer@usace.army.mil" <jennifer.a.moyer@usace.army.mil>, "stacey.m.jensen@usace.army.mil" <stacey.m.jensen@usace.army.mil>, "David.F.Dale@usace.army.mil" <David.F.Dale@usace.army.mil>, Cindy Barger <cindy.s.barger.civ@mail.mil>, "douglas.w.lamont2.civ@mail.mil" <douglas.w.lamont2.civ@mail.mil>, "craig.r.schmauder.civ@mail.mil" <craig.r.schmauder.civ@mail.mil>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Nandi, Romell" <Nandi.Romell@epa.gov>, "Washington, Valerie" <Washington.Valerie@epa.gov>, "Hewitt, Julie" <Hewitt.Julie@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Penman, Crystal" <Penman.Crystal@epa.gov>
Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in Nonresponsive Conference Code/ Ex. 6

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov]; 2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Knapp, Kristien[Knapp.Kristien@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Reeder, John
Sent: Fri 4/14/2017 6:38:30 PM
Subject: Weekly Reports
Weekly Report 4 14 2017.docx

Here are the Weekly Reports.

Enjoy your weekend everyone.

JReeder

Personal Phone / Ex. 6

To: Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Freire, JP[Freire.JP@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Graham, Amy[graham.amy@epa.gov]
Cc: Gaines, Cynthia[Gaines.Cynthia@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]
From: Hope, Brian
Sent: Wed 4/12/2017 8:11:29 PM
Subject: Daily Reading File - April 12, 2017
Daily Reading File.4.12.17.pdf

To: Brown, Byron[brown.byron@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Greenwalt, Sarah
Sent: Wed 4/12/2017 4:52:19 PM
Subject: RE: 5pm WOTUS meeting

Program.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: Personal Phone / Ex. 6

Greenwalt.Sarah@epa.gov

From: Brown, Byron
Sent: Wednesday, April 12, 2017 12:52 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re: 5pm WOTUS meeting

Is this just with us or program offices? I cannot stay too late today.

Sent from my iPhone

On Apr 12, 2017, at 12:36 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Byron, attached are the materials for today's wotus schedule meeting.

Sam, can we connect before the meeting? There will be some questions that I think would be best answered by OP.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: Personal Phone / Ex. 6

Greenwalt.Sarah@epa.gov

<DRAFT schedule considerations.docx>

<Copy of schedule 4-12.xlsx>

To: Brown, Byron[brown.byron@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Greenwalt, Sarah
Sent: Wed 4/12/2017 4:36:39 PM
Subject: 5pm WOTUS meeting
DRAFT schedule considerations.docx
Copy of schedule 4-12.xlsx

Byron, attached are the materials for today's wotus schedule meeting.

Sam, can we connect before the meeting? There will be some questions that I think would be best answered by OP.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: Personal Phone / Ex. 6

Greenwalt.Sarah@epa.gov

From: Shapiro, Mike
Location: 3233 WJCE
Importance: High
Subject: Canceled: WOTUS Call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Wed 4/12/2017 2:00:00 PM
End Date/Time: Wed 4/12/2017 2:45:00 PM

From: Shapiro, Mike
Location: 3233 WJCE
Importance: Normal
Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Wed 4/12/2017 2:00:00 PM
End Date/Time: Wed 4/12/2017 2:45:00 PM
Agenda -- WOTUS 12 April 2017 v2.docx

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]
From: Greenwalt, Sarah
Sent: Tue 4/11/2017 9:35:21 PM

Hi mike! Can you please make sure Byron gets added to the weekly wotus meeting? Thank you!

Sent from my iPhone

To: Brown, Byron[brown.byron@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]
Cc: 'Beth Botsis'[bbotsis@imcc.isa.us]; 'Ryan Ellis'[rellis@imcc.isa.us]
From: Greg Conrad
Sent: Tue 4/11/2017 5:40:20 PM
Subject: Meeting with IMCC Staff

Byron and Ken:

Following up on our e-mail exchange of a couple weeks ago, I'm wondering whether we might be able to find a time during the first two weeks of May for my staff and I to meet with you at your offices to discuss key concerns for the mining states, particularly the CERCLA 108(b) rule, the WOTUS rule and Good Samaritan protections for coal and hardrock mines. Right now we are pretty open May 1 – 4 and May 8 – 12. Would a day and time some time during those two weeks work for you? We probably need about 45 minutes.

Thanks,

Greg

Gregory E. Conrad

Executive Director

Interstate Mining Compact Commission

445A Carlisle Drive

Herndon, VA 20170

Ph: 703.709.8654

Fax: 703.709.8655

Email: gconrad@imcc.isa.us

Website: www.imcc.isa.us

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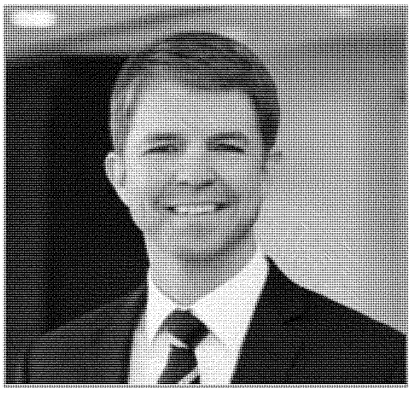
Acting DOJ Enviro Head Says Enforcement Is Still A Priority

By **Juan Carlos Rodriguez**

Law360, Los Angeles (March 31, 2017, 7:25 PM EDT) -- The acting head of the environmental division of the U.S. Department of Justice said Friday that enforcement will continue to be a priority under the Trump administration, but he signaled that there may be some areas in which it's less inclined to act.


Jeffrey Wood

Jeffrey Wood, who began serving as acting assistant attorney general for the DOJ's Environment and Natural Resources Division on Jan. 20, said that, amid concerns voiced by environmental groups and others that the agency will be more lax on enforcing environmental matters than the previous administration, in fact there won't be a drastic change in approach to the issue.

"Enforcement remains a high priority for the administration," Wood said at a meeting of the American Bar Association's Section of Environment, Energy, and Resources in Los Angeles. "We're going to do this through the vigorous enforcement of the laws of the United States enacted by Congress, and we'll do this also through the vigorous defense of the lawful regulations and actions of our client agencies."

But he indicated that there may be some changes at the ENRD under Attorney General Jeff Sessions, especially in relation to interpreting existing environmental statutes like the Clean Water Act, which the Obama administration used to create the Clean Water Rule — something the Environmental Protection Agency under new Administrator Scott Pruitt has already begun rolling back.

"Even amidst some healthy debate about the scope of federal jurisdiction under statutes like the Clean Water Act ... we will support the work of our client agencies as they continue to navigate the jurisdictional question," Wood said.

The "jurisdictional question" he was referring to is exactly which waters of the U.S. fall under the federal government's permitting jurisdiction — the question the Clean Water Rule was designed to clear up.

Wood also said "it's not our duty or our job to use enforcement to regulate in ways that are not clearly authorized by law," an indication that the ENRD may be very deliberate before taking an enforcement action.

He said that on the criminal side, the administration is focused on fraud, particularly in the

renewable fuels space, and pointed to several recent cases involving the sale of fraudulent biofuel credits. Wood also said a focus will be vessel pollution and fraudulent cover-ups akin to the Volkswagen emissions fraud scheme.

Asked whether environmental justice would continue to receive the attention it did under the Obama administration, Wood was circumspect, saying the issue "remains a consideration under existing executive orders that have not been rescinded."

And he hewed to the Trump administration theme of lean federal budget and staffing choices.

"In a time of tight budgets ... we do think we need to make sure we do our mission as efficiently and effectively as possible, keeping in mind that every tax dollar we're given must be justified and put to good use for the American people," he said.

--Editing by Sara Ziegler.

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To: Brown, Byron[brown.byron@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Rebeckah Adcock
Sent: Thur 3/30/2017 4:10:52 PM
Subject: FW: FINAL CEO Council Meeting Agenda and Materials
Pruitt Meeting Materials.pdf
ATT00001.htm

FYI – final materials for today's meeting.

Reb

From: "Mary Jo Tomalewski" <mjtomalewski@croplifeamerica.org>
To: "Hupp, Sydney" <hupp.sydney@epa.gov>
Cc: "Jay Vroom" <JVroom@croplifeamerica.org>
Subject: FINAL Meeting Agenda and Materials

Sydney,

We have refined our proposed topics for today's CEO Council meeting with the administrator. Attached, please find:

- Revised "Final Proposed Agenda Topics," which includes the list of those CEO Council members who will attend our meeting today, and their short bios
- Introduction / Mission Overview of the CEO Council
- CEO Council Letter to President Trump, dated February 9, 2017

We assume we can skip a formal "round table of introductions" at the beginning of the meeting as our time is short and we want to maximize time spent talking about issues.

MJ

Mary Jo Tomalewski

Executive Assistant to the President & CEO

CropLife America

1156 15th Street, NW

Suite 400

Washington, DC 20005

Direct Dial (202) 872-3849

Main Switchboard (202) 296-1585

Mobile Personal Phone / Ex. 6

Fax (202) 466-5832

Email mjtomalewski@croplifeamerica.org

Web www.croplifeamerica.org

How can I serve you today?

Future Meetings

2017 Spring Regulator Conference – April 6-7, Arlington, VA

2017 Annual Meeting – September 22-27, Dana Point, CA

2018 Winter Board of Directors Meeting – March 5-7, Washington, DC

2018 Annual Meeting – September 21-26, The Ritz-Carlton Amelia Island

FINAL PROPOSED AGENDA TOPICS

Meeting Information: **Office of EPA Administrator Scott Pruitt**
1200 Pennsylvania Avenue, NW
Washington, DC
Thursday, March 30, 2017 3:45-4:30 PM

Topic
1. Thanks to Trump Administration and Administrator Pruitt for early decisive actions: a. WOTUS b. Chlorpyrifos Petition
2. Top Priority Issues a. **Ag Advisor Position –** We recommend adding additional title of "Assistant Deputy Administrator" as a title b. **Water** i. Next steps to refine / clarify beyond WOTUS ii. NPDES permits (CAFO Program needs work; legislation to fix water permits NOT needed for lawful use of pesticides) c. **Pesticides Policy** i. **Endangered Species Act** conflicts with Pesticide Regulation and Biotech Regulation ii. **Epidemiology** Study Policy (as aftermath from Chlorpyrifos matter) iii. **Reform Certification & Training and Worker Protection Rules** – Suspend implementation and revise d. **Renewable Fuels Standard** – current program kept consistent e. **Communication / Messaging / Opinion Polling** – vital to all parties' ability to advance sound policy f. **EPA and USDA Cooperation and Coordination** – Already vast progress; more can be done! g. **Environmental Justice, Research & Development, and Children's Health Offices** – Better integration with and reform of EPA program offices; sound science h. **Regulation of Manufacturing & Mining Facilities for Ag Inputs** – Restore science and process i. **Public and Science Advisory Panels** at EPA – Balance, strategic agendas j. **"Air Emissions"** from farming operations

CEO Attendees

American Seed Trade Association	Andrew "Andy" LaVigne, President and CEO
American Soybean Association	Steve Censky, Chief Executive Officer (***Co-Chair***)
Biotechnology Innovation Organization	Dana O'Brien, Executive Vice President
CropLife America	Jay Vroom, President and CEO (***Co-Chair***)
The Fertilizer Institute	Chris Jahn, President
National Association of Wheat Growers	Chandler Goule, CEO
National Corn Growers Association	Chris Novak, CEO (***Co-Chair***)
National Cotton Council	Gary Adams, President and CEO
National Council of Farmer Cooperatives	Chuck Conner, President and CEO
National Pork Producers Council	Neil Dierks, CEO
United Fresh Produce Association	Tom Stenzel, President and CEO
USA Rice Federation	Betsy Ward, President & CEO
National Association of State Departments of Agriculture	Barb Glenn, CEO, ***ex-officio***

Others

American Farm Bureau Federation	Dale Moore, Deputy Executive Director
Corn Refiners Association	John Bode, President & CEO
National Farmers Union	Rob Larew, Senior VP

Production Agriculture's CEO Council

Introduction/Mission Statement: The production agriculture "CEO Council" coordinates alignment on core issues of modern agricultural systems through telling our story, sharing information and leveraging our strengths, while serving as a resource for government decision makers and others interested in USA food, fiber and renewable fuels.

Core Focus of Interest

- Research and innovation
- Technology access
- Science and risk-based regulation
- Sustainability, environment, and weather
- Marketability, trade, and economic prosperity
- Government leadership and partnership with private sector
- Food access and food safety
- Plant and animal health
- Ag labor

The Council supports (principles/themes):

- Accelerating rural economic growth and improving productivity through innovation and technology
- Promoting research and innovation that enables development of tools and techniques necessary for discovering new products that hold tremendous potential for farmers and society at large
- Enabling a regulatory and commercial environment in which agricultural products are marketable, both domestically and internationally
- Appropriate balance between Federal and State Governments and a cooperative regulatory approach
- Access to essential labor in balance with an effective Federal immigration policy and adequate worker safety protections
- Support for all methods of agricultural production
- Transparency and dialogue with consumers

Members of the CEO Council (see reversed)

March 30, 2017

CEO Council Members

American Farm Bureau	Vincent "Zippy" Duvall, President
American Seed Trade Association	Andrew "Andy" LaVigne, President and CEO
American Soybean Association	Steve Censky, Chief Executive Officer (***Co-Chair***)
Biotechnology Innovation Organization	Dana O'Brien, Executive Vice President
CropLife America	Jay Vroom, President and CEO (***Co-Chair***)
The Fertilizer Institute	Chris Jahn, President
National Association of Wheat Growers	Chandler Goule, CEO
National Cattlemen's Beef Association	Kendal Frazier, CEO
National Chicken Council	Michael Brown, President
National Corn Growers Association	Chris Novak, CEO (***Co-Chair***)
National Cotton Council	Gary Adams, President and CEO
National Council of Farmer Cooperatives	Chuck Conner, President and CEO
National Farmers Union	Roger Johnson, President
National Milk Producers Federation	Jim Mulhern, President and CEO
National Pork Producers Council	Neil Dierks, CEO
United Fresh Produce Association	Tom Stenzel, President and CEO
USA Rice Federation	Betsy Ward, President & CEO
National Association of State Departments of Agriculture	Barb Glenn, CEO, ***ex-officio***

March 2017

February 9, 2017

The President
The White House
Washington, D.C. 20500

Dear Mr. President,

We, the CEO Council (undersigned herein), representing the production agricultural value chain, including many agricultural producers and farm input developers and suppliers, look forward to working with you and your Administration on matters of importance to American agriculture.

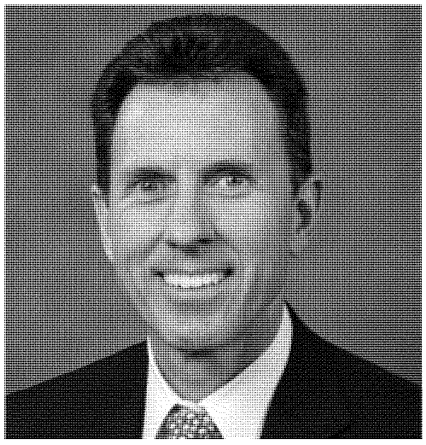
The challenges we face in agriculture are significant. Many experts emphasize that producers must grow as much food in the next 50 years as was produced over all previous history to meet the demands of our expanding global population. A firm commitment by the U.S. government to aggressively support agricultural innovation and science-based regulatory decisions will be necessary to ensure farmers have the tools they need to produce a safe and abundant supply of nutritious food, in addition to feed, fuel and fiber, in an environmentally sound and sustainable manner.

The policy and regulatory environment your Administration establishes can ensure that agricultural innovation flourishes and American farmers are able to meet the food production goals necessary to feed billions more people. We are ready to provide the White House and the Executive Branch Departments and Agencies, as well as Congress, with policy concepts that foster stability in the U.S. agriculture economy with a strong and predictable farm safety net and promotes American competitiveness through research; marketability and trade of agricultural commodities; rural economic growth; and plant, animal, and environmental health, among many other things.

We appreciate your attention to these and other issues of value to American production agriculture and food consumers everywhere.

Sincerely,

American Farm Bureau Foundation, Zippy Duvall
American Seed Trade Association, Andy LaVigne
American Soybean Association, Steve Censky
Biotechnology Innovation Organization , Dana O'Brien
CropLife America, Jay Vroom
The Fertilizer Institute, Chris Jahn
National Association of Wheat Growers, Chandler Goule
National Cattlemen's Beef Association, Kendal Frazier
National Corn Growers Association, Chris Novak
National Cotton Council, Gary Adams
National Council of Farmer Cooperatives, Chuck Conner
National Farmers Union, Roger Johnson
National Milk Producers Federation, Jim Mulhern
National Pork Producers Council, Neil Dierks
United Fresh Produce Association, Tom Stenzel
USA Rice Federation, Betsy Ward



Gary M. Adams
President and Chief Executive Officer
National Cotton Council of America

Gary Adams assumed the position of President and Chief Executive Officer of the National Cotton Council in February 2015. He plays a key role in guiding the industry's seven segments to reach consensus on critical policies affecting U.S. cotton, with the mission of helping all U.S. cotton industry segments compete effectively and profitably in global markets.

Prior to that, Gary served the Council for 13 years as the Vice President of Economic and Policy Analysis. As the Council's chief economist, he provided economic outlooks for global cotton markets, as well as analyzing the impacts of farm and trade policies.

Gary also represents the U.S. cotton industry as a member of USDA's Agricultural Policy Advisory Committee. Previously, Gary served on USDA's Advisory Committee on Trade from 2005 through 2011 and the NASS Advisory Committee on Agricultural Statistics from 2003 through 2009.

Prior to joining the Council, Gary was a Research Assistant Professor in the Department of Agricultural Economics at the University of Missouri. During his 13-year tenure at the university, Gary's primary responsibilities included policy analysis and market outlook for the Food and Agricultural Policy Research Institute, also known as FAPRI. While at FAPRI, Gary and his colleagues were recognized by the American Agricultural Economics Association for their distinguished policy contributions.

Gary has B.S. and M.A. degrees in Applied Mathematics from the University of Alabama and a Ph.D. in Agricultural Economics from the University of Missouri. Gary and his wife, Carol, have four children.

Stephen L. Censky
Chief Executive Officer

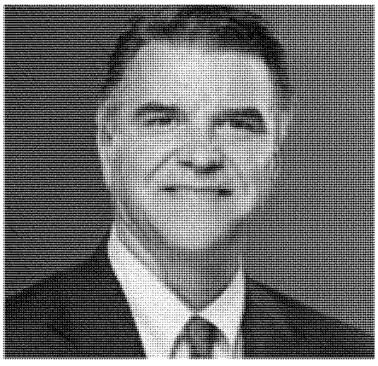
Stephen L. Censky is the American Soybean Association's (ASA) Chief Executive Officer, a staff position he accepted in April 1996. As ASA's top executive, Censky is in charge of managing ASA's legislative, trade policy, membership and education and training programs.

The American Soybean Association is a national, not-for-profit commodity organization with over 22,000 members. ASA works as the domestic and international policy advocate for soybean producer members.

Prior to joining ASA, Censky worked in Washington, D.C. for over a decade. He began his career on Capitol Hill as a legislative assistant for agricultural and transportation matters to Senator Jim Abdnor (R-SD). Later he served in both the Reagan and Bush Administrations at the U.S. Department of Agriculture, helping to craft the 1990 Farm Bill and eventually serving as Administrator of the Foreign Agricultural Service where he was involved in global trade negotiations and running our nation's export programs.

Censky received his Bachelor's of Science degree of Agriculture from South Dakota State University and his Master's Diploma in Agriculture Studies from the University of Melbourne, Australia.

NCFC
National Council of Farmer Cooperatives



Charles F. (Chuck) Conner

President and CEO
National Council of Farmer Cooperatives

Charles F. (Chuck) Conner became president & CEO of the National Council of Farmer Cooperatives (NCFC) on January 22, 2009. As president of NCFC, Conner will oversee the organization's work to promote and protect the business and public policy interests of America's farmer-owned cooperatives. He will also provide the strategic vision for the trade association as it continues to seek new ways in which to add value for its membership.

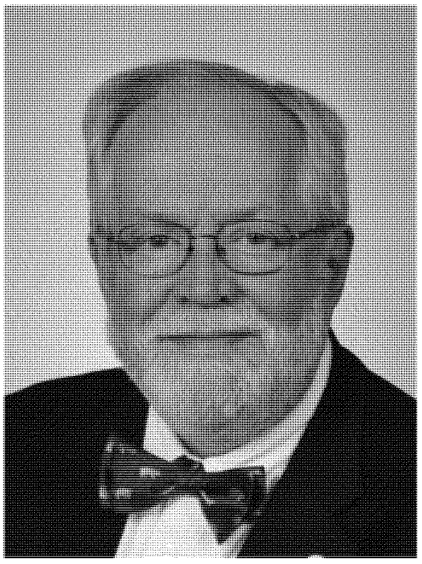
Prior to joining NCFC, Conner had served as the Deputy Secretary at the U.S. Department of Agriculture since mid-2005. In this capacity, he was the Chief Operating Officer (COO) overseeing day-to-day operations of the department. Conner interacted directly with President George W. Bush and his senior staff to formulate domestic and international food, trade, security and energy policy. He led development of the Bush Administration's $300 billion Farm Bill proposal and the strategy to educate and inform industry, constituents and Congress.

From August 2007 to January 2008, Conner served as both USDA Secretary and Deputy Secretary. He played a key role in developing the Administration's immigration policy including important changes to the H2A program.

Conner's experience also includes the assignment of Special Assistant to the President, Executive Office of the President, from October 2001 to May 2005, working on the 2001/2 Farm Bill to develop the strategy behind the transfer of several USDA agency functions to the newly formed Department of Homeland Security.

From May 1997 to October 2001 Conner served as President of the Corn Refiners Association. He also served for 17 years as an advisor to U.S. Senator Richard Lugar of Indiana.

Conner is a graduate of Purdue University, with a Bachelor's of Science degree and is the recipient of Purdue's Distinguished Alumni Award. He and his wife Dru have four children.



Neil Dierks, Chief Executive Officer

Neil Dierks is Chief Executive Officer of the National Pork Producers Council (NPPC). In this position, he is responsible for the overall implementation of all NPPC programs. Dierks' position requires him to spend time in both Des Moines, Iowa, the national office of NPPC, and Washington, D.C.

Beginning in 1990, Dierks served NPPC in a series of senior executive positions, including Executive Director of Operations, Vice President for Research and Education and Senior Vice President for Programs. Prior to his service with NPPC, Dierks was the Special Activities Director for the Iowa Pork Producers Association and Marketing Director for the Iowa Corn Promotion Board.

Neil grew up on a livestock farm in eastern Iowa and remains involved in a family farming operation. He is a graduate of Iowa State University.

Dr. Barbara Glenn recently joined the National Association of State Departments of Agriculture (NASDA) as CEO on August 18, 2014.

NASDA is a nonpartisan, nonprofit association which represents the elected and appointed commissioners, secretaries, and directors of the departments of agriculture in all fifty states and four U.S. territories.

Dr. Glenn is a scientist with decades of experience as a policy researcher and advocate for agriculture. She previously served as Senior Vice President of Science and Regulatory Affairs for CropLife America, where she was responsible for developing policies and regulations to support agriculture through crop protection. Prior to joining CropLife America, Dr. Glenn served as Managing Director of the Animal Biotechnology, Food and Agriculture Section of the Biotechnology Industry Association in Washington, DC.

Dr. Glenn holds a B.S. in animal science and a Ph.D. in ruminant nutrition from the University of Kentucky. She previously worked for the U.S. Department of Agriculture, Agricultural Research Service and the Federation of Animal Science Societies.

Born in Lincoln, Nebraska and raised in Centerville, Ohio, Dr. Glenn developed a passion for agriculture from her parents and her involvement in 4-H. She lives on a small farm in Maryland with her husband and three children, and serves on various boards for farm bureau and 4-H.

Chandler Goule
CEO

Chandler Goule assumed his responsibilities as CEO of the National Association of Wheat Growers on July 5, 2016. In addition, he also serves as the executive director of the National Wheat Foundation.

Most recently, Goule served as senior vice president of programs at the National Farmers Union (NFU) where he was heavily involved in farm bill legislation.

Originally from Texas, Goule holds degrees from Texas A&M and George Washington University and served as a subcommittee staff director for the House Agriculture Committee before moving to the National Farmers Union in 2009 as vice president of government relations. He was appointed senior vice president of NFU programs in 2014.

The Fertilizer Institute
Nourish, Replenish, Grow

BIOGRAPHY OF CHRISTOPHER JAHN

President
The Fertilizer Institute and the Nutrients for Life Foundation

Christopher L. Jahn is president of The Fertilizer Institute (TFI), the fertilizer industry's national trade association. As TFI president, Jahn works to represent, promote and protect a sound fertilizer industry through legislative and regulatory activities and to promote a favorable public image of the fertilizer industry and agriculture. Jahn also serves as president of the Nutrients for Life Foundation (NFL).

Jahn comes to TFI having served as president of the National Association of Chemical Distributors (NACD) since 2006. Prior to leading NACD, Jahn served as president of the Contract Services Association (CSA).

Before joining CSA, Jahn had an active role in the United States Senate working for nearly 10 years for U.S. Senator Craig Thomas (R-Wyo.) in a variety of roles, including legislative assistant, legislative director and Chief of Staff.

After graduating from Columbia University with a B.A. in Political Science, Jahn co-founded a book distribution business. He also earned an MBA from the University of Maryland.

A native of Wyoming, Chris and his wife, Marianne, live in Fairfax Station, Va., with their two children.

Capitol View
425 Third Street, S.W., Suite 950
Washington, DC 20024

202.962.0490
202.962.0577 fax
www.tfi.org

Roger Johnson
President

Roger Johnson is president of the National Farmers Union (NFU), a grassroots organization that represents more than 200,000 family farmers, ranchers, fisherman and rural communities across the Unites States.

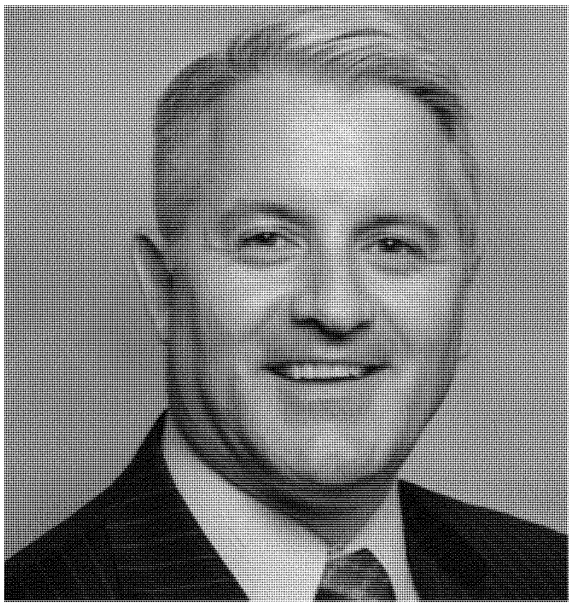
Johnson was elected to lead the family farm organization at NFU's 107th anniversary convention in 2009. He has since expanded the education department by providing more programs for beginning, college-aged and women farmers, increased the number of Farmers Union state divisions, and developed a strategic plan for the organization. Johnson has also overseen a number of important policy initiatives important to family farmers including: passage of the 2014 Farm Bill; maintaining a strong Renewable Fuel Standard and Country-of-Origin Labeling, promoting policies that allow farmers to address the growing threat of climate change; and renewing the nation's focus on eliminating an overwhelming trade deficit that results in lost jobs and prosperity for rural America.

Prior to leading National Farmers Union, Johnson, a third-generation family farmer from Turtle Lake, N.D., served as North Dakota Agriculture Commissioner, a position he was first elected to in 1996. While Agriculture Commissioner, Johnson served on the State Industrial Commission, the North Dakota Trade Office Advisory Board, and the State Board of Agricultural Research and Education, among many other boards and commissions.

From 2007-2008, Johnson served as president of the National Association of State Departments of Agriculture (NASDA). He is a past president of the Midwestern Association of State Departments of Agriculture (MASDA), past president of the Food Export Association of the Midwest and a former chairman of the Interstate Pest Control Compact.

Johnson graduated from North Dakota State University with a degree in agricultural economics. Johnson and his wife, Anita, are the proud parents of a daughter and two sons and have three grandchildren.

AMERICAN SEED TRADE ASSOCIATION



Andrew W. "Andy" LaVigne
President & CEO

Andrew W. LaVigne is currently the President and CEO of the American Seed Trade Association. He joined ASTA in February, 2006. Andy has had a 30-year career in government relations, industry representation, public affairs advocacy, and management. His core areas of expertise include agriculture, food policy and international trade.

Prior to joining ASTA, Andy was Executive Vice President/CEO of Florida Citrus Mutual, representing citrus growers on issues affecting their business. Prior to joining Florida Citrus Mutual, Andy spent four years as Florida Fertilizer and Agrichemical Association's (FFAA) President and Executive Director. FFAA is a non-profit, agricultural trade organization representing companies that specialize in crop protection and plant nutrition products.

Before his position at FFAA, Andy spent eight years in Washington, D.C. working in the U.S. Congress and the U.S. Department of Agriculture. He served as Legislative Director for Congressman Charles Canady, Agriculture Committee staffer for Congressman Tom Lewis, and on the staff of USDA Secretary Ed Madigan.

Andy is a native of Florida with a BA degree in Political Science, with a minor in economics, from the University of Florida.

1701 Duke Street • Suite 275 • Alexandria, VA 22314 • Phone: (703) 837-8140 • Fax: (703) 837-9365

Biotechnology Innovation Organization

Dana O'Brien

Executive Vice President, Food & Agriculture

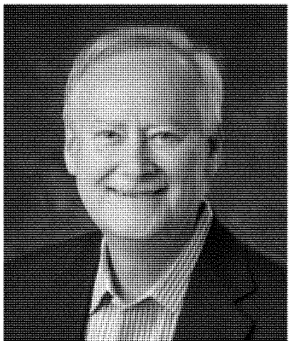
Dana O'Brien is Executive Vice President for Food and Agriculture and is responsible for the development of public policy and strategic advocacy, public affairs, and legal strategies that advance industry and stakeholder objectives in the United States.

Prior to becoming EVP, Dana served as BIO Food and Agriculture's chief legislative advocate as Senior Director of Federal Government Relations since March 2011.

Before BIO, Dana worked in Congress for the late Representative Ike Skelton (D-MO) managing his legislative team and concentrating on a variety of agricultural, energy, and trade matters.

A native of Sedalia, Missouri, and a graduate of Missouri University with a bachelor's degree in psychology, Dana joined the Skelton team immediately out of college and served there for nearly 14 years

UNITED FRESH
PRODUCE ASSOCIATION



Tom Stenzel
President and CEO
United Fresh Produce Association
1901 Pennsylvania Avenue NW, Suite 1100
Washington, DC 20006
202/303-3400
tstenzel@unitedfresh.org

Tom Stenzel is President and CEO of the United Fresh Produce Association, a position he has held since 1993. United Fresh is the pre-eminent trade association for the produce industry in shaping legislative and regulatory policies; providing scientific and technical leadership in food safety and nutrition; and developing educational programs for its members. Founded in 1904, United Fresh represents the interests of companies from small family businesses to the largest international corporations throughout the global fresh produce supply chain.

United Fresh is widely known for its work in government affairs, agricultural policy, food safety and nutrition, working to promote political and environmental change to help the next generation of children double their consumption of fresh produce. The United Fresh Start Foundation is committed to increasing children's access to fresh fruits and vegetables, and is a founding partner of the *Let's Move Salad Bars to Schools* campaign. The campaign has donated salad bars to more than 6,000 schools across the country.

Tom is a frequent speaker on industry issues and has been recognized often by the produce industry throughout his career. He was honored as the 2002 *Produce Man of the Year* by *The Packer* newspaper, and is the past Chairman of the International Federation for Produce Standards, a global body representing national produce associations around the world.

He is a member of the U.S. Chamber of Commerce Committee of 100 leading association executives, the Advisory Board of the International Food Protection Training Institute, and the Key Industry Associations Committee of the American Society of Association Executives, from which he achieved the Certified Association Executive (CAE) designation in 1990. He has served in many government and industry leadership positions, including the first U.S. Department of Agriculture Fruit and Vegetable Industry Advisory Committee, President George W. Bush's Transition Advisory Team for Agriculture, and as an advisor on the U.S. Agricultural Policy Advisory Committee for Trade.

Tom was the founding President of the International Food Information Council (IFIC) in 1986, and was previously director of public affairs for the National Soft Drink Association. Tom is a 1977 graduate of the University of Richmond.

Jay Vroom has served as President and CEO of the trade association known as CropLife America (CLA) since 1989. CLA is the leading U.S. trade group for the crop protection industry in the U.S.

Vroom is a founding member of the CropLife Foundation, serving as chairman since its inception in 2001, and now serves as the Foundation's Vice-Chair, since 2015.

His sits of the Board of Directors for the Agricultural Retailers Association, Asmark, National Wheat Foundation, the National Association of Manufacturers Council of Manufacturing Associations, and the Soil Health Institute. He is also a member of the Farm Foundation Roundtable Steering Committee, and the North American Climate Smart Ag Alliance Steering Committee.

Vroom was a member of the youth organization, Future Farmers of America, and served as an elected state officer in Illinois. Today, he is a member of the FFA Foundation's Individual Giving Council and Board of Trustees.

Vroom co-chairs the Coalition for the Advancement of Precision Agriculture and the CEO Council.

He is a member of the Friends of the National Arboretum (FONA) FONA Council.

He graduated with honors from the College of Agriculture, Consumer and Environmental Sciences at the University of Illinois Urbana-Champaign. Vroom was raised on a grain and livestock farm in north-central Illinois and continues to own the farming operation.

Elizabeth Ward

Betsy Ward was appointed President & CEO of the USA Rice Federation in 2007. From 2003-2005, Ward was the Vice President of International and Domestic Promotion at USA Rice where she was in charge of developing and implementing domestic and international promotion, and food aid programs.

From 2005-2007, Ward served as the chief executive for the Hardwood Federation, a trade association representing over 15,000 hardwood producers across the United States. From 1995 to 2003, she ran the Wood Products International Group at the American Forest & Paper Association, directing the wood trade policy and global forestry agenda for the industry.

In 2011, Ward was elected Chairman of the U.S. Agricultural Export Development Council (USAEDC) which represents the interests of more than 80 commodity organizations who grow and process a wide variety of U.S. agricultural products. She currently serves as Past Chair. Since 2011, Ward has also served on the Board of Directors of the Sustainable Fisheries Partnership, an independent non-governmental organization (NGO) working to ensure healthy marine and aquatic ecosystems; secure seafood supplies; and a thriving, responsible seafood economy.

Ward served for six years as a cleared advisor on the Industry Trade Advisory Committee for forest and paper products (ITAC-7) and was appointed forest products representative to USDA's Agricultural Policy Advisory Committee (APAC) in 2001.

Ward holds a Bachelor's degree in History and Political Science from the University of New Hampshire and a Master's degree in International Security Affairs from the School of International Affairs at Columbia University.

To: Middleton, Brandon (ENRD)[Brandon.Middleton@usdoj.gov]
Cc: Brown, Byron[brown.byron@epa.gov]
From: Gunasekara, Amanda
Sent: Thur 3/23/2017 9:04:52 PM
Subject: RE: CPP

Great – thank you for update.

From: Middleton, Brandon (ENRD) [mailto:Brandon.Middleton@usdoj.gov]
Sent: Thursday, March 23, 2017 4:34 PM
To: Gunasekara, Amanda <gunasekara.amanda@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: CPP

Mandy,

FYI, we're putting together options paper based on our understanding of current state of play with CPP. Similar paper is being prepared for WOTUS. Will keep you posted.

Brandon

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Bowman, Liz[Bowman.Liz@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 4/27/2017 2:42:14 PM
Subject: materials for today's tribal consultation webinar
tribal info-consultation webinars run of show Apr 27.docx
WOTUS2 tribal info and consultation.pptx

Hi Sarah and Byron,

Please find the final webinar slides and run of show for today's step 2 consultation. As of yesterday afternoon, we had 39 people registered. See you at 2!

If you have any questions, just let me know.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

Waters of the U.S. Tribal Webinar(s)
April 27 and May 18, 2017
(Draft) RUN OF SHOW(s)

Note: the May webinar starts at 1:30.

2:00 - 2:10 PM Check in, Roll Call

John Goodin introduces himself, leads roll call

2:10 - 2:15 PM Call to Order and Initial Business

Rose Kwok Walks through technical set up of webinar and how to address technical questions, agenda, how participants can ask questions at the end

Mike Shapiro -

Thank you to the many people who have made an effort to attend this meeting. We are very much looking forward to hearing from you over the course of our consultation and coordination activities.

We are here today to inform our tribal partners of actions the agencies are undertaking in response to the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

We are still in the early stages of our work but hope to move forward expeditiously to meet the goals laid out in the executive order. An important part of that is to obtain your input on a revised definition and how this change could affect you.

The EPA also is pleased to be working so closely with our partners in the effort to revise the definition of "waters of the United States," the Department of the Army and the Army Corps of Engineers.

I'm pleased to introduce two people involved in this effort, who will be speaking briefly in a few minutes.

- Byron Brown is the Deputy Chief of Staff for Policy.
- Cindy Barger who is representing Douglas Lamont (the Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works).

Byron Brown –

On behalf of Administrator Pruitt, thank you so much for being here. We are excited to gather your input and wisdom as the agencies begin work to rescind and revise the definition of waters of the United States.

Consulting with tribal government officials is a priority to the Administrator and indeed to the President. This is an important step in the process prior to proposing regulations that may affect tribes.

The EPA also is pleased to be working so closely with our partners in the effort to revise the definition of "waters of the United States," the Department of the Army and the Army Corps of Engineers.

Cindy on behalf of Mr. Lamont on April 27–

Thank you. On behalf of Mr. Lamont, the Senior official performing the duties of the Assistant Secretary of the Army (Civil Works), thank you for joining us. Together with the Army Corps of Engineers, we are committed to working closely with and supporting the EPA on these rulemakings. As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public and for tribes through our government to government consultations as part of implementing the program.

We welcome feedback from our tribal partners at the meeting today and in the upcoming months.

2:15 - 2:35 PM Presentation of WOTUS2

John launches into Powerpoint.

2:35 - 3:20 PM Q & A, Discussion statements from invitees

John plus Rose (on computer) facilitate discussion (leaves slide 12 on screen during discussion)

3:20 – 3:30 PM Next steps

Mike or John closes meeting with timeline for next steps (slide for this needs to be updated after each event and as we get details of additional meetings)

Thanks to all for their advice and discussions today. I'd like to remind you that we hope to have written comments on the step 2 proposal for the new definition by June 20. In addition, we want to hear from you about the best ways to keep you appropriately informed and involved as the agencies move forward with these important rulemakings.

Thanks again for your time and interest.

John adjourns.

To: Brown, Byron[brown.byron@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 9:56:40 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:56 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: FW: WOTUS Federalism Meeting draft materials

Hi Byron,

Sarah asked me to forward the draft materials for the Federalism consultation on Wednesday. I want to flag for your attention slides 9-12 in the powerpoint. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:29 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,

Attached are draft materials for Wednesday's federalism meeting for your review. We have the agenda, what we're calling the "run of show" which has your talking points and the flow that we will follow, and the powerpoint. I want to flag slides 9-12 in particular for your review. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

The powerpoint will be distributed to those on the phone just before the meeting begins, and the conference number will be sent out on Wednesday. In addition, we will be using an operator assisted number which will require participants to say who they are and their affiliation to try to minimize the chance of uninvited guests attending.

We understand that you had a question about press attending. The short answer is no. Here is a statement that we developed with OCIR in case OPA receives requests.

Thanks!

Mindy

The April 19, 2017 Federalism Consultation meeting on the definition of "Waters of the United States" is not open to the press. Consulting with state and local government officials, or their representative national organizations, is a normal and important step in the rulemaking process prior to proposing regulations that may have implications for federalism as defined by EPA's policy for implementing Executive Order 13132. This executive order provides for pre-proposal discussions with elected state and local officials and their associations and it is agency policy that this is not an open meeting but rather part of the deliberative process.

There will be other opportunities for discussion and public comment as the agencies comply with the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" and embark upon rulemaking to define "Water of the U.S."

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday's federalism meeting: a draft agenda, a draft "run of show" with TPs for senior leaders, and the draft powerpoint. I think slides 9-12 are probably the key ones for senior-level review though of course we welcome any changes.

Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: Brown, Byron[brown.byron@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 9:55:41 PM
Subject: FW: WOTUS Federalism Meeting draft materials
WOTUS Federalism Meeting Agenda.docx
federalism draft ppt.pptx
federalism DRAFT run of show.docx

Hi Byron,

Sarah asked me to forward the draft materials for the Federalism consultation on Wednesday. I want to flag for your attention slides 9-12 in the powerpoint. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:29 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,

Attached are draft materials for Wednesday's federalism meeting for your review. We have the agenda, what we're calling the "run of show" which has your talking points and the flow that we will follow, and the powerpoint. I want to flag slides 9-12 in particular for your review. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

The powerpoint will be distributed to those on the phone just before the meeting begins, and the conference number will be sent out on Wednesday. In addition, we will be using an operator assisted number which will require participants to say who they are and their affiliation to try to minimize the chance of uninvited guests attending.

We understand that you had a question about press attending. The short answer is no. Here is a statement that we developed with OCIR in case OPA receives requests.

Thanks!

Mindy

The April 19, 2017 Federalism Consultation meeting on the definition of "Waters of the United States" is not open to the press. Consulting with state and local government officials, or their representative national organizations, is a normal and important step in the rulemaking process prior to proposing regulations that may have implications for federalism as defined by EPA's policy for implementing Executive Order 13132. This executive order provides for pre-proposal discussions with elected state and local officials and their associations and it is agency policy that this is not an open meeting but rather part of the deliberative process.

There will be other opportunities for discussion and public comment as the agencies comply with the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" and embark upon rulemaking to define "Water of the U.S."

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday's federalism meeting: a draft agenda, a draft "run of show" with TPs for senior leaders, and the draft powerpoint. I think slides 9-12 are probably the key ones for senior-level review though of course we welcome any changes.

Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov]; 2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Burley, Veronica
Sent: Fri 6/2/2017 4:03:27 PM
Subject: Weekly Reports June 2
060217 Weekly Report.docx

Hello All,

Attached is the weekly report for the week ending June 2, 2017. Have a great weekend.

Veronica Burley

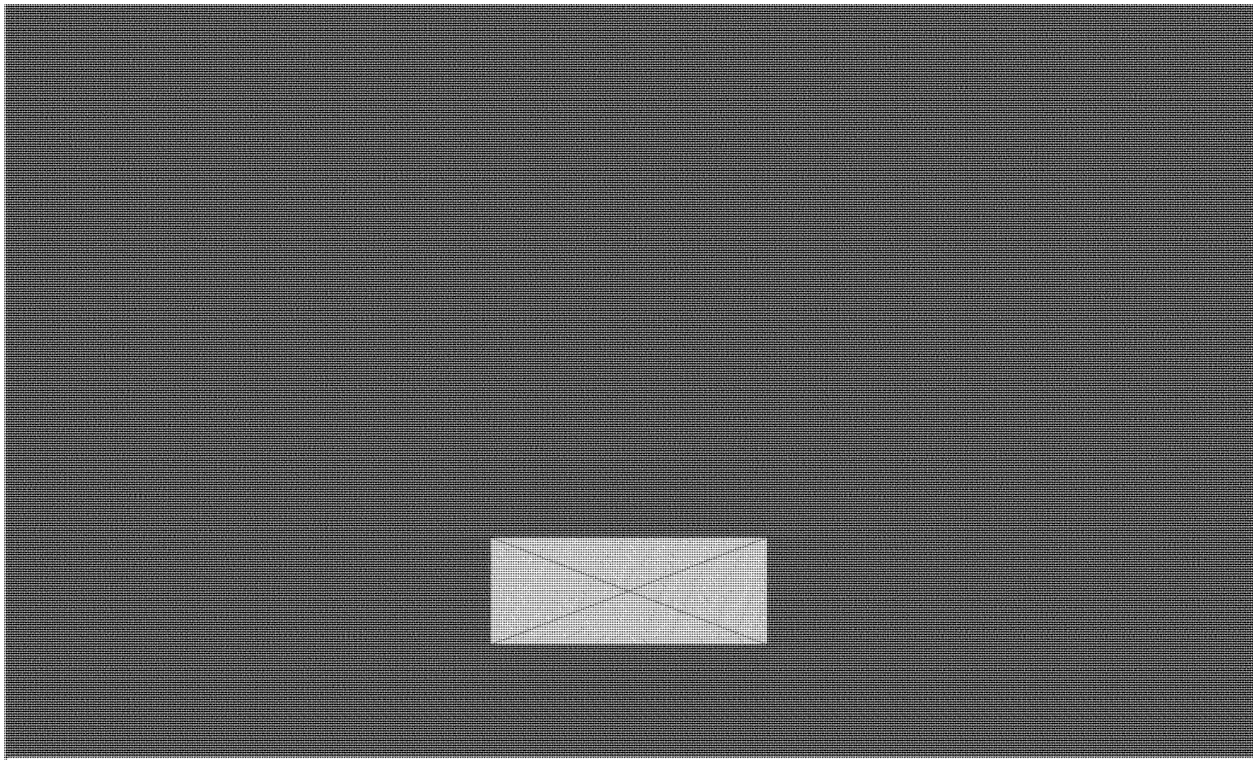
Office of the Administrator

202-564-7084 (direct)

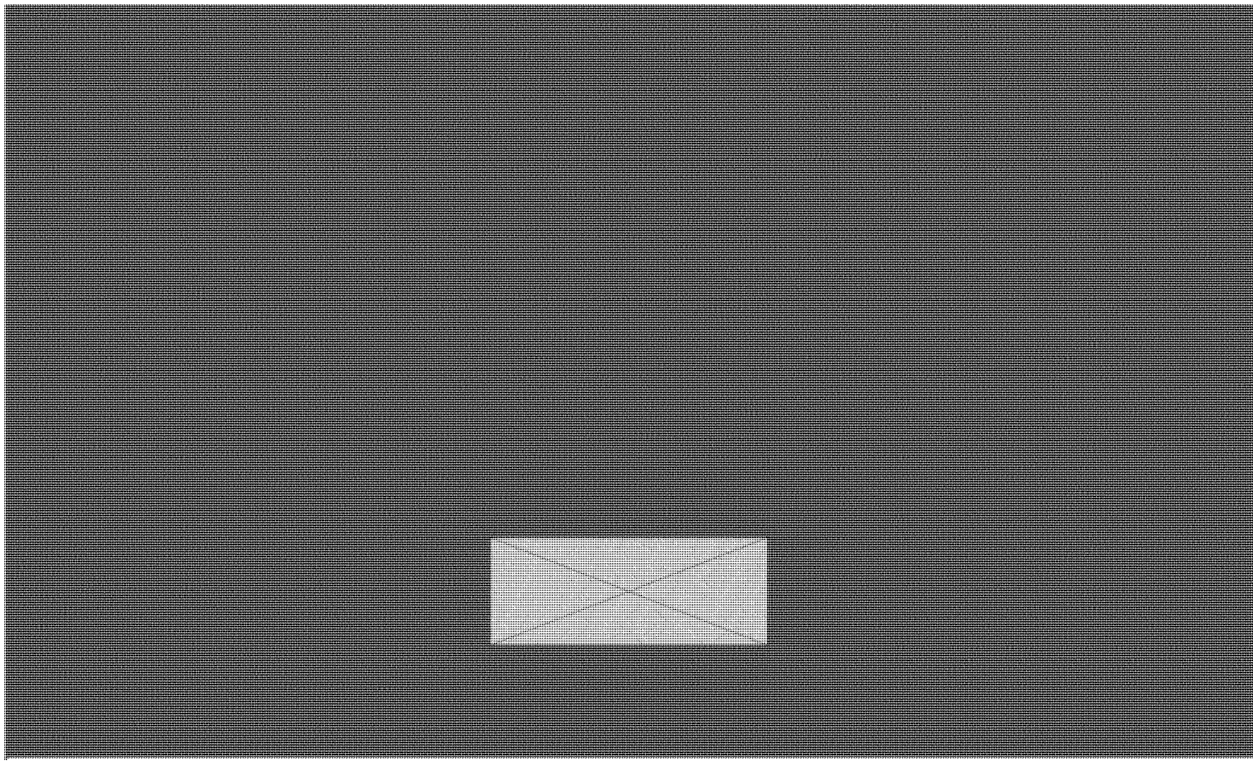
202-501-1480 (fax)

burley.veronica@epa.gov

To: Brown, Byron[brown.byron@epa.gov]
From: ECOS
Sent: Fri 5/12/2017 6:10:53 PM
Subject: STEP Meeting to Explore 'Reframing Our Environmental Future,' U.S. EPA Seeks State Input on WOTUS, & More



To: Brown, Byron[brown.byron@epa.gov]
From: ECOS
Sent: Fri 4/21/2017 7:09:04 PM
Subject: U.S. EPA Briefs States on WOTUS Review, Electrify America Unveils Plan, & More



To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Packard, Elise[Packard.Elise@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Fine, Steven[fine.steven@epa.gov]; Vizian, Donna[Vizian.Donna@epa.gov]
From: Minoli, Kevin
Sent: Fri 4/21/2017 2:18:11 AM
Subject: OGC Weekly Report 4.20.17.docx
OGC Weekly Report 4.20.17.docx
ATT00001.htm

All- OGC's Weekly Report is attached. Feel free to reach out to me, Elise, Justin, or David with any questions. Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Date: April 20, 2017 at 7:23:38 PM EDT
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: OGC Weekly Report 4.20.17.docx

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Knapp, Kristien[Knapp.Kristien@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Strauss, Alexis[Strauss.Alexis@epa.gov]
From: Minoli, Kevin
Sent: Thur 4/6/2017 10:28:28 PM
Subject: OGC's weekly report
OGC Weekly Report 4.6.17.docx

All- Elise, Justin, David, and I are happy to answer questions or provide additional information on any matter listed in the report. Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Schwab, Justin[schwab.justin@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Gunasekara, Amanda[gunasekara.amanda@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Albores, Richard[Albores.Richard@epa.gov]; Trudeau, Shaun[Trudeau.Shaun@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Thomas, Deb[thomas.debrah@epa.gov]; Nishida, Jane[Nishida.Jane@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/24/2017 12:58:52 AM
Subject: OGC Weekly Report
OGC Weekly Report 3.23.17.docx

Attached is OGC's Weekly Report. Also available upon request are the following:

1. List of litigation deadlines for the next 90 days

2. Detailed list of litigation and similar deadlines over the next two weeks

3. Court ordered, settlement, and consent decree deadlines through 2017

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Brown, Byron
Sent: Wed 5/3/2017 2:04:12 PM
Subject: Wotus

I am running late for ow mtg

Sent from my iPhone

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Brown, Byron
Sent: Tue 4/18/2017 11:30:57 AM
Subject: RE: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-

Nonresponsive Conference Code/ Ex. 6

Thanks. I was not aware of it but will plan to call in.

-----Original Appointment-----
From: Greenwalt, Sarah **On Behalf Of** Shapiro, Mike
Sent: Monday, April 17, 2017 11:10 PM
To: Brown, Byron; Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; Cindy Barger; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy
Cc: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita; Penman, Crystal
Subject: Fwd: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-866-299-3188 passcode 2025640516
When: Tuesday, April 18, 2017 9:00 AM-9:45 AM (UTC-05:00) Eastern Time (US & Canada).
Where: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort

Are you going to this 9am tomorrow? Could use your input here.

Sent from my iPhone

Begin forwarded message:

From: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Date: April 17, 2017 at 3:05:08 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "McGartland, Al" <McGartland.Al@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "jennifer.a.moyer@usace.army.mil" <jennifer.a.moyer@usace.army.mil>, "stacey.m.jensen@usace.army.mil" <stacey.m.jensen@usace.army.mil>, "David.F.Dale@usace.army.mil" <David.F.Dale@usace.army.mil>, Cindy Barger <cindy.s.barger.civ@mail.mil>, "douglas.w.lamont2.civ@mail.mil" <douglas.w.lamont2.civ@mail.mil>,

"craig.r.schmauder.civ@mail.mil" <craig.r.schmauder.civ@mail.mil>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Nandi, Romell" <Nandi.Romell@epa.gov>, "Washington, Valerie" <Washington.Valerie@epa.gov>, "Hewitt, Julie" <Hewitt.Julie@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Penman, Crystal" <Penman.Crystal@epa.gov>
Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in Nonresponsive Conference Code/ Ex. 6

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Brown, Byron
Sent: Wed 4/12/2017 4:51:36 PM
Subject: Re: 5pm WOTUS meeting

Is this just with us or program offices? I cannot stay too late today.

Sent from my iPhone

On Apr 12, 2017, at 12:36 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Byron, attached are the materials for today's wotus schedule meeting.

Sam, can we connect before the meeting? There will be some questions that I think would be best answered by OP.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|C **Personal Phone / Ex. 6**

Greenwalt.Sarah@epa.gov

<DRAFT schedule considerations.docx>

<Copy of schedule 4-12.xlsx>

From: Keating, Jim
Location: DCRoomWest7129/DC-CCW-OWOW; Telecom Nonresponsive Conference Code/ Ex. 6
Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: FW: WOTUS-2 interagency staff meeting
Start Date/Time: Tue 6/6/2017 5:00:00 PM
End Date/Time: Tue 6/6/2017 6:00:00 PM

From: Downing, Donna
Sent: Friday, April 7, 2017 3:16:21 PM UTC
To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US; Moyer, Jennifer A CIV USARMY CEHQ (US; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn; Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores; Peterson, Carol; McDavit, Michael W.
Cc: Peck, Gregory; Cooper, David R SES USARMY CEHQ (US)
Subject: WOTUS-2 interagency staff meeting
When: Tuesday, June 6, 2017 5:00 PM-6:00 PM.
Where: DCRoomWest7129/DC-CCW-OWOW; Telecom Nonresponsive Conference Code/ Ex. 6

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: **Nonresponsive Conference Code/ Ex. 6**

Talk to you later!
Donna

To: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Theis, Joseph
Sent: Thur 5/25/2017 8:05:01 PM
Subject: What do you think of this revision?
WOTUS EO Q&A.docx

Joseph G. Theis

Associate Director

Water Enforcement Division

Office of Enforcement and Compliance Assurance

U.S. EPA (2243A)

1200 Pennsylvania Ave, NW

Washington, D.C. 20460

(202)564-4053

This email may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this email has been received by you in error, you are instructed to delete it from your machine and all storage media whether electronic or hard copy.

To: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Greenwald, Kathryn
Sent: Thur 5/25/2017 8:01:41 PM
Subject: FW: For the WOUS q&a

-----Original Message-----
From: Fogarty, Johnpc
Sent: Thursday, May 25, 2017 2:46 PM
To: Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>
Subject: For the WOUS q&a

We are going to be combining the question on the WOUS exec order with the exec order on energy independence, so can you please use this as the question, and add the paragraph at the bottom to your draft of the q&a please? Thx!

***

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Morgan, James[Morgan.James@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]; Feinmark, Phyllis[Feinmark.Phyllis@epa.gov]; Kovac, Steve[Kovac.Steve@epa.gov]
Cc: Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Peterson, Carol[Peterson.Carol@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]
From: Kwok, Rose
Sent: Tue 5/16/2017 10:37:50 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

I was not able to successfully send an update from Donna's calendar, but 12-1 PM EDT won as the best time. I know that some have a conflict, so my apologies. I cannot cancel Donna's invite, but please ignore it (or delete it for 5/18 only), and I'll send out another invite.

From: Kwok, Rose
Sent: Monday, May 15, 2017 4:31 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia

<McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Kovac, Steve <Kovac.Steve@epa.gov>
Cc: Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi folks,

This week's workgroup call overlaps with our national tribal webinar. Would you prefer to push up the meeting to 12-1 PM EDT or 12:30-1:30 EDT, or back to 3:30-4:30 EDT. Please let me know if there is a strong preference. Thanks!

Donna's out this week, so I won't be able to change her calendar invite, FYI.

Rose

-----Original Appointment-----
From: Downing, Donna
Sent: Friday, April 07, 2017 12:00 PM
To: Downing, Donna; Williams, Ann; Kwok, Rose; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Christensen, Damaris; Auerbach, Daniel; Ludwig-Monty, Sarah; Wesson, Dolores; Cindy Barger; Morgan, James; Moffatt, Brett; Feinmark,

Phyllis; Kovac, Steve
Cc: Speir, Jeffrey; Connors, Sandra; Peterson, Carol; Horchem, Brad; Gude, Karen
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, May 18, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of "waters of the US." When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I'll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

To: Downing, Donna[Downing.Donna@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Morgan, James[Morgan.James@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]; Feinmark, Phyllis[Feinmark.Phyllis@epa.gov]; Kovac, Steve[Kovac.Steve@epa.gov]
Cc: Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Peterson, Carol[Peterson.Carol@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]
From: Kwok, Rose
Sent: Mon 5/15/2017 8:30:50 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi folks,

This week's workgroup call overlaps with our national tribal webinar. Would you prefer to push up the meeting to 12-1 PM EDT or 12:30-1:30 EDT, or back to 3:30-4:30 EDT. Please let me know if there is a strong preference. Thanks!

Donna's out this week, so I won't be able to change her calendar invite, FYI.

Rose

-----Original Appointment-----
From: Downing, Donna
Sent: Friday, April 07, 2017 12:00 PM
To: Downing, Donna; Williams, Ann; Kwok, Rose; Keating, Jim; Bennett, Brittany; Eisenberg,

Mindy; McDavit, Michael W.; Goodin, John; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Christensen, Damaris; Auerbach, Daniel; Ludwig-Monty, Sarah; Wesson, Dolores; Cindy Barger; Morgan, James; Moffatt, Brett; Feinmark, Phyllis; Kovac, Steve
Cc: Speir, Jeffrey; Connors, Sandra; Peterson, Carol; Horchem, Brad; Gude, Karen
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, May 18, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of "waters of the US." When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I'll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

To: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Morgan, James[Morgan.James@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 5:24:24 PM
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

This email is a reminder of the recurring WOTUS Regional/HQ staff workgroup meeting. The agenda for today includes:

•□□□□□□□ Quick updates on Step 1, federalism and tribal outreach (10 minutes)

Deliberative Process / Ex. 5

•□□□□□□□ Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

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USPS Address:

1200 Pennsylvania Avenue, NW

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Morgan, James[Morgan.James@epa.gov]; EPA Wetlands Managers[EPA_Wetlands_Managers@epa.gov]; Allnutt, David[Allnutt.David@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 5/4/2017 1:45:06 AM
Subject: WOTUS desk statement
Step 1 initiating OMB review_desk statement_final.docx

Hi All,

Deliberative Process / Ex. 5

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----
From: Downing, Donna
Sent: Friday, April 07, 2017 12:00 PM
To: Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; Morgan, James
Cc: Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, May 04, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

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Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

To: Adams, Margery[adams.margery@epa.gov]; Beveridge, Laura[Beveridge.Laura@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Clovis, Debora[Clovis.Debora@epa.gov]; Messier, Dawn[Messier.Dawn@epa.gov]; Denawa, Mai[Denawa.Mai@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Feinmark, Phyllis[Feinmark.Phyllis@epa.gov]; Fischer, Lauren[Fischer.Lauren@epa.gov]; Garnett, Desean[Garnett.Desean@epa.gov]; Ghosh, Mita[Ghosh.Mita@epa.gov]; Hicks, Matt[Hicks.Matthew@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; Kao, Jessica[Kao.Jessica@epa.gov]; Kermish, Laurie[Kermish.Laurie@epa.gov]; Klassman, Debra[klassman.debra@epa.gov]; Knorr, Michele[knorr.michele@epa.gov]; Kopf, Jeff[Kopf.Jeff@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Lazos, Pamela[Lazos.Pamela@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Logan, Paul[Logan.Paul@epa.gov]; Mairs, Stephanie[Mairs.Stephanie@epa.gov]; Mancusi-Ungaro, Philip[Mancusi-Ungaro.Philip@epa.gov]; Mikalian, Charles[mikalian.charles@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]; Muehlberger, Christopher[muehlberger.christopher@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murdock, Russell[Murdock.Russell@epa.gov]; Nalven, Heidi[Nalven.Heidi@epa.gov]; Pallesen, Reginald A.[pallesen.reginald@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Perkins, Erin[Perkins.Erin@epa.gov]; Przyborski, Jay[Przyborski.Jay@epa.gov]; Rucki, Thomas[Rucki.Thomas@epa.gov]; Saporita, Chris[Saporita.Chris@epa.gov]; Schefski, Melissa[Schefski.Melissa@epa.gov]; Schwartz, Paul[Schwartz.Paul@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Silver, Wendy[Silver.Wendy@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Sutin, Elyana[Sutin.Elyana@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]; Trevino, Jeffery[trevino.jeffery@epa.gov]; Vinch, James[Vinch.James@epa.gov]; Volk, Everett[volk.everett@epa.gov]; VonVacano, Marcela[VonVacano.Marcela@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Wester, Barbara[wester.barbara@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]
From: Wehling, Carrie
Sent: Wed 5/3/2017 5:00:18 PM
Subject: FYI -- WOTUS2, step 1 proposal started OMB review yesterday

First Trump EPA Rule For OMB Review Would Repeal Obama CWA Policy

May 03, 2017

EPA has sent its first new proposed rule for mandatory White House Office of Management & Budget (OMB) policy review since the Trump administration began, seeking approval of a regulation that would repeal the Obama-era Clean Water Act (CWA) jurisdiction rule as the first step in the process of rewriting the policy to narrow the water law's reach.

According to OMB's website, EPA submitted the proposed rule, “Definition of

'Waters of the United States' -- Recodification of Preexisting Rules," on May 2. The usual deadline for OMB review is 90 days, but that target is non-binding and in practice the process can take more or less time. Although the Trump EPA withdrew several pending Obama EPA rules from OMB once it took office, this is the first rule it has sent for OMB approval.

The website says the rule is not "economically significant," meaning it could avoid hurdles posed by the administration's order for agencies to designate two existing rules for repeal in order to make way for a new policy. If a new rule is deemed "economically significant," it is subject to the "2-for-1" requirement.

OMB's recent guidance on implementing the order has been seen underscoring that the requirement poses a major hurdle to crafting new rules not explicitly required by statute -- underscoring the importance of exempting rules like the CWA jurisdiction policy that EPA is seeking to quickly issue to comply with President Donald Trump's executive order requiring it to repeal or revise the underlying rule.

While EPA has not made a specific announcement about the CWA proposal sent for OMB review, the title of the proposed rulemaking fits with EPA's vow -- announced publicly at an April 19 meeting with state regulatory groups -- to repeal and replace the Obama administration's CWA rule in two steps.

The first step is to scrap the Obama-era rule and reinstate policies that were place before that rule was finalized.

The "preexisting rules" in the pending proposal's title refer to CWA jurisdiction policies that the 2015 rule supplanted -- most prominently a 1986 rulemaking, the most recent formal regulation issued on the subject until the Obama administration's policy, and 2008 guidance interpreting the effects of the Supreme Court's fractured CWA decision, *Rapanos v. United States*.

Those policies are still in force nationwide as implementation of the Obama-era rule has been stayed by the U.S. Court of Appeals for the 6th Circuit, but a formal repeal would make that state of affairs permanent.

Rule Repeal

One attendee of the April 19 meeting told *Inside EPA* at the time that the now-pending rule is not expected to codify the 2008 guide. Instead, it will aim to formally revive the policy *status quo* that existed before the Obama administration issued its rule.

The goal of the forthcoming rulemaking is to “make clear where we stand now, and what policies are going to be in place until there's a new rule,” that source said.

Repealing the Obama-era rule would avoid any chance that an appellate court's nationwide stay could be dissolved -- which could happen as soon as the end of 2017 if the Supreme Court rules in the pending case *National Association of Manufacturers (NAM) v. Department of Defense, et al.*, that appellate courts never had authority to hear suits over the regulation at all.

Critics of the 2015 rule, including GOP legislators, have urged the Trump administration to move quickly on a repeal rulemaking in order to avoid that scenario.

Most recently, legislators and witnesses at an April 26 hearing of the Senate Environment & Public Works Committee argued that the Obama-era rule goes far beyond the scientific report on waters' connectivity that EPA crafted to justify it, with one member of the Scientific Advisory Board (SAB) panel that reviewed the report agreeing with those claims.

The rule submitted to OMB is not expected to touch on the CWA jurisdiction policy that EPA ultimately plans to implement to comply with Trump's Feb. 28 executive order.

Second Step

Instead, the second step in the repeal and replace process for the CWA policy will be for the agency to craft a replacement rule that uses a narrower test for determining jurisdiction crafted by the late Supreme Court Justice Antonin Scalia rather than the broader test from Justice Anthony Kennedy that the Obama EPA and Army Corps of Engineers used in their joint rulemaking.

Scalia's test from the high court' 4-4-1 *Rapanos* ruling says CWA jurisdiction should be limited to "relatively permanent" waters that share a "continuous surface connection" with navigable waters. Since the *Rapanos* ruling it has competed with the broader test crafted by Justice Anthony Kennedy that says any waterbodies sharing a “significant nexus” with navigable waters should be considered jurisdictional.

While the Obama-era rule was based on the “significant nexus” test, repealing that regulation will not formally abandon Kennedy's standard, since the 2008 guidance says any water that satisfies either Kennedy or Scalia's opinions is protected by the CWA. Thus, a court battle over the repeal rule is unlikely to

touch on whether it is lawful to apply only the Scalia test -- instead, that question is expected to be at the heart of challenges to the eventual replacement rule.

But at least six state attorneys general, as well as environmental groups, have already vowed to sue over any action to rescind or replace the current CWA rule, signaling that any final rule on the subject will start a fresh court battle over whether the Trump administration has a reasonable basis for its repeal.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

To: Cherry, Andrew[Cherry.Andrew@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]
From: Pollins, Mark
Sent: Tue 4/25/2017 7:01:36 PM
Subject: FW: Hearings and Markups for April 24 - April 28, 2017

Mark Pollins, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance (OECA)
U.S. Environmental Protection Agency
Phone: (202) 564-4001
Fax: (202) 564-0018

From: Kabler, Lauren
Sent: Tuesday, April 25, 2017 2:39 PM
To: Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shinkman, Susan <Shinkman.Susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: FW: Hearings and Markups for April 24 - April 28, 2017

Hearing on WOTUS on Wednesday - FYI

Lauren V. Kabler

Special Counsel

OCE/IO/XPS

From: Bartlett, Keith

Sent: Monday, April 24, 2017 9:17 AM
To: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Kabler, Lauren <Kabler.Lauren@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>; Nguyen, Loan <Nguyen.Loan@epa.gov>; Previ, Caroline <Previ.Caroline@epa.gov>; Seaton, Tom <Seaton.Tom@epa.gov>; Strickland, Ann <Strickland.Ann@epa.gov>; McClary, Michael <McClary.Michael@epa.gov>; DePaul, Kimberley <DePaul.Kimberley@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Drazan, Dan <Drazan.Dan@epa.gov>; Senn, John <Senn.John@epa.gov>; Klos, Caroline <Klos.caroline@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>; Walker, Mike <Walker.Mike@epa.gov>; Ng, Brian <Ng.Brian@epa.gov>
Subject: Hearings and Markups for April 24 - April 28, 2017

Hearings and Markups for April 24 - April 28, 2017

Please note that most hearings are available as a streaming broadcast on the committee's website. However, if you have trouble seeing video on the committee website, please try using the congress.gov website and hearing links available at congress.gov/committees/video.

Wednesday, April 26, 2017

House Energy and Commerce, Subcommittee on Environment, will hold a hearing at 10:00 am, to consider "H.R.___, the Nuclear Waste Policy Amendments Act of 2017." A discussion draft is available here. Additional hearing information is available here.

Senate Committee on Environment and Public Works, will hold a hearing at 10:00 am, entitled "A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule." Additional Hearing information is available here.

Keith Bartlett

Policy and Legislative Coordination Division

Office of Administration and Policy

Office of Enforcement and Compliance Assurance

U.S. EPA

202-564-2385

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of "waters of the US." When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I'll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

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Donna

(202) 566-1367

To: Downing, Donna[Downing.Donna@epa.gov]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Yu, Yone[yu.yone@epa.gov]; Weaver, Kerryann[weaver.kerryann@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Kwok, Rose
Sent: Thur 4/20/2017 8:14:56 PM
Subject: Sharepoint Links for WOTUS-2 Regional-HQ Workgroup

Hi Folks,

Deliberative Process / Ex. 5

Here's the link again:

Deliberative Process / Ex. 5

this Sharepoint site, please let me know, and I'll give them access.

Go to WOTUS2 Briefing Materials

Thanks, please let me know if you have any questions.

Rose

From: Downing, Donna
Sent: Thursday, April 20, 2017 12:03 PM
To: Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; DCRoomWest7301/DC-CCW-OWOW <DCRoomWest7301@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Hi everybody:

Our biweekly Region-HQ WOTUS meeting is scheduled for today at 1pm. The agenda includes:

•□□□□□□□ A Sharepoint site for sharing documents among Workgroup members

Deliberative Process / Ex. 5

Those in Federal Triangle will be meeting in 7301 EPA West, the Potomac Conference Room.
CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Deliberative Process / Ex. 5

Talk to you at 1pm!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

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To: Downing, Donna[Downing.Donna@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]
Cc: Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Peterson, Carol[Peterson.Carol@epa.gov]; Yu, Yone[yu.yone@epa.gov]; Weaver, Kerryann[weaver.kerryann@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]
From: Christensen, Damaris
Sent: Thur 4/20/2017 5:48:56 PM
Subject: RE: FYI tribal consultation letter distribution list
ESPruitt to Tribal Leaders_04-20-17.pdf

And the tribal consultation letter is attached.

From: Christensen, Damaris
Sent: Thursday, April 20, 2017 1:45 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>

Cc: Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>
Subject: FYI tribal consultation letter distribution list

email distribution list for the tribal consultation letter will include:

Deliberative Process / Ex. 5

Damaris

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 20, 2017

THE ADMINISTRATOR

Dear Tribal Leader:

The U.S. Environmental Protection Agency is initiating consultation and coordination with federally recognized Indian tribes on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). The EPA has invited the Department of Army to participate in this consultation and coordination.

This action follows the February 28, 2017, Presidential Executive Order 13778 on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of the Congress and the states under the Constitution. It also directs the agencies to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. Further, the EO directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the Clean Water Rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the EO. Justice Scalia's *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

With this letter, the EPA is formally initiating consultation on the revised definition of "waters of the U.S." with federally recognized Indian tribes. This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). The EPA invites you and your designated consultation representative(s) to participate. The EPA's anticipated timeline for the consultation and coordination period is expected to extend from April 20, 2017, to June 20, 2017. In addition, the coordination may extend through the end of the public comment period on the second rulemaking.

Internet Address (URL) ● http://www.epa.gov
Recycled/Recyclable ● Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process the EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. *This information is also available on the EPA's Tribal Portal.*

The official EPA contact person for this consultation and coordination process is Karen Gude, Office of Water Tribal Program Coordinator, at (202) 564-0831 or gude.karen@epa.gov. Please do not hesitate to contact Karen should you have any questions or if you would like to request alternate arrangements to the process outlined in the consultation plan.

Whether or not you participate in this consultation process, you will still have the opportunity to provide input on any regulatory action during the public comment period. The proposed rule will be published in the *Federal Register* and accessible at https://www.regulations.gov. I look forward to working with you on this important matter.

Respectfully yours,

E. Scott Pruitt

Enclosure

cc: Tribal Environmental Directors
Regional Indian Coordinators
Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works

Consultation Plan

Background information on this initiative

From the 1970s through the 1990s, the majority of federal courts as well as the EPA and the Department of Army (the agencies) consistently interpreted a broad scope of Clean Water Act jurisdiction as necessary to and consistent with the Act's goals of protecting water quality. Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The Justices in the *Rapanos v. United States*, 547 U.S. 715 (2006) decision were split on how this was to be accomplished. The agencies have been working since the 2006 Supreme Court decision to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act. The 2015 Clean Water Rule, and the proposed new rulemaking effort, reflect the agencies' efforts to provide that needed clarification and predictability.

The February 28, 2017, executive order says that the EPA and the Army Corps "shall consider interpreting the term "navigable waters" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*. Justice Scalia's opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

Since the EO was issued, the agencies have taken two actions. First, we published a *Federal Register* notice on March 6, 2017, called "Intention to Review and Rescind or Revise the Clean Water Rule." The notice announces the EPA and Army's intention to review and rescind or revise the 2015 Clean Water Rule, consistent with Justice Scalia's opinion. Second, at the EPA's request, on March 6, 2017, the Department of Justice advised the Sixth Circuit Court of Appeals that the agencies intend to consider rescinding or revising the Clean Water Rule. The notice is called for by the EO and is appropriate because of the ongoing Clean Water Rule-related litigation currently before that court. These items, as well as a link to the executive order, are on the EPA's Clean Water Rule website at www.epa.gov/cleanwaterrule.

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit stay of the 2015 rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a rulemaking to revise the definition of "waters of the U.S." consistent with direction in the February 28, 2017, EO to interpret the term "navigable waters" in a manner consistent with the opinion of Justice Scalia in *Rapanos*.

The definition of "waters of the U.S." affects the implementation of Clean Water Act programs on tribal lands and lands upstream of tribal waters, including section 401 tribal and state certification requirements, under which tribes can request accommodation for environmental and cultural values within a federal permit; section 402 National Pollutant Discharge Elimination System permits, which regulate discharges of pollutants that may directly or indirectly reach jurisdictional waters; section 404 permits, which regulate the discharge of dredged or fill material; section 303, which calls for water quality standards; and section 311, which requires oil spill response and prevention plans.

The Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule can be found at www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic.

The Federal Register Notice of Intention to Review and Rescind or Revise the Clean Water Rule can be found at www.federalregister.gov/documents/2017/03/06/2017-04312/intention-to-review-and-rescind-or-revise-the-clean-water-rule.

Potential impacts to tribes

The EPA understands that decisions concerning whether a water body is subject to the Clean Water Act have consequences for tribal, state and local governments and for private parties. The agencies intend the first rulemaking is to preserve the status quo. Under the second proposed rulemaking, the EPA expects that the number of waters protected under the Clean Water Act will decrease compared both to current practice and the scope of the 2015 Clean Water Rule. As a result, businesses and governments that, for example, build homes and roads may face some decreased costs of the permitting process from offsetting the effects to aquatic resources from development. Those tribes that have 401 certification authorities may find that the number of permits requiring 401 certification decreases.

The Clean Water Act is one of the nation's most effective environmental laws, calling for the federal government, tribes and states to work together to achieve the act's goals. While tribes may request approval from the EPA to administer their own Clean Water Act section 402 and/or Clean Water Act section 404 permit program, to date no tribes have requested approval of a tribal 402 or 404 program. As a result, the EPA issues 402 permits and the Corps issues 404 permits in Indian country, and thus the burden for processing permit applications and conducting associated analyses will generally fall on the agencies.

Opportunities for tribes to participate

The tribal consultation process table below lays out the process and timeline for government-to-government consultation and coordination. The agencies are also looking for opportunities to discuss the rulemaking at in-person meetings.

Tribes may also participate in any public review and comment process. For more information, see the EPA's website at www.epa.gov/cleanwaterrule.

Tribes may access this letter and related consultation information via the EPA's Tribal Consultation Opportunities Tracking System, located at tcots.epa.gov.

The combined goal for all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Tribal Consultation Process and Timeline

April 20, 2017	Initiation of tribal consultation via mail and by electronic announcement	EPA Contact: Karen Gude, (202) 564-0831
April 27, 2017	Tribes-only Information Webinar	Webinar time: 2:00-3:30 Eastern Time To register: https://epawebconferencing.acms.com/wotus2/event/registration.html; Call-in 1-866-299-3188, code 202-566-0657 EPA Contact: Rose Kwok, (202) 566-0657
May 18, 2017	Tribes-only Information Webinar	Webinar time: 1:30-3:30 Eastern Time To register: http://epawebconferencing.acms.com/cwa_wotus/event/registration.html ; Call-in 1-866-299-3188, code 202-566-0657 EPA Contact: Rose Kwok, (202) 566-0657
Public comment period	Tribes will be welcome to make additional comments and raise additional questions during the public comment period following rule proposal.	Once the rule has been proposed, EPA's website will contain information on the public comment process.
Additional meetings or webinars may be scheduled.		

To: Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; DCRoomWest7301/DC-CCW-OWOW[DCRoomWest7301@epa.gov]; Yu, Yone[yu.yone@epa.gov]; Weaver, Kerryann[weaver.kerryann@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Downing, Donna
Sent: Thur 4/20/2017 4:03:29 PM
Subject: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials
federalism FINAL ppt 4-19-17.pptx
draft Basic Talking Points.docx

Hi everybody:

Our biweekly Region-HQ WOTUS meeting is scheduled for today at 1pm. The agenda includes:

•□□□□□□□ A Sharepoint site for sharing documents among Workgroup members

Deliberative Process / Ex. 5

Those in Federal Triangle will be meeting in 7301 EPA West, the Potomac Conference Room.
CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Talk to you at 1pm!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

United States Environmental Protection Agency

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
  - Step 1
  - Step 2
- Discussion of Potential Approaches
- Next steps

ED_001271_00075980-00002 WOTUS_Rule_FOIAs_0023612

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of "waters of the U.S."

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“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

ED_001271_00075980-00004 WOTUS_Rule_FOIAs_0023614

The Executive Order

On February 28, 2017, the President signed the "Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and "publish for notice and comment a proposed rule rescinding or revising the rule…."

The E.O. directs that EPA and the Army "shall consider interpreting the term 'navigable waters'" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*. Justice Scalia's opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic

ED_001271_00075980-00005 WOTUS_Rule_FOIAs_0023615

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

ED_001271_00075980-00006 WOTUS_Rule_FOIAs_0023616

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

ED_001271_00075980-00007 WOTUS_Rule_FOIAs_0023617

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia's opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

ED_001271_00075980-00008 WOTUS_Rule_FOIAs_0023618

Potential Approaches to "Relatively Permanent" Waters

Perennial plus streams with "seasonal" flow

Current practice: seasonal flow = about 3 months (varies regionally)

Perennial plus streams with another measure of flow

Use appropriate, implementable metrics, e.g., frequency of flow, intersecting water table

Perennial streams only

Streams that carry flow throughout the year except in extreme drought

Other

Thoughts?

ED_001271_00075980-00009 WOTUS_Rule_FOIAs_0023619

Potential Approaches to Wetlands with a "Continuous Surface Connection"

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of "relatively permanent" and "continuous surface connection" defined and implemented? How would you like to see the agencies interpret "consistent with" Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?

2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?

3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?

4. The agencies' economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

ED_001271_00075980-00011 WOTUS_Rule_FOIAs_0023621

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov

ED_001271_00075980-00012 WOTUS_Rule_FOIAs_0023622

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

ED_001271_00075980-00013 WOTUS_Rule_FOIAs_0023623

To: Speir, Jeffrey[speir.jeffrey@epa.gov]
Cc: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Stokely, Peter
Sent: Tue 4/18/2017 12:25:13 PM
Subject: Re: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

Jeff, YesI am planning to call in today.

Peter Stokely
EPA Office of Civil Enforcement
Washington, DC
202-564-1841

CONFIDENTIAL: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message was sent to you in error you are instructed to delete it from your computer including all media storage devices and hard copy outputs.

From: Speir, Jeffrey
Sent: Tuesday, April 18, 2017 8:22:35 AM
To: Stokely, Peter
Cc: Cherry, Andrew
Subject: RE: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

Hi Pete,

I will be in a training today during the WOTUS-2 interagency meeting, and I believe Drew is out. Are you able to call in this afternoon at 1:00? Thanks!

-Jeff

Jeffrey Speir

Attorney-Adviser

U.S. Environmental Protection Agency

OECA – OCE – Water Enforcement Division

1200 Pennsylvania Avenue, NW (2243-A)

Washington, DC 20460

(202) 564-0872

From: Downing, Donna
Sent: Monday, April 17, 2017 6:39 PM
To: Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; David.F.Dale@usace.army.mil; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

Hi everybody –

This email is a reminder of tomorrow's interagency staff meeting on WOTUS-2, scheduled for 1pm. For those able to attend in person, we're in 7301 ("Potomac Conference Room") in EPA West. For telecom participation, c Nonresponsive Conference Code/ Ex. 6 The plan for

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder with read-only copies of the documents to be discussed at this meeting:

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Looking forward to talking with you tomorrow!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Stokely, Peter[Stokely.Peter@epa.gov]
Cc: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Speir, Jeffrey
Sent: Tue 4/18/2017 12:22:35 PM
Subject: RE: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

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-Jeff

Jeffrey Speir

Attorney-Adviser

U.S. Environmental Protection Agency

OECA – OCE – Water Enforcement Division

1200 Pennsylvania Avenue, NW (2243-A)

Washington, DC 20460

(202) 564-0872

From: Downing, Donna
Sent: Monday, April 17, 2017 6:39 PM
To: Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; David.F.Dale@usace.army.mil; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin

<Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

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Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder with read-only copies of the documents to be discussed at this meeting:

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Looking forward to talking with you tomorrow!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Speir, Jeffrey
Sent: Mon 4/10/2017 5:48:58 PM
Subject: RE: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

Yes, this is the first one that I have received, but I should be on the list now.

Jeffrey Speir

Attorney-Adviser

U.S. Environmental Protection Agency

OECA – OCE – Water Enforcement Division

1200 Pennsylvania Avenue, NW (2243-A)

Washington, DC 20460

(202) 564-0872

From: Cherry, Andrew
Sent: Monday, April 10, 2017 1:46 PM
To: Speir, Jeffrey <speir.jeffrey@epa.gov>
Subject: FW: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

Are you getting these Jeff?

Andrew Cherry

Attorney - Advisor

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South, Room 4119A (Mail Code 2243-A))

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-2589 (FAX 202-564-0024)

From: Downing, Donna
Sent: Monday, April 10, 2017 1:44 PM
To: David.F.Dale@usace.army.mil; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; DCRoomWest7129/DC-CCW-OWOW <DCRoomWest7129@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>
Subject: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

DELIBERATIVE PROCESS; CONFIDENTIAL

Hi folks:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'll be in Shepherdstown at the ASWM meeting on Tuesday and Wednesday, but hope to call in for both meetings.

Thanks!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW Telecom: 1-8662993188, access 2025661290#
Importance: Normal
Subject: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM
Informal WOTUS Workgroup participant list.docx

ADDING CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of "waters of the US." As various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. I've asked the Wetlands Regional Branch Chiefs for suggested participants, and have filled in around in the edges with staff who've been active currently or in the past.

This meeting is the kick-off. Agenda includes:

- Discussion of the agencies' charge, and the role of this workgroup

Deliberative Process / Ex. 5

- Discussion of how frequently and when this workgroup should meet

Deliberative Process / Ex. 5

Please feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

PS -- I'm attaching a draft list of workgroup participants. I'll update as it evolves.

To: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Speir, Jeffrey
Sent: Tue 4/4/2017 12:43:38 PM
Subject: RE: WOTUS-2 interagency meeting

I'll plan to call in as well.

Jeffrey Speir

Attorney-Adviser

U.S. Environmental Protection Agency

OECA – OCE – Water Enforcement Division

1200 Pennsylvania Avenue, NW (2243-A)

Washington, DC 20460

(202) 564-0872

-----Original Appointment-----
From: Cherry, Andrew **On Behalf Of** Downing, Donna
Sent: Tuesday, April 04, 2017 8:35 AM
To: Speir, Jeffrey; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn
Cc: Ludwig-Monty, Sarah
Subject: FW: WOTUS-2 interagency meeting
When: Tuesday, April 04, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

Jeff – FYI – I may call in for this meeting.

-----Original Appointment-----
From: Downing, Donna

Sent: Thursday, March 30, 2017 5:11 PM
To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn
Cc: Ludwig-Monty, Sarah
Subject: WOTUS-2 interagency meeting
When: Tuesday, April 04, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

Agenda will precede the meeting.

The time's moved from our usual 11am in response to requests.

I've reserved a room at EPA, but the meeting could be held at the Corps if they prefer.

Telecom: call **Nonresponsive Conference Code/ Ex. 6**

Talk to you later!

Donna

To: Adams, Margery[adams.margery@epa.gov]; Beveridge, Laura[Beveridge.Laura@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Clovis, Debora[Clovis.Debora@epa.gov]; Messier, Dawn[Messier.Dawn@epa.gov]; Denawa, Mai[Denawa.Mai@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Feinmark, Phyllis[Feinmark.Phyllis@epa.gov]; Fischer, Lauren[Fischer.Lauren@epa.gov]; Garnett, Desean[Garnett.Desean@epa.gov]; Ghosh, Mita[Ghosh.Mita@epa.gov]; Hicks, Matt[Hicks.Matthew@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; Kao, Jessica[Kao.Jessica@epa.gov]; Kermish, Laurie[Kermish.Laurie@epa.gov]; Klassman, Debra[klassman.debra@epa.gov]; Knorr, Michele[knorr.michele@epa.gov]; Kopf, Jeff[Kopf.Jeff@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Lazos, Pamela[Lazos.Pamela@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Logan, Paul[Logan.Paul@epa.gov]; Mairs, Stephanie[Mairs.Stephanie@epa.gov]; Mancusi-Ungaro, Philip[Mancusi-Ungaro.Philip@epa.gov]; Mikalian, Charles[mikalian.charles@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]; Muehlberger, Christopher[muehlberger.christopher@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murdock, Russell[Murdock.Russell@epa.gov]; Nalven, Heidi[Nalven.Heidi@epa.gov]; Pallesen, Reginald A.[pallesen.reginald@epa.gov]; Perkins, Erin[Perkins.Erin@epa.gov]; Przyborski, Jay[Przyborski.Jay@epa.gov]; Rucki, Thomas[Rucki.Thomas@epa.gov]; Saporita, Chris[Saporita.Chris@epa.gov]; Schefski, Melissa[Schefski.Melissa@epa.gov]; Schwartz, Paul[Schwartz.Paul@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; Silver, Wendy[Silver.Wendy@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Sutin, Elyana[Sutin.Elyana@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]; Trevino, Jeffery[trevino.jeffery@epa.gov]; Vinch, James[Vinch.James@epa.gov]; Volk, Everett[volk.everett@epa.gov]; VonVacano, Marcela[VonVacano.Marcela@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Wester, Barbara[wester.barbara@epa.gov]; Williams, Ann[Williams.Ann@epa.gov]
From: Wehling, Carrie
Sent: Mon 3/6/2017 3:44:02 PM
Subject: FR Notice of Intention to Review and Rescind or Revise the Clean Water Rule published today.

FYI, link below.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Monday, March 06, 2017 10:37 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: FR Dailies: Notice of Intention to Review and Rescind or Revise the Clean Water Rule is about to publish in the FR.

FYI – here's the link at federalregister.gov and gpo.gov. I'll replace the version that is on the website.

https://www.federalregister.gov/documents/2017/03/06/2017-04312/intention-to-review-and-rescind-or-revise-the-clean-water-rule.

https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04312.pdf.

To: Theis, Joseph[Theis.Joseph@epa.gov]
Cc: Cherry, Andrew[Cherry.Andrew@epa.gov]
From: Stokely, Peter
Sent: Wed 5/3/2017 3:41:06 PM
Subject: Emailing: CWA_After_SupremeCourt_draft final EPW.ppt
CWA_After_SupremeCourt_draft final EPW.ppt

Joe here is the presentation, I doubt this was given to Susan, or Dave since it predated their involvement here in OECA (Dave may have seen it when was in the Region). I don't know if Larry saw this.

Your message is ready to be sent with the following file or link attachments:

CWA_After_SupremeCourt_draft final EPW.ppt

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: MSN.com - Hotmail, Outlook, Skype, Bing, Latest News, Photos & Videos
Sent: Tue 2/28/2017 1:13:22 PM
Subject: Trump Order Will Aim to Roll Back a Clean Water Rule
MAIL_CONVERSATION_TOPIC: Trump Order Will Aim to Roll Back a Clean Water Rule
Created: Tue 2/28/2017 1:14:52 PM

The executive order, expected Tuesday, will direct the Environmental Protection Agency to begin dismantling President Barack Obama's environmental legacy.

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