Message

From: McGartland, Al [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FE25FC1DF634F9798675527E0070429-AMCGARTL]
Sent: 6/9/2017 6:39:56 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Fwd: Update from OMB
Attachments: WOTUS_-_US 6thCir file-stamped_response_brief.pdf; ATT00001.htm

Making sure you have everything

Sent from my iPhone

Begin forwarded message:

From: "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
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>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov>, "Hewitt, Julie" <Hewitt.Julie@epa.gov>, "McGartland, Al" <McGartland.Al@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Owens, Nicole" <Owens.Nicole@epa.gov>, "Rees, Sarah" <rees.sarah@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: RE: Update from OMB

Hi Mindy – Here's the brief. One issue we were flagging is not limited to Deliberative Process / attorney-client Ex. 5
Deliberative Process / attorney-client Ex. 5

Deliberative Process / attorney-client Ex. 5

Deliberative Process / attorney-client Ex. 5

Deliberative Process / attorney-client Ex. 5

Let me know if you need anything else.

Karyn

Karyn Wendelowski

Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

From: Eisenberg, Mindy
Sent: Friday, June 09, 2017 1:39 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>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Update from OMB

I just had a quick chat with Vlad to check in on their review of the preamble and econ. They are having internal discussions later about their recommendations and edits back to us, particularly on the Deliberative Process / Ex. 5 Hopefully we will see that by COB or on Monday, and Vlad was interested in a possible staff call once they send us their edits. Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

For OGC – I flagged for him that we want to Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 so if there are sections that you think they should be aware of can you send to me? He mentioned how we Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 I also conveyed Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Finally, it looks like there may be a call later with Samantha on various EPA actions, so stay tuned.

Mindy

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Kime, Robin[Kime.Robin@epa.gov]
From: Hilary Moffett
Sent: Tue 5/16/2017 12:20:47 PM
Subject: Fwd: Comments on EPA's Reg Reform proposal
API EPA reg reform final comments 5-15-17.pdf
ATT00001.htm
API Attachment 1 - Comments on specific regulations 5-15-17.pdf
ATT00002.htm

Hi Robin,

These are the comments we submitted last night.

Thanks, and see you soon.

Hilary

Begin forwarded message:

From: "Howard Feldman" <Feldman@api.org>
To: "hec@listserve.api.org" <hec@listserve.api.org>
Subject: Comments on EPA's Reg Reform proposal

API Health and Environment Committee,

Attached are the comments submitted today to the EPA reg reform docket. Thank you all for your input! Obviously we tried to incorporate every company's input and comments to the extent possible, consistent with the HEC guidance on the issues and the comment package.

Next, your Washington representatives will be meeting with EPA and Hill staff regarding the identified issues.

Thanks again for your help.

Howard

Howard J. Feldman
Senior Director
Regulatory & Scientific Affairs
1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8340
Fax 202-682-8270
E-mail feldman@api.org

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Hilary Moffett
Sent: Mon 5/15/2017 9:52:45 PM
Subject: API Comments on Task Force
API EPA reg reform final comments 5-15-17.pdf
API Attachment 1 - Comments on specific regulations 5-15-17.pdf

Good afternoon,

Attached, please find a copy of API's comments that were submitted just moments ago. We will reference these comments in out meeting tomorrow.

Thanks,
Hilary

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Curry, Bridgid[Curry.Bridgid@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Owens, Nicole[Owens.Nicole@epa.gov]; Rogers, JoanB[Rogers.JoanB@epa.gov]
From: Benjamin-Sirmons, Denise
Sent: Mon 5/15/2017 7:24:51 PM
Subject: OSDBU Regulatory Reform Recommendations
OSDBU Executive Order 13777 Public Feedback Matrix1.xlsx
OSDBU Executive Order 13777 Public Feedback Matrix_w Figures.xlsx
OSDBU Regulatory Reform Recommendations 5.15.17.pdf
OSDBU Regulatory Reform Recommendations 5.15.17.docx

Greetings Samantha,

In response to Administrator Pruitt's March 24, 2017, memorandum on Executive Order 13777, I am attaching the recommendations of the Office of Small and Disadvantaged Business Utilization regarding the agency's regulatory reform efforts. As requested, the attached recommendations include background information on the comments provided at the two meetings OSDBU hosted. The recommendations also include information on the written comments submitted through the agency's Regulatory Reform Docket (EPA-HQ-OA-2017-0190), as well as the separate docket OSDBU originally opened (EPA-HQ-OA-2017-0178). The recommendations are provided in both the PDF and WORD formats.

Also attached for your information are two excel files, each containing a stakeholder feedback matrix.

My thanks to Joan B. Rogers, EPA's Small Business Ombudsman, and her team for taking the lead in conducting the meetings and in drafting the attached documents. If you have any questions concerning the stakeholder feedback process, comments or OSDBU's recommendations, please feel free to contact me at the number below. You may also contact Joan directly at: (202) 564-6568 or rogers.joanb@epa.gov .

Thank you for soliciting OSDBU's input and the small business perspective in the agency's regulatory reform initiative.

Denise Benjamin Sirmons, Director
Office of Small and Disadvantaged Business Utilization
U.S. Environmental Protection Agency
P: 202-564-6771; F: 202-566-1505
"Small Business First"

Message

From: Paul Schlegel [pauls@fb.org]
Sent: 5/15/2017 6:24:46 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: Agriculture submission to EPA
Attachments: EPA-Final17.0515.pdf

Samantha and Brittany –

As I mentioned last week, a broad spectrum of agricultural organizations have compiled comments for EPA's docket on regulations. I am attaching a copy of the comment letter, which was filed a short while ago.

The comments raise a number of very important issues for producers. If your schedules permit, we would welcome the chance to meet with you to reinforce their importance to our members.

Thanks very much for your willingness to look these over.

Cordially,

Paul

Paul Schlegel
Director, Energy and Environment Team
Direct: (202) 406-3687
Cell: Personal Phone / Ex. 6
Email: pauls@fb.org

From: Dravis, Samantha [mailto:dravis.samantha@epa.gov]
Sent: Thursday, May 11, 2017 2:58 PM
To: Paul Schlegel
Cc: Bolen, Brittany
Subject: RE: Agriculture submission to EPA

Thank you, Paul. Look forward to seeing the comments.

From: Paul Schlegel [mailto:pauls@fb.org]
Sent: Thursday, May 11, 2017 2:41 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Agriculture submission to EPA

Samantha –

On Monday, a large number of agricultural organizations will make a joint submission to the EPA docket EPA-HQ- OA-2017-0190. American Farm Bureau is coordinating this effort. I've included below a list of the groups currently signing onto the submission.

Once the submission is final, I would like to send you a copy. Additionally, I know we would appreciate the chance to meet with you to underscore the importance of these issues to agriculture generally. We'd be happy to work around your schedule if that is something that would be worthwhile for you.

Thanks very much, and let me know if I can answer any questions.

Paul

Paul Schlegel
Director, Energy and Environment Team
Direct: (202) 406-3687
Cell: Personal Phone / Ex. 6
Email: pauls@fb.org

Groups signing onto Agriculture Regulatory Reform Submission:

Agri-Mark Dairy Cooperative, Inc.
American Dairy Coalition
American Farm Bureau Federation
AmericanHort
American Soybean Association
American Sugar Cane League
California Specialty Crops Council
Dairy Farmers of America
Dairy Producers of New Mexico
Dairy Producers of Utah
Exotic Wildlife Association
Federal Forest Resource Coalition
Idaho Dairymen's Association
Missouri Dairy Association
National Association of Wheat Growers
National Corn Growers Association
National Cotton Council
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Pork Producers Council
National Milk Producers Federation
National Sorghum Producers
Northeast Dairy Farmers Cooperatives
Panhandle Peanut Growers Association
Professional Dairy Managers of Pennsylvania
South East Dairy Farmers Association
Southwest Council of Agribusiness
St. Albans Cooperative Creamery
Upstate Niagara Cooperative, Inc.
US Apple Association
USA Rice
Western Peanut Growers Association
Western United Dairymen

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 6/8/2017 3:05:23 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Barbery, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e219352056ea405a97c93fd9756ceb2b-ABarbery]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Ward Scott [wscott@westgov.org]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; David.F.Dale@usace.army.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=323c0ae43d59410ebcf97e2218200a14-David.F.Dale@usace.army.mil]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]

Subject: WOTUS - WGA federalism call
Attachments: federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF; federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF
Location: DCRoomWest7114M/DC-CCW-OWOW

Start: 6/8/2017 5:00:00 PM
End: 6/8/2017 6:00:00 PM
Show Time As: Busy

Call in Nonresponsive Conference Code/ Ex. 6 (this is for the agencies to use, the WGA members have the number on the PPT)

Conference ID Nonresponsive Conference Code/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

If you will be speaking or responding to questions at this meeting you should use the Leader number.

Conference ID Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

Participant Toll Free Dial-In Number:

Webinar:

URL: Nonresponsive Internal URL/ Ex. 6

Appointment

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 6/3/2017 2:03:21 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Gude, Karen [Gude.Karen@epa.gov]; Chemerys, Ruth [Chemerys.Ruth@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Wesson, Dolores [Wesson.Dolores@epa.gov]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Charles Smith [charles.r.smith567.civ@mail.mil]; Rose Kwok [kwok.rose@gmail.com]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; David.F.Dale@usace.army.mil; Christensen, Damaris [Christensen.Damaris@epa.gov]; Mcguffie, Brianne E CIV USARMY CESAJ (US) [Brianne.E.Mcguffie@usace.army.mil]

Subject: NCAI Mid-Year Conference: Tribal Listening Session on WOTUS
Attachments: 14June2017_TribalRunofShow.docx; WOTUS2 tribal info and consultation - 6-14-2017.pptx
Location: Brothertown Conference Room (at Conference) or Nonresponsive Conference Code/ Ex. 6

Start: 6/14/2017 4:00:00 PM
End: 6/14/2017 5:00:00 PM
Show Time As: Tentative

Cindy and I will be attending in person, but I'm setting up a phone line for folks to call in who are interested in calling in. The call in is Nonresponsive Conference Code/ Ex. 6

Karen – can you help take notes?

I've added materials for the meeting to Sharepoint:

Nonresponsive Internal URL/ Ex. 6

attached a few of the documents to the invite. Cindy, give you the Army opening remarks on the Run of Show since you'll be there in person. We'll have a sign-in sheet and some hard copies of the presentation.

Appointment

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/26/2017 3:40:39 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [Bennett.Tate@epa.gov]; Hurld, Kathy [Hurld.Kathy@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [cindy.s.barger.civ@mail.mil]
CC: Reid, Darren [Reid.Darren@epa.gov]; Klos, Caroline [Klos.caroline@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Nitsch, Chad [Nitsch.Chad@epa.gov]; Wesson, Dolores [Wesson.Dolores@epa.gov]

Subject: WOTUS2: Federalism webinar w/NASADA
Attachments: federalism NASDA ppt 5-31-17.pdf; state federalism outreach invite NASDA.PDF
Location: WJCW 7129; webina Nonresponsive Conference Code/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6 below:
Start: 5/31/2017 8:00:00 PM
End: 5/31/2017 9:00:00 PM
Show Time As: Busy

Note: Agenda added below and Room change

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 call in **Nonresponsive Conference Code/ Ex. 6**

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/17/2017 7:19:01 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Downing, Donna [Downing.Donna@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Wesson, Dolores [Wesson.Dolores@epa.gov]; Peterson, Carol [Peterson.Carol@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Gude, Karen [Gude.Karen@epa.gov]; Martinez, Maria [Martinez.Maria@epa.gov]; Fontenot, Alison [Fontenot.Alison@epa.gov]; Charles Smith [charles.r.smith567.civ@mail.mil]

Subject: HOLD for Region 6 RTOC WOTUS Presentation
Attachments: 06-06-17_TribalRunofShow.docx; WOTUS2 tribal info and consultation - 6-6-2017.pptx; WOTUS2 tribal info and consultation - 6-6-2017.pdf
Location: Nonresponsive Conference Code/ Ex. 6 or DCRoomWest7301/DC-CCW-OWOW

Start: 6/6/2017 3:30:00 PM
End: 6/6/2017 4:00:00 PM
Show Time As: Busy

Conference Number: Nonresponsive Conference Code/ Ex. 6. I've reserved Potomac Conference Room. Latest materials are attached.

Hold for the Region 6 RTOC. **I will not be able to give this presentation** since I will be on travel. Donna will be giving the presentation instead. Please let me know if there are others that should be invited.

Their call begins at 11:30 AM on 6/6. R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. They prefer that we send them the slides in advance and to not do a webinar – I will send them the PDF version.

Appointment

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/15/2017 6:56:49 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Shaw, Hanh [Shaw.Hanh@epa.gov]; Peak, Tracy [Peak.Tracy@epa.gov]; Dean, Heather [Dean.Heather@epa.gov]; Leidy, Robert [Leidy.Robert@epa.gov]; Amato, Paul [Amato.Paul@epa.gov]; Wesson, Dolores [Wesson.Dolores@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Gude, Karen [Gude.Karen@epa.gov]; Louis, Gail [Louis.Gail@epa.gov]; Briannon.Fraley@tolowa.com; Charles Smith [charles.r.smith567.civ@mail.mil]
CC: Peterson, Carol [Peterson.Carol@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Eastman, Tiffany (AKA: Stone) [Eastman.Tiffany@epa.gov]; Nadeau, Tracie [Nadeau.Tracie@epa.gov]; Stevie Lemke [stevie.lemke@Tolowa.com]; Megan Van Pelt [Megan.VanPelt@Tolowa.com]

Subject: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
Attachments: WOTUS2 tribal info and consultation - 5-31-2017.pdf
Location: Nonresponsive Conference Code/ Ex. 6 or 7114M WJC West (Pacific Conference Room)

Start: 5/31/2017 4:00:00 PM
End: 5/31/2017 5:00:00 PM
Show Time As: Busy

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the "waters of the United States" (WOTUS) rulemaking efforts.

Conference line: Nonresponsive Conference Code/ Ex. 6

In DC, I've reserved the Pacific Conference Room (7114-M West)

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Wed 5/31/2017 6:39:19 PM
Subject: TPs on options, drawn directly from larger options paper
Options table TPs.docx

Is attached, and hardcopy coming.

Donna

Donna Downing
Jurisdiction Team Leader
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: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 5/30/2017 6:14:45 PM
Subject: Table and agenda
WOTUS2_options v3.docx
Agenda -- WOTUS 31 May 2017 v3.docx

Mindy – do you want me to send this out or will you?

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/26/2017 7:44:01 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Fwd: step 2 options paper
Attachments: WOTUS2_options v2.docx; ATT00001.htm

... because I somehow left you off the list! I copied from the Wednesday meeting.

Damaris

Sent from my iPhone

Begin forwarded message:

From: "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Date: May 26, 2017 at 2:17:44 PM EDT
To: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Kwok, Rose" <kwok.rose@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Flannery-Keith, Erin" <Flannery-Keith.Erin@epa.gov>, "Frazer, Brian" <Frazer.Brian@epa.gov>, "David.F.Dale@usace.army.mil" <David.F.Dale@usace.army.mil>, "Hewitt, Julie" <Hewitt.Julie@epa.gov>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov>, "Stokely, Peter" <Stokely.Peter@epa.gov>, "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, "jennifer.a.moyer@usace.army.mil" <jennifer.a.moyer@usace.army.mil>, "Orvin, Chris" <Orvin.Chris@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>
Subject: step 2 options paper

Hi all,

Attached is a table laying out a variety of options for describing the scope of CWA jurisdiction in preparation for a meeting with Sarah, Justin and David on May 31. We would appreciate your thoughts and edits, preferably on the Sharepoint site (link below), although I have attached a Word document for your convenience.

Nonresponsive Internal URL/ Ex. 6

Please note that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Damaris

Message

From: Klos, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EE1938845F7449DFBEB1A41493051068-KLOS, CAROLINE]
Sent: 6/12/2017 11:06:38 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]
CC: Hall, Lynda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc410640384b4ba0a158573d17f88fb9-LHall02]; Flahive, Katie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3ca49eade624827a8a65281b7bffe9c-KFlahive]; Yusuf, Istanbul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4db2f6c3869b4b668208ef60e08d7fe8-Yusuf, Istanbul]; Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]; Chancey, Barbara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bda8332fffe34ff28c671bd344058982-BChancey]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: Family Farm Alliance TP's
Attachments: OWOW Family Farm Alliance TPs.docx; Family Farm Alliance June 13_OW final TPs.docx

Attached is what OWOW submitted for this short turnaround drill, as well as the final OW talkers as consolidated by Christine Ruf.

Thanks to all who contributed in such a timely fashion.

Caroline Mixon Klos
Environmental Protection Agency
Office of Wetlands, Oceans & Watersheds
Office: 202-564-3029 room 7417D West
Telework: Personal Phone / Ex. 6

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/12/2017 7:29:26 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]
Subject: RE: TPs Needed for Tomorrow: Family Farm Alliance
Attachments: WOTUS2 Talking Points 6-12-17.docx

Here are the latest TPs.

Damaris

From: Eisenberg, Mindy
Sent: Monday, June 12, 2017 12:12 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fwd: TPs Needed for Tomorrow: Family Farm Alliance

Damaris,
Can you send Caroline the basic TPs on Wotus? Reflecting step 1 is coming soon?
Thanks!

Sent from my iPhone

Begin forwarded message:

> **From:** "Klos, Caroline" <Klos.caroline@epa.gov>
> **Date:** June 12, 2017 at 10:55:10 AM EDT
> **To:** OWOW Managers Group <OWOW_Managers_Group@epa.gov>
> **Cc:** "Brown, Sineta" <Brown.Sineta@epa.gov>
> **Subject: RE: TPs Needed for Tomorrow: Family Farm Alliance**
>
> Here is additional information, just in, regarding this request:
>
> To discuss crucial western water policies and issues, including infrastructure, drought, the Endangered Species Act, the Clean Water Act, farm water programs and a new Farm Bill, and other issues that affect western irrigated farms and ranches.
>
> ---
>
> **From:** Klos, Caroline
> **Sent:** Monday, June 12, 2017 10:44 AM
> **To:** OWOW Managers Group <OWOW_Managers_Group@epa.gov>
> **Subject:** FW: TPs Needed for Tomorrow: Family Farm Alliance

Another request for talking points from the OW IO. They are looking for generic TPs on our work with farming in general. Please see email below and let me know by 1:00 today if you have input. Sorry for the short turnaround, but this just came in :o(

Caroline Mixon Klos
Environmental Protection Agency
Office of Wetlands, Oceans & Watersheds
Office: 202-564-3029 room 7417D West
Telework: Personal Phone / Ex. 6

From: Campbell, Ann
Sent: Monday, June 12, 2017 10:40 AM
To: Farris, Erika D. <Farris.Erika@epa.gov>; Klos, Caroline <Klos.caroline@epa.gov>; Crawford, Tiffany <Crawford.Tiffany@epa.gov>
Cc: Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: TPs Needed for Tomorrow: Family Farm Alliance

Folks, this got set up late last week. I'm still trying to narrow the conversation down and get specifics but this is what I have so far. Would be great if folks could offer some generic TPs on our work with farming in general (which I think we have from the agri womens meeting), water infrastructure, and WOTUS. I will compile, unless someone wants to volunteer! ☺

Family Farm Alliance
Clinton North Room 5530

6/13/2017 1:00 PM
6/13/2017 2:00 PM

e: (none)

tatus: Accepted

Brennan, Thomas
Attendees: Brennan, Thomas; Shapiro, Mike; Keigwin, Richard; Konkus, John
ttendees: Graham, Amy; Carroll, Carly; Best-Wong, Benita; Law, Darci; Healey, Emily; Johnson, Anna

Ten members of the Family Farm Alliance will be in DC and would like to meet with EPA. They want to discuss water policy, water infrastructure, Clean Water Act, and Endangered Species Act. I have invited John and Amy from OPA, Rick from OPP and Mike from OW.

Message

From: Gorke, Roger [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9A59CE070DA94A4194ECBC2C19756B98-RGORKE]
Sent: 6/8/2017 3:41:56 PM
To: Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: WGA PPT and phone number
Attachments: federalism WGA ppt 6-8-17.pdf

Sorry for the delay…stupid computer…(and computer user)

Conference ID: Nonresponsive Conference Code/ Ex. 6
Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6
Participant Toll Free Dial-In Number:

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

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 6/8/2017 3:05:23 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Barbery, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e219352056ea405a97c93fd9756ceb2b-ABarbery]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Ward Scott [wscott@westgov.org]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; David.F.Dale@usace.army.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=323c0ae43d59410ebcf97e2218200a14-David.F.Dale@usace.army.mil]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]

Subject: WOTUS - WGA federalism call
Attachments: federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF; federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF
Location: DCRoomWest7114M/DC-CCW-OWOW

Start: 6/8/2017 5:00:00 PM
End: 6/8/2017 6:00:00 PM
Show Time As: Tentative

Call in Nonresponsive Conference Code/ Ex. 6 (this is for the agencies to use, the WGA members have the number on the PPT)

Conference ID Nonresponsive Conference Code/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

If you will be speaking or responding to questions at this meeting you should use the Leader number.

Conference ID: Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

Participant Toll Free Dial-In Number:

Webinar:

URL: **Nonresponsive Internal URL/ Ex. 6**

Message

From: Eargle, Frances [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A63FCA70FF3944CEBF60B10B80A2ACB6-FEARGLE]

Sent: 6/6/2017 10:52:33 PM

To: Susan Hann [Hann.Susan@brevardschools.org]; Elizabeth B. Kautz [Elizabeth.Kautz@burnsvillemn.gov]; Bob Bozien [bobziend@reno.gov]; Brad Pierce [bpierce@auroragov.org]; Cynthia Koehler [ckoehler@marinwater.org]; Hector F. Gonzalez [hgonzalez@ci.laredo.tx.us]; Jill Duson [jillduson@gmail.com]; jwitte@nmda.nmsu.edu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=542ee3fee247433d9a6d043d7df73ada-jwitte@nmda]; norm.archibald@abilenetx.com; Jill Duson [jillduson@gmail.com]; Kevin Shafer [kshafer@mmsd.com]; Kim Driscoll [kdriscoll@salem.com]; Mark Stodola [mstodola@littlerock.gov]; Miro Weinberger [mayor@burlingtonvt.gov]; Shawn Yanity [syanity@stillaguamish.com]; Terri Goomann [tgoodman@cityofdubuque.org]; victoria.reinhardt@co.ramsey.mn.us; Stephanie Chang [SChang@house.mi.gov]; Sal Panto [spanto@easton-pa.gov]; Robert Cope [cowdoc75@hotmail.com]; Rodney Bartlett [rbartlett@peterboroughnh.gov]

CC: mayor [mayor@greensburgks.org]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Matthews, Demond [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=daf7e6eec58841df8b3236d8ccc400d6-Matthews, D]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Andy Beerman [andy@parkcity.org]; Dawn Zimmer [dzimmer@hobokennj.gov]; Elizabeth B. Kautz [elizabeth.kautz@ci.burnsville.mn.us]; Hardie Davis [mayordavis@augustaga.gov]; Jacqueline Goodall [jacquelinegoodall@msn.com]; Johnny DuPree [mayor@hattiesburgms.com]; Karen Freeman-Wilson [kfreemanwilson@ci.gary.in.us]; Kitty Barnes (kbarnes@catawbacountync.gov) [kbarnes@catawbacountync.gov]; mannajo@clearwater.org [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=faacbb75d7854405af305ffe2cfa9a3c-mannajo@clearwater.org]; Maria Salas [msalas@chulavistaca.gov]; Merceria Ludgood [mludgood@mobile-county.net]; Ryan Sundberg [rsundberg@co.humboldt.ca.us]; Samara Swanston [fotlah@gmail.com]; scott.bouchie@mesaaz.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b31c0458409142b1a28c0c08a1e19647-scott.bouchie@mesaaz.gov]; Steve Williams [swilliams@cityofhuntington.com]; Sue Hann [susanhannpe@gmail.com]; Susan Anderson [Susan.Anderson@portlandoregon.gov]; Tom Sloan [tom.sloan@house.ks.gov]; Angie Bracey [braceya@cityofhuntington.com]; Anna Kettlewell [akettlewell@mmsd.com]; Debbie Orth [Debbie.orth@co.ramsey.mn.us]; Deborah Delk [ddelk@cityofgary.onmicrosoft.com]; donna.difrancesco@mesaaz.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98a10a6d3a5a4a3483592e3856c0820c-donna.difrancesco@mesaaz.gov]; Ellen Heinitz [eheinitz@house.mi.gov]; Erika Martinez [emartinez8@ci.laredo.tx.us]; Jamie Hartranft [jhartranft@easton-pa.gov]; Jen Wessell [JWessell@Salem.com]; Joanne Buonarota [jbuonarota@hobokennj.gov]; Joi Whiteside [jwhiteside@ci.gary.in.us]; Jordan [jordan@burlingtonvt.gov]; Kathy Hayes [Khayes@co.humboldt.ca.us.]; Kim O'Farrell [O'Farrell]; Kim [Kim.O'Farrell@leg.wa.gov]; Lalosa Burns [ldburns@ci.gary.in.us]; Lindsay Rogers (ler@waternow.org) [ler@waternow.org]; Macheal Brooks [macheal.brooks@ci.burnsville.mn.us]; Nellie Flores [nflores@chulavistaca.gov]; Seichner [seichner@marinwater.org]; Stephanie Valentine [Svalenti@cityofdubuque.org]

Subject: REMINDER! TOMORROW! Wed., June 7th, 4:30-5:30 ET- LGAC Protecting America's Waters Workgroup-Call in: 1-{ Nonresponsive Conference Code/ Ex. 6 }#-Agenda and Meeting Materials

Attachments: LGAC-WOTUS-Charge-05-17-17-.pdf; WOTUSFedSlides4.19.17.pdf; WaterWG-AGENDA-June7-2017.docx; NOTES-HANN-LGAC WaterWG-May18-2017 (2).docx; WaterWG-ChargeIssues-June5-17.docx; LGAC-ChargeQs-06-05-17.docx

REMINDER! TOMORROW! LGAC Water Workgroup Teleconference, Wed., June 7th, 4:30-5:30 ET. The call in number is: Nonresponsive Conference Code/ Ex. 6

ATTACHMENTS ADDED: Revised WOTUS Issue Paper and Charge Response

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From: Eargle, Frances
Sent: Monday, June 5, 2017 8:11 PM
To: Susan Hann <Hann.Susan@brevardschools.org>; 'Elizabeth B. Kautz' <Elizabeth.Kautz@burnsvillemn.gov>; Bob Bozien <bobziend@reno.gov>; Brad Pierce <bpierce@auroragov.org>; Cynthia Koehler <ckoehler@marinwater.org>; 'Hector F. Gonzalez' <hgonzalez@ci.laredo.tx.us>; Jeff Witte <jwitte@nmda.nmsu.edu>; 'norm.archibald@abilenetx.com' <norm.archibald@abilenetx.com>; Jill Duson <jillduson@gmail.com>; Kevin Shafer <kshafer@mmsd.com>; Kim Driscoll <kdriscoll@salem.com>; Mark Stodola <mstodola@littlerock.gov>; Miro Weinberger <mayor@burlingtonvt.gov>; 'Sundberg, Ryan' <RSundberg@co.humboldt.ca.us>; 'Scott Bouchie' <scott.bouchie@mesaaz.gov>; Terri Goomann <tgoodman@cityofdubuque.org>; 'Stephanie Chang' <SChang@house.mi.gov>; 'victoria.reinhardt@co.ramsey.mn.us' <victoria.reinhardt@co.ramsey.mn.us>; Sal Panto <spanto@easton-pa.gov>; Robert Cope <cowdoc75@hotmail.com>; Rodney Bartlett <rbartlett@peterboroughnh.gov>
Cc: mayor <mayor@greensburgks.org>; Johnny DuPree <mayor@hattiesburgms.com>; Karen Freeman-Wilson <kfreemanwilson@ci.gary.in.us>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Matthews, Demond <matthews.demond@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Andy Beerman <andy@parkcity.org>; Dawn Zimmer <dzimmer@hobokennj.gov>; Elizabeth B. Kautz <elizabeth.kautz@ci.burnsville.mn.us>; Hardie Davis <mayordavis@augustaga.gov>; Jacqueline Goodall <jacquelinegoodall@msn.com>; Kitty Barnes (kbarnes@catawbacountync.gov) <kbarnes@catawbacountync.gov>; Manna Jo Greene <mannajo@clearwater.org>; Maria Salas <msalas@chulavistaca.gov>; Merceria Ludgood <mludgood@mobile-county.net>; Samara Swanston <fotlah@gmail.com>; Shawn Yanity <syanity@stillaguamish.com>; Steve Williams <swilliams@cityofhuntington.com>; Sue Hann <susanhannpe@gmail.com>; Susan Anderson <Susan.Anderson@portlandoregon.gov>; Tom Sloan <tom.sloan@house.ks.gov>; Angie Bracey <braceya@cityofhuntington.com>; Anna Kettlewell <akettlewell@mmsd.com>; Debbie Orth <Debbie.orth@co.ramsey.mn.us>; Deborah Delk <ddelk@cityofgary.onmicrosoft.com>; Donna DiFrancesco <Donna.DiFrancesco@MesaAZ.gov>; Ellen Heinitz <eheinitz@house.mi.gov>; Erika Martinez <emartinez8@ci.laredo.tx.us>; Jamie Hartranft <jhartranft@easton-pa.gov>; Jen Wessell <JWessell@Salem.com>; Joanne Buonarota <jbuonarota@hobokennj.gov>; Joi Whiteside <jwhiteside@ci.gary.in.us>; Jordan <jordan@burlingtonvt.gov>; Kathy Hayes <Khayes@co.humboldt.ca.us.>; Kim O'Farrell <O'Farrell,Kim<Kim.O'Farrell@leg.wa.gov>>; Lalosa Burns <ldburns@ci.gary.in.us>; Lindsay Rogers (ler@waternow.org) <ler@waternow.org>; Macheal Brooks <macheal.brooks@ci.burnsville.mn.us>; Nellie Flores <nflores@chulavistaca.gov>; Seichner <seichner@marinwater.org>; Stephanie Valentine <Svalenti@cityofdubuque.org>
Subject: LGAC Protecting America's Waters Workgroup-Wed, June 7, 4:30-5:30 ET-Call in: Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6 Agenda and Meeting Materials

Hi, LGAC Protecting America's Waters Workgroup (*And LGAC & SCAS Members*):

The ***LGAC Protecting America's Waters Workgroup*** **will** meet **Wednesday, June 7th, 4:30-5:30 ET. The call in number is:** **Nonresponsive Conference Code/ Ex. 6**

The Workgroup will continue the discussion on the Waters of the U.S. Charge (WOTUS) and specific areas where the LGAC's input is needed (see Meeting Agenda). LGAC and SCAS Members are also invited to take part (*pending any quorum issues*).

The purpose of this meeting will be to review and discuss the LGAC WOTUS General Issues and the Charge response. Thanks to Workgroup and LGAC Members who have provided written responses!!

The LGAC is on a tight schedule by the end of June to respond to the Charge. Your discussions have been very helpful and will contribute greatly to the Final Report!

There is an additional meeting of the Water Workgroup planned for **Thursday, June 22nd, 4:30-5:30 ET** to review the final draft of the LGAC WOTUS Report. So please mark this date on your calendar so that we can clear this action for the Full Committee.

Please also make sure that the **LGAC Full Committee Teleconference** is on your calendar for **Thursday, June 29th, 2:00-3:00 ET** to take action on the LGAC Draft WOTUS Report.

Your photos are needed! Please consider sending in any photos of 'Waters' you would like to include in the Report (jpeg). Please provide information on the photo and photo source. We would like to include as many of LGAC photographs as possible in the Final Report.

For your reference, LGAC 2014 Waters of the U.S. Report:

Nonresponsive Internal URL/ Ex. 6

Thanks so much for all your great work!

Fran Eargle
202-564-3115

Attachments:
-Agenda June 7th Water Workgroup
-LGAC WOTUS Charge
-Draft LGAC WOTUS Issues Paper
-Notes-May 18th Water Workgroup
-WOTUS PowerPoint (*for reference*)

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/6/2017 4:43:08 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Ruf, Christine [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a6d66733e5c5493087ee7f067675bc99-CRuf]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]
Subject: RE: need brief TPS on status WOUS, for Mike Meeting with WDD Wed
Attachments: WDD Talking Points 6-6-17.docx

Here`you go. Please note that because of the tight turnaround this doesn't yet reflect review by Mindy.

Damaris and Donna

From: Eisenberg, Mindy
Sent: Tuesday, June 06, 2017 12:32 PM
To: Ruf, Christine <Ruf.Christine@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: need brief TPS on status WOUS, for Mike Meeting with WDD Wed

We'll provide something

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Ruf, Christine
Sent: Tuesday, June 06, 2017 12:01 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: need brief TPS on status WOUS, for Mike Meeting with WDD Wed
Importance: High

Hi Damaris, am forwarding this request, I haven't heard back from Mindy. Could you send me something today? Thanks so much. Christine

Christine Ruf
Associate Director, Water Policy Staff
Office of Water US EPA 20460
202.566.1220
http://water.epa.gov
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From: Ruf, Christine
Sent: Monday, June 05, 2017 3:42 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: brief TPS on status WOUS, for Mike Meeting with WDD Wed

HI Mindy, Mike Shapiro has his monthly meeting scheduled with the WDD this Wed to talk about Transition and other issues. We don't have a lot to update the WDD on the EO 13777 reg reform since May 17. Mike wanted to briefly update them on WOUS items. Could you /your staff send one or two pages of TPS for Mike to use by 2.30 pm tomorrow to speak from? I don't think I have the latest versions. Thanks so much. Christine

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/6/2017 3:17:05 AM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]
Subject: LGAC meeting Wednesday

(Just saw this didn't send)

I had a long conversation with Fran this morning and would like to download with you before Wednesday, but in brief what I can say in an email

1. They would appreciate a brief update, if we have anything to add from the last time. (Deliberative Process / Ex. 5 Deliberative Process / Ex. 5)
2. This will be mostly a working meeting and we would be available mostly for technical assistance.
3. They hope to discuss a draft report which Fran will circulate once it's developed Deliberative Process / Ex. 5
4. They are very interested in the Rapanos guidance approach (I can say more in person)

There's a subcommittee meeting of the Small Communities and Agriculture Subcommittee June 29. No invite is out yet but likely they would appreciate someone who can talk about WOTUS and agriculture – specifically PCC and pesticides. For pesticides, I'm going to see what info I have from the CWR and also see if Prasad Chumble, who works on the PGP, can attend. For PCC, maybe Donna? Tim did PCC a while ago, and handed it over to me, but we've done nothing with it in the past few years. Is there more generally a person who could bring more of the ag perspective to this discussion?

Damaris

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/4/2017 4:54:03 AM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Schaefer-Gomez, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5f0868369304bef91d8aece8386fc8c-Schaefer-Go]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: upcoming external meetings (or, why you will be tired this week)
Attachments: ASFPM.pdf; WGA CWR comments.pdf; CA groups incl Policylink CWR comments.pdf

John and Mindy,

Here's a list of meetings the week of 6/5. Hopefully this will be helpful.

A few points:

- Rose has draft run of shows and further info for the tribal consultation meetings on the Sharepoint site (see her email from before she left).
- We need leader, not participant, call-ins for a few of the EPA-hosted meetings – I am working on that. And it can be changed day of if need be.
- Where participants commented on the Clean Water Rule I've attached their comments, except for ACWA and ASWM, I figure you know where they are coming from.

Monday 6/5

1-1:30 E.O. 12866 requested by Lisa Barrett, PolicyLink. (A CA-based equity-and-justice association, see policylink.org)
Call-in: Nonresponsive Conference Code/ Ex. 6
Listening session only

2-2:30 E.O. 12866 requested by Don Parrish, American Farm Bureau Federation.
Call-in: Nonresponsive Conference Code/ Ex. 6
Listening session only
No comments (part of WAC)

?? E.O. 12866 requested by UWAG – I heard about this but it is not on my calendar
Call-in (presumably): Nonresponsive Conference Code/ Ex. 6
Listening session only *politicals are attending*
UWAG comments were too big to attach, you can find them here: https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-15016

Tues. 6/6,

11:30-11:50 Region 6 RTOC

Call-in: Nonresponsive Conference Code/ Ex. 6

Room: Potomac Conference Room (7301) OR if new phone hasn't arrived, I've also reserved Everglades (7343) as a back-up

Webinar: slides sent in advance, this will be discussion only

Support: Damaris will take notes, open call

Presenters: Donna will give presentation

Goal/Purpose: Quick review of key points, Q&A; Tribal consultation/info session

2-3 Association of State Wetland Managers (ASWM)

DCRoomWest6300D/DC-CCW-OW-WEST

Webinar (preregistration): Nonresponsive Internal URL/ Ex. 6

Support: Kathy will be back and will presumably set up, call in – ASWM is going to be running webinar

Presenters: Mindy or John per invite

Goal/Purpose: Review powerpoint, Q&A and discussion under federalism; Described as a "listening session" in invite

Wed. 6/7

11-12 Region 4 RTOC

Call-in: Nonresponsive Conference Code/ Ex. 6

Webinar: Nonresponsive Internal URL/ Ex. 6

Room: Pacific Conference Room (7114-M)

Support: Brittany will run the webinar, Damaris will take notes

Presenter: Donna will give the presentation; Mindy has the option to give opening remarks if she wants to (or Donna can); Army/Corps also has the option to given opening remarks if they want Damaris will take notes

Goal/Purpose: Webinar and Q&A; Tribal consultation/info session

2-3 Association of State Floodplain Managers (ASFPM) and Interstate Oil and Gas Commission (IOGCC)

Webinar: Adobe Connect: Nonresponsive Internal URL/ Ex. 6

Call-in: call-in number Nonresponsive Conference Code/ Ex. 6

Support: Kathy/Julia will run webinar, Damaris will run Leaderview

Presenters: Mindy or John per invite

Materials: provided in the invitation – ASFPM comments attached, none from IOGCC

Goal/Purpose: Review powerpoint, Q&A; Described as a "listening session" in invite

4:30-5:30 LGAC

Call-in only – info on John's calendar only

Support: Fran is organizing, we call in.

Presenters: John

Goal/Purpose: This is the final call before their June 29 public meeting to discuss their recommendations, so I assume they will be discussing those recommendations and would like a general update on status as well as having John available for Q&A – but I have a call/email into Fran to make sure.

Thurs. 6/8

1-2 Western Governors Association

Webinar: Nonresponsive Internal URL/ Ex. 6

Participant Toll Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Support: Kathy/Julia will run webinar, Damaris will run Leaderview

Materials: sent by Roger Gorke and are embedded in the invite

Presenters: Mindy or John per invite

Goal/Purpose: Review powerpoint, Q&A; Described as a "listening session" in invite

Fri. 6/9
3-4 ACWA
Webinar: Nonresponsive Internal URL/ Ex. 6
Call-in number: Conference Number(s): [redacted]
Support: ACWA is hosting the webinar/ call - Kathy/Julia will log into webinar
Materials:
Presenters: John will review powerpoint,
Goal/Purpose: Review powerpoint and Q&A, discussion with ACWA's WOTUS workgroup; Described as a "listening session" in invite

Appointment

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 6/3/2017 2:35:04 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Martinez, Maria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c1654e39ca0b42eaaba9de964612a0ea-Martinez, Maria]; Fontenot, Alison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e956c8fc4284920acea5593bc28c45f-Kitto, Alison]; Charles Smith [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=usere6069097]

Subject: HOLD for Region 6 RTOC WOTUS Presentation
Attachments: 06-06-17_TribalRunofShow.docx; WOTUS2 tribal info and consultation - 6-6-2017.pptx; WOTUS2 tribal info and consultation - 6-6-2017.pdf
Location: Nonresponsive Conference Code/ Ex. 6 DCRoomWest7301/DC-CCW-OWOW
Start: 6/6/2017 3:30:00 PM
End: 6/6/2017 4:00:00 PM
Show Time As: Tentative

Conference Number: Nonresponsive Conference Code/ Ex. 6 I've reserved Potomac Conference Room. Latest materials are attached.

Hold for the Region 6 RTOC. **I will not be able to give this presentation** since I will be on travel. Donna will be giving the presentation instead. Please let me know if there are others that should be invited.

Their call begins at 11:30 AM on 6/6. R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. They prefer that we send them the slides in advance and to not do a webinar – I will send them the PDF version.

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 6/2/2017 7:57:00 PM
To: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: RE: congressional briefing.pptx
Attachments: WOTUS part 1.congressional briefing sak.pptx

Looks good! Again, thanks for Carrie for reviewing in my absence. I made one minor suggestion in slide 6 for clarity.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Thursday, June 01, 2017 9:37 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: congressional briefing.pptx

Feel free to simplify. I've made some changes in case you do use this language. 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

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 12:57 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores

<Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: congressional briefing.pptx

All, in this morning's (Wednesday's) politicals meeting, EPA's Congressional liaison Denis Borum indicated he could use a short briefing for members of Congress, focusing on step one.

This is a first draft – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Some other possible changes –

Deliberative Process / Ex. 5

Damaris

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Kwok, Rose
Sent: Fri 6/2/2017 10:08:07 AM
Subject: Re: Transmittal memos
WOTUS DRAFT Action Memo 5-31-2017.docx
Memo_Transmittal_OWOW to AAA_Step 1 WOTUS_NPRM.docx

Hi John,

Here are the two memos - a transmittal for you to sign (to Mike) and the memo for Mike to sign (to the Administrator through OP)

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Eisenberg, Mindy
Sent: Thursday, June 1, 2017 7:42:36 PM
To: Kwok, Rose
Subject: Transmittal memos

Hi Rose,
Could you please email the two memos to John so he can review?

Thanks!
Mindy

Sent from my iPhone

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/1/2017 4:57:26 AM
To: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: congressional briefing.pptx
Attachments: congressional briefing.pptx

All, in this morning's (Wednesday's) politicals meeting, EPA's Congressional liaison Denis Borum indicated he could use a short briefing for members of Congress, focusing on step one.

This is a first draft - Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Some other possible changes –

Deliberative Process / Ex. 5

Damaris

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 6/1/2017 1:18:04 AM
To: Briannon.Fraley@tolowa.com; Stevie Lemke [stevie.lemke@Tolowa.com]; Megan Van Pelt [Megan.VanPelt@Tolowa.com]
CC: Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]
Subject: RE: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
Attachments: Clean Water Rule Tribal Summary.pdf

Dear Briannon, Stevie, and Megan,

Thank you for joining us today to hear more about our efforts to redefine "waters of the United States" and for your interest in this topic. As follow up to our call, I wanted to provide you with a few items.

- Tribal Consultation Summary Report for 2015 Clean Water Rule (attached)
- Link to full report including comments received from Tribes: https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20868 (download the Attachment at this link – it's very large)
- Factsheet with the table comparing the pre-2015 definition to the Clean Water rule definition: https://archive.epa.gov/epa/sites/production/files/2015-05/documents/fact_sheet_summary_final_1.pdf
- Link to decision in *Rapanos:* https://www.epa.gov/sites/production/files/2016-04/documents/rapanos_decision_2006.pdf
- Link to the Executive Order: https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic
- Pre-2015 definition of waters of the United States: https://www.epa.gov/cwa-404/definition-waters-united-states-under-clean-water-act#Guidance (scroll down to heading "1986/1988 Regulatory Definition of 'Waters of the United States'" for the definition at 40 CFR 230.3)
- 2008 *Rapanos* guidance: https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf (for discussion of current implementation of "relatively permanent waters" and "wetlands with a continuous surface connection).

I've also attached the presentation from today, just in case you didn't see it attached the invitation.

Please let Karen or I know if you have any questions. We look forward to hearing your comments. Consultation comments should be sent to CWAwotus@epa.gov and gude.karen@epa.gov (both copied here).

Thank you,
Rose

Rose Kwok
U.S. Environmental Protection Agency
Oceans, Wetlands, and Communities Division
kwok.rose@epa.gov
202-566-0657

-----Original Appointment-----
From: Kwok, Rose
Sent: Monday, May 15, 2017 2:57 PM
To: Kwok, Rose; Eisenberg, Mindy; Shaw, Hanh; Peak, Tracy; Dean, Heather; Leidy, Robert; Amato, Paul; Wesson, Dolores; Downing, Donna; Gude, Karen; Brush, Jason; Louis, Gail; Briannon.Fraley@tolowa.com; Charles Smith
Cc: Peterson, Carol; Christensen, Damaris; Eastman, Tiffany (AKA: Stone); Nadeau, Tracie; Stevie Lemke; Megan Van Pelt

Subject: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
When: Wednesday, May 31, 2017 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Nonresponsive Conference Code/ Ex. 6 or 7114M WJC West (Pacific Conference Room)

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the "waters of the United States" (WOTUS) rulemaking efforts.

Conference line: Nonresponsive Conference Code/ Ex. 6

In DC, I've reserved the Pacific Conference Room (7114-M West)

Appointment

From: Klos, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EE1938845F7449DFBEB1A41493051068-KLOS, CAROLINE]
Sent: 5/31/2017 2:51:56 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
CC: Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Nitsch, Chad [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d1d117eb89ff410fb6ccd21643b34447-CNitsch]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]

Subject: WOTUS2: Federalism webinar w/NASADA
Attachments: federalism NASADA ppt 5-31-17.pdf; state federalism outreach invite NASADA.PDF
Location: WJCW 7129; webinar Nonresponsive Conference Code/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6 .below:

Start: 5/31/2017 8:00:00 PM
End: 5/31/2017 9:00:00 PM
Show Time As: Tentative

Note: Agenda added below and Room change

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/31/2017 4:02:38 AM
To: Dennis, Allison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9bf7959058b241fab18e564e9c957b56-ADennis]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: WOTUS Step 1 Comms Plan 5.21.2017.docx
Attachments: WOTUS Step 1 Comms Plan 5.21.2017.docx; Script for step 1 proposal notification calls.docx

Allison,

Something I forgot to flag in my earlier email is that OPA should think about whether Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy,

Do you want to attach this to the meeting invite or just have me review orally?

Damaris

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/30/2017 11:55:02 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Shaw, Hanh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60509321022b49a39f6f6f8df62858de-Shaw, Hanh]; Peak, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d91e8031a31646439c7a33829c4ec926-Degering, Tracy]; Dean, Heather [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=544264942f0644feaf7c86abaebcd3df-Dean, Heather]; Leidy, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422555dd236749a4b77fc295e15c2604-RLEIDY]; Amato, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=13b29b5df12f425e833b66385fda9969-PAMATO]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Louis, Gail [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6ccc035e237b4581b1ff5abb179cc82c-GLOUIS]; Charles Smith [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=usere6069097]
CC: Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Eastman, Tiffany (AKA: Stone) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=06aa46481ec04f27a67e02b44b4fbb3f-TEASTMAN]; Nadeau, Tracie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d018f78dbdd4e6d85acd0da4e627161-Nadeau, Tracie]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
Subject: RE: Materials/Prep for Call with Tolowa Dee-ni' Nation on WOTUS
Attachments: 31May2017_TribalRunofShow.docx; WOTUS2 tribal info and consultation - 5-31-2017.pptx; Tolowa Dee-ni Nation.pdf; Tolowa Dee-ni Nation - notes.docx

Hi Folks,

In preparation for Wednesday's call with the Tolowa Dee-ni' Nation, I've attached a few documents. One is the draft "run of show" for the call. The second is the PowerPoint – they preferred that we email them the presentation (I've attached it as a PDF to the calendar invitation) rather to see the presentation via webinar. Third is the letter the tribe sent us requesting consultation. We checked the docket, and it doesn't appear that the tribe sent us a letter on the CWR either during tribal consultation or during the public comment period. And fourth is a document with some background information sent to me by Chip that Mary Pakenham-Walsh from the Corps put together on the tribe.

The tribe has not confirmed who will be attending, but at minimum, it will be Briannon Fraley – Chief Governance Officer (Self Governance Director). In addition, Stevie Lemke (Self-Governance Analyst) and Megan Van Pelt (Natural Resources Director) were also included on the invitation.

Based on their letter requesting consultation, coastal waters and the Smith River are among the important aquatic resources. The San Francisco District has called portions of the Smith River a Section 10 water: http://www.spn.usace.army.mil/Portals/68/docs/regulatory/1%20-%20Sect10waters.pdf.

Mindy & Chip will give opening remarks on behalf of EPA and the Army at the beginning of the call, and I'll run through our regular presentation. I'll leave plenty of time for discussion and questions.

Thanks,
Rose

-----Original Appointment-----
From: Kwok, Rose
Sent: Monday, May 15, 2017 2:57 PM
To: Kwok, Rose; Eisenberg, Mindy; Shaw, Hanh; Peak, Tracy; Dean, Heather; Leidy, Robert; Amato, Paul; Wesson, Dolores; Downing, Donna; Gude, Karen; Brush, Jason; Louis, Gail; Briannon.Fraley@tolowa.com; Charles Smith
Cc: Peterson, Carol; Christensen, Damaris; Eastman, Tiffany (AKA: Stone); Nadeau, Tracie; Stevie Lemke; Megan Van Pelt
Subject: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
When: Wednesday, May 31, 2017 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Nonresponsive Conference Code/ Ex. 6 or 7114M WJC West (Pacific Conference Room)

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the "waters of the United States" (WOTUS) rulemaking efforts.

Conference line: Nonresponsive Conference Code/ Ex. 6

In DC, I've reserved the Pacific Conference Room (7114-M West)

Appointment

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/30/2017 11:03:59 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Shaw, Hanh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60509321022b49a39f6f6f8df62858de-Shaw, Hanh]; Peak, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d91e8031a31646439c7a33829c4ec926-Degering, Tracy]; Dean, Heather [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=544264942f0644feaf7c86abaebcd3df-Dean, Heather]; Leidy, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422555dd236749a4b77fc295e15c2604-RLEIDY]; Amato, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=13b29b5df12f425e833b66385fda9969-PAMATO]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Brush, Jason [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ade1a32824404ed5a333dcd77f2dfc4a-JBRUSH]; Louis, Gail [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6ccc035e237b4581b1ff5abb179cc82c-GLOUIS]; Briannon.Fraley@tolowa.com; Charles Smith [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=usere6069097]
CC: Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Eastman, Tiffany (AKA: Stone) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=06aa46481ec04f27a67e02b44b4fbb3f-TEASTMAN]; Nadeau, Tracie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d018f78dbdd4e6d85acd0da4e627161-Nadeau, Tracie]; Stevie Lemke [stevie.lemke@Tolowa.com]; Megan Van Pelt [Megan.VanPelt@Tolowa.com]

Subject: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
Attachments: WOTUS2 tribal info and consultation - 5-31-2017.pdf
Location: Nonresponsive Conference Code/ Ex. 6 or 7114M WJC West (Pacific Conference Room)

Start: 5/31/2017 4:00:00 PM
End: 5/31/2017 5:00:00 PM
Show Time As: Tentative

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the "waters of the United States" (WOTUS) rulemaking efforts.

Conference line: Nonresponsive Conference Code/ Ex. 6

In DC, I've reserved the Pacific Conference Room (7114-M West)

WESTERN GOVERNORS' ASSOCIATION

Brian Sandoval
Governor of Nevada
Chairman

John A. Kitzhaber, M.D.
Governor of Oregon
Vice Chairman

James D. Ogsbury
Executive Director

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www.westgov.org

August 27, 2014

Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (1101A)
Washington, D.C. 20460

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)
108 Army Pentagon
Washington, D.C. 20310

Dear Administrator McCarthy and Assistant Secretary Darcy,

The purpose of this letter is to request an additional extension of the comment period on the proposed rule regarding the jurisdiction of the Clean Water Act (*79 FR 22187*, published April 21, 2014).

Western Governors originally requested a 180-day extension of the comment period. While we appreciate the 91-day extension of the comment period announced on June 9, the time frame remains insufficient for states to formulate thorough and thoughtful commentary on the rule's extensive impacts, effects and implications. Moreover, a significant amount of confusion and new information regarding the proposed rule has emerged over the last several weeks thus further warranting an extra 89-day extension of the comment period.

As stated in WGA's letter dated March 25, 2014, we are concerned that this proposed rulemaking could impinge upon state authority in water management. Given the potential impacts of the rule on management of water resources – a fundamental responsibility of the states – we hope you will respond favorably to our request.

In addition, our states need more time to review the streams and waterbodies and wetlands maps recently released by the Environmental Protection Agency. The additional extension of the comment period will provide states with adequate time to review these resources.

Again, we appreciate the initial extension of the comment period, as well as your accessibility to discuss the proposed rule since its publication.

With gratitude for your consideration of our request, we are

Respectfully,

Brian Sandoval
Governor, State of Nevada
WGA Chairman

John Kitzhaber
Governor, State of Oregon
WGA Vice Chairman

cc: House Transportation and Infrastructure Committee Leadership
House Natural Resources Committee Leadership
Senate Environment and Public Works Leadership
Michael Boots, Acting Chairman, Council on Environmental Quality

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/26/2017 12:05:42 AM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: Options table
Attachments: WOTUS2_options v2.docx

Mindy – I tried to address your comments in the attached. Some of your edits I accepted without track changes.

From: Eisenberg, Mindy
Sent: Thursday, May 25, 2017 6:52 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Options table

Hey Rose,
Here are some edits. Thanks!

Shutting down my computer and getting on the plane shortly.

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

From: Kwok, Rose
Sent: Thursday, May 25, 2017 6:13 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Options table

Here's the current version and the link on Sharepoint. Let me know if you have any edits (that aren't made in Sharepoint).

Nonresponsive Internal URL/ Ex. 6

I'm **Personal Matters / Ex. 6** but I'll be checking email and will check the status of this.

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/25/2017 10:12:57 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: Options table
Attachments: WOTUS2_options v2.docx

Here's the current version and the link on Sharepoint. Let me know if you have any edits (that aren't made in Sharepoint).

Nonresponsive Internal URL/ Ex. 6

I'm **Personal Matters / Ex. 6**, but I'll be checking email and will check the status of this.

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/25/2017 7:53:20 PM
To: Dennis, Allison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9bf7959058b241fab18e564e9c957b56-ADennis]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Thomas, Latosha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a405bd473fff4b80b3065d03d9b48eb9-LaThomas]
Subject: WOTUS Step 1 Comms Plan 5.21.2017.docx
Attachments: WOTUS Step 1 Comms Plan 5.21.2017.docx

Hey Allison,

I just got final comments from Army on the comms strategy. Not many changes. (Brittany, they did make a few tweaks to the FAQs (like numbering them) so we may want to update the website once these go public.)

There are a couple places where there are questions for Mike ([redacted] Deliberative Process / Ex. 5 [redacted]?) and for OPA ([redacted] Deliberative Process / Ex. 5 [redacted]?) We can also send the press release to Ginah Mortensen here at EPA who can then distribute it to a wide variety of ag stakeholders.

Re: timing – I just got invitations from OMB for listening sessions June 5 and June 8, so I think that [redacted] Deliberative Process / Ex. 5 [redacted]

Deliberative Process / Ex. 5

Allison - it would be ideal if Latosha can cross compare the stakeholder table to provide phone numbers and names for the calls, and also get a list together for a broader distribution.

Damaris

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/22/2017 3:38:34 AM
To: Dennis, Allison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9bf7959058b241fab18e564e9c957b56-ADennis]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
CC: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: WOTUS Step 1 Comms Plan 5.21.2017.docx
Attachments: WOTUS Step 1 Comms Plan 5.21.2017.docx

Allison,

Deliberative Process / Ex. 5

Cindy, unless Simma chimes in early Monday, this is the most up to date version I have for you to start circulating at Army. It's on the Sharepoint site.

Damaris

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/19/2017 7:44:47 PM
To: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]; Dennis, Allison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9bf7959058b241fab18e564e9c957b56-ADennis]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
Subject: WOTUS Step 1 Comms Plan 5.19.17.docx
Attachments: WOTUS Step 1 Comms Plan 5.19.17.docx

Hi Antonio and Allison,

Per our discussion today, I am sending along a communications strategy for the WOTUS step 1 proposal. We think that the package may Deliberative Process / Ex. 5

1. Deliberative Process / Ex. 5
2.
3.

Please let all of us know if there are any big changes at any point.

Damaris

Message

From: Christensen, Damaris [Christensen.Damaris@epa.gov]
Sent: 5/19/2017 2:40:16 PM
To: Goodin, John [Goodin.John@epa.gov]
CC: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]
Subject: RE: Tribal and LGAC summaries
Attachments: Key comments from 5-18-17 meetings.docx

Here's what I have – Brittany reviewed and Cindy Barger added a few comments to mine.

Damaris

From: Goodin, John
Sent: Friday, May 19, 2017 9:06 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Tribal and LGAC summaries

Thanks, Damaris. Each call, please. This does not need to be a/the formal summary, just a brief download on the highlights of each I can send right away.
Thanks
John

From: Christensen, Damaris
Sent: Friday, May 19, 2017 8:17 AM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Tribal and LGAC summaries

I'm checking my bullets for the LGAC with Fran but wanted you to know I have something in case there was time pressure to get it to Sarah.

Did you also want me to pull together some bullet points from the tribal call? I did not take notes but Brittany and Karen Gude did if you want me to check with them.

Damaris

Sent from my iPhone

On May 18, 2017, at 5:28 PM, Goodin, John <Goodin.John@epa.gov> wrote:

> Mindy/Damaris—thanks for the prep today for both calls-- I felt well-prepared and I think folks appreciated that.
>
> Would you be able to put a few bullets together on key points from each call? Sarah was on for the opening minutes of the LGAC and requested a brief download.
> Thanks
> John

To: Kwok, Rose[Kwok.Rose@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Charles Smith[charles.r.smith567.civ@mail.mil]; Gude, Karen[Gude.Karen@epa.gov]
From: Christensen, Damaris
Sent: Thur 5/18/2017 6:37:43 PM
Subject: May 18 tribal webinar comments.docx
May 18 tribal webinar comments.docx

These are not formatted, but exactly as written comments came in during the webinar – John responded to many but not all verbally.

Damaris

To: Bennett, Tate[Bennett.Tate@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Bowles, Jack[Bowles.Jack@epa.gov]
From: Goodin, John
Sent: Wed 5/17/2017 9:43:23 PM
Subject: Outreach
WOTUS2 outreach overview 4-28.docx

Pleasure to meet you this afternoon, Tate.

As discussed, please find attached our working version of an outreach approach that we discussed earlier this month with Sarah and Liz.

Looking forward to any upcoming opportunity to discuss your thoughts on this approach in light of what you conveyed, including leveraging opportunities where agency leadership is already on the road somewhere.

Thanks
John

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/17/2017 7:54:55 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: FW: For close-hold review: latest draft WOTUS-2 rule text
Attachments: 2017 WOTUS 2 Draft Proposed Rule Text 3_30_17v2.docx

Hi Mindy,

I'm sorry about the delay. Attached is the draft rule text. I don't think we ever had a draft preamble. I think Donna and I were each doing some scribbling on our own (I have some rough notes) but I don't think either of us had the chance to write it up for public consumption **Deliberative Process / Ex. 5**

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Downing, Donna
Sent: Thursday, March 30, 2017 6:25 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@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>; Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; David.F.Dale@usace.army.mil
Subject: For close-hold review: latest draft WOTUS-2 rule text

DELIBERATIVE PROCESS; CONFIDENTIAL

Hi all:

Attached please find the latest draft WOTUS-2 rule text. Simma, Stacey, Rose, Damaris, and I have worked to tweak it to reflect the discussion last Wednesday. I'm scheduling a meeting among us to discuss on Monday afternoon, and will be sending that invitation shortly.

Looking forward to our discussion!

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

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/16/2017 9:48:10 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Jensen, Stacey M CIV USARMY HQDA (US [Stacey.M.Jensen@usace.army.mil]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]
Subject: Draft Run of Show for May 18 tribal webinar
Attachments: 18May2017_TribalRunofShow.docx; fact_sheet_summary_final_1.pdf

Hi Folks,

Attached is the link to the draft run of show for the May 18th tribal webinar:
Nonresponsive Internal URL/ Ex. 6
Nonresponsive Internal URL/ Ex. 6 I've also included it as a Word document in case you can't access the Sharepoint. Please let us know if you have any edits. We should share this with the political team at the 10 am and will also need to send it up.

Thanks to Cindy for updating it.

John – just as an FYI, and I totally forgot to tell you this earlier. There has been a restatement of the request that was made during the last tribal webinar, requesting Deliberative Process / Ex. 5 I don't think we'll be able to produce such materials, but during the last call you mentioned Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Tue 5/16/2017 8:50:23 PM
Subject: Talking Points for your review
Draft Basic Talking Points updated 5-16-17_tribal.docx

Kwok, Rose has shared a OneDrive for Business file with you. To view it, click the link below.

Draft Basic Talking Points updated 5-16-17_tribal.docx

Mindy,
Region 9 has requested talking points for the May 18 tribal water workshop. They will have the national tribal webinar available for those who want to view it, but also requested talking points. Damaris updated the basic TPs (thanks!), and I added a few tribal specific ones. I've sent both the link on Sharepoint and the Word document just in case (changes are in track changes).

From: Christensen, Damaris
Sent: Tuesday, May 16, 2017 4:19 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Draft Basic Talking Points updated 5-16-17.docx

I'd suggest adding the tribal info and then at least running past Mindy before circulating to R9.

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/16/2017 7:39:10 PM
To: Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]
Subject: FW: federalism
Attachments: Draft Federalism Comment Summar format.docx

Hi all –

I am forwarding you an email from Andrea, who has been thinking about reading and analyzing the federalism comments as they come in. Before I start working with her on the details, I wanted to get some overall discussion and thoughts on our approach. I'm going to set up a meeting for early next week for us to talk through:

1.
2.
3.
4.

Deliberative Process / Ex. 5

Damaris

From: Schaller, Andrea
Sent: Tuesday, May 16, 2017 12:37 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: federalism

Hey ladies
Working on setting up a framework for reading all the federalism comments. Pulled out a template for a summary used when reviewing the IR comments. (see attached)

Let me know if these are the topics that decision makers will find useful.

Are we Deliberative Process / Ex. 5? If so are who is doing, or do you need me to tackle that as they come in. Think it will be helpful if we Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Andrea

Andrea Schaller
USEPA-Region 5
77 W. Jackson Blvd, WW-16J
Chicago, IL 60604

schaller.andrea@epa.gov
312-886-0746

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/15/2017 6:45:56 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
CC: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: LGAC meeting Thursday May 18

When is John back from his vacation? I couldn't remember/ tell if it was this week or next.

I ask because I just talked with Fran about the LGAC and want to pin down who is attending and how to split time between the LGAC and the R10 RTOC.

This is the meeting where the LGAC is pulling in the local government organizations like UCM, NACo, and NLC. Fran said the LGAC would appreciate a brief overview of what we've done since we last met with them a couple weeks ago – I think, basically, I can pull together a few TPs about Deliberative Process / Ex. 5 Then, maybe frame for them the questions we are asking in a little more detail – she said examples would be helpful. Along those lines, I'm thinking (generally):

1. Deliberative Process / Ex. 5
2.
3.

I know Cindy said she could attend the LGAC. Not sure about Stacey. Chip might be able to participate for the Army with tribes.

Damaris

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/11/2017 3:01:32 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]
Subject: RE: draft WOTUS website

I haven't finished my review, but I did notice that Deliberative Process / Ex. 5 Deliberative Process / Ex. 5. I'm really concerned if that Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 I'd highly recommend adding it to Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Also – I can't remember – why is the information different on the Deliberative Process / Ex. 5

Relevant Information about Water

- Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Wednesday, May 10, 2017 10:55 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: draft WOTUS website

FYI, a few thoughts on the web pages if it isn't too late to incorporate. Based on the attachments with the 6:59 transmittal email below.

(it isn't worth fixing the typo in the title but I just noticed it)

Damaris

From: Eisenberg, Mindy
Sent: Wednesday, May 10, 2017 6:59 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Dibble, Christine <Dibble.Christine@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: draft WOTUS website

Hi Liz and Sarah,
As promised, I'm sending you the info on how to find the draft pages in Web CMS and attaching PDFs of the draft web pages (which look slightly different than the web version). A little explanation of the PDFs – the draft WOTUS homepage is the landing page for the new site. About WOTUS, FAQs, and Rulemaking process PDFs are all on the WOTUS rulemaking site. The draft 404 PDF is what we are placing on our CWA Section 404 microsite as we discussed yesterday. OGC and Army/Corps would like to do a final review prior to going live on Monday, so let me know when you are ready for their review. And if you want us to make changes to the pages, just let us know.

Once you log into Web CMS, I think you can look up each page/note by typing in **Nonresponsive Internal URL/ Ex. 6**

Nonresponsive Internal URL/ Ex. 6

Notes:

1. Work still in progress: creating document pages.
    a. A note about document pages: EPA web policy requires that all documents (such as PDFs) are linked through an intermediary page, called a document page. A user clicks a link for a PDF on an EPA web page, is directed to a document page, and then can click the link on that document page which takes them to the actual PDF. Currently, many document links in the new web pages will take you directly to the PDF rather than the document page. Document pages will be completed before publication on Monday.
    b. This process does NOT impact the content of the website.
2. Work still in progress: Brittany is quadruple checking that all links are working as expected.

Thanks,
Mindy

Message

From: Kwok, Rose [Kwok.Rose@epa.gov]
Sent: 5/11/2017 1:54:18 PM
To: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Wesson, Dolores [Wesson.Dolores@epa.gov]
Subject: FW: Deadline coming up for 2017 TLEF proposals

Please let me know if you have any comments on the proposed session description for the Tribal Lands Environment Forum in August (in Oklahoma). I made some edits to Karen's initial draft, which are reflected below. Army/Corps – not sure if you'd like to mention in description that you have Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 We need to submit no later than Friday. Karen spoke to the organizers about a possible Deliberative Process / Ex. 5, and her guess is that it will likely be held Wednesday afternoon concurrent to the Forum's multimedia networking event, and we can use one of the breakout rooms.

From: Gude, Karen
Sent: Thursday, May 11, 2017 8:51 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Deadline coming up for 2017 TLEF proposals

Hi Rose,

We can discuss this at 10:30, if need be, but I wanted to run a draft TLEF session description by you before I submit it to ITEP (the conference organizer). We will be able to edit/tweak the session description and add speaker(s) and bios once these are known, but I wanted to make sure that we had a solid draft to work from.

Deliberative Process / Ex. 5

Thanks,

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831

From: Kwok, Rose
Sent: Wednesday, May 10, 2017 7:01 PM

To: Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Deadline coming up for 2017 TLEF proposals

Thanks, Karen!

From: Gude, Karen
Sent: Wednesday, May 10, 2017 6:55 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Deadline coming up for 2017 TLEF proposals

Hi Rose,

Thanks. I can submit a proposal tomorrow for this. Thanks for confirming. I spoke to the organizers about a possible Deliberative Process / Ex. 5 and my guess is that it will likely be held Wed afternoon concurrent to the Forum's multimedia networking event, and we can use one of the breakout rooms.

Thanks,
Karen

Sent from my iPhone

On May 10, 2017, at 6:37 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

> Hi Karen,
>
> Based on Mindy's comments today, it does sound like we would want to try to Deliberative Process / Ex. 5 Deliberative Process / Ex. 5. I'm happy to do that and submit it online if the thought is that this would best work as a breakout. I'm not sure if Deliberative Process / Ex. 5 Deliberative Process / Ex. 5
>
> Let me know what you think the best way to proceed is – thanks!
>
> ---
>
> **From:** Christensen, Damaris
> **Sent:** Wednesday, May 10, 2017 9:30 AM
> **To:** Kwok, Rose <Kwok.Rose@epa.gov>
> **Subject:** Fwd: Deadline coming up for 2017 TLEF proposals
>
> FYI
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** Todd A Barnell <Todd.Barnell@nau.edu>
> > **Date:** May 10, 2017 at 9:25:57 AM EDT
> > **To:** <ITEP-CONFERENCE@LISTS.NAU.EDU>
> > **Subject: Deadline coming up for 2017 TLEF proposals**
> > **Reply-To:** Todd A Barnell <Todd.Barnell@nau.edu>
> >
> > Hello everyone,

Just one last reminder that the deadline for submitting proposals for breakout sessions at trainings at the 2017 Tribal Lands and Environment Forum (TLEF) is this Friday. If you have an idea for a session at this year's event we want to hear from you! Simply go to our website at http://www7.nau.edu/itep/main/Conferences/confr_tlef and click on the Session Proposal tab to submit your idea online. We look forward to hearing from you and seeing you this August.

Your TLEF Team

Todd Barnell (todd.barnell@nau.edu)

Julie Jurkowski (julie.jurkowski@nau.edu)

John Mead (john.mead@nau.edu)

To unsubscribe from the ITEP-CONFERENCE list, click the following link:
http://lists.nau.edu/cgi-bin/wa?TICKET=NzM2NDg5IGNocmlzdGVuc2VuLmRhbWFyaXNARVBBLkdPViBJVEVQLUNPTkZFUkVOQ0UgIHraSuhOHxMk&c=SIGNOFF

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/11/2017 2:54:33 AM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: RE: draft WOTUS website
Attachments: Wb site comments.docx

FYI, a few thoughts on the web pages if it isn't too late to incorporate. Based on the attachments with the 6:59 transmittal email below.

(it isn't worth fixing the typo in the title but I just noticed it)

Damaris

From: Eisenberg, Mindy
Sent: Wednesday, May 10, 2017 6:59 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Dibble, Christine <Dibble.Christine@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: draft WOTUS website

Hi Liz and Sarah,
As promised, I'm sending you the info on how to find the draft pages in Web CMS and attaching PDFs of the draft web pages (which look slightly different than the web version). A little explanation of the PDFs – the draft WOTUS homepage is the landing page for the new site. About WOTUS, FAQs, and Rulemaking process PDFs are all on the WOTUS rulemaking site. The draft 404 PDF is what we are placing on our CWA Section 404 microsite as we discussed yesterday. OGC and Army/Corps would like to do a final review prior to going live on Monday, so let me know when you are ready for their review. And if you want us to make changes to the pages, just let us know.

Once you log into Web CMS, I think you can look up each page/note by typing in **Nonresponsive Internal URL/ Ex. 6**

Nonresponsive Internal URL/ Ex. 6

Notes:

1. Work still in progress: creating document pages.
    a. A note about document pages: EPA web policy requires that all documents (such as PDFs) are linked through an intermediary page, called a document page. A user clicks a link for a PDF on an EPA web page, is directed to a document page, and then can click the link on that document page which takes them to the actual PDF. Currently, many document links in the new web pages will take you directly to the PDF rather than the document page. Document pages will be completed before publication on Monday.
    b. This process does NOT impact the content of the website.

2. Work still in progress: Brittany is quadruple checking that all links are working as expected.

Thanks,
Mindy

Message

From: Bennett, Brittany [bennett.brittany@epa.gov]
Sent: 5/10/2017 8:11:11 PM
To: Christensen, Damaris [Christensen.Damaris@epa.gov]
CC: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Subject: RE: new WOTUS website

Hey Damaris,

As an update, I received feedback from Simma and Mindy on the description of the two-step process. The current direction is Deliberative Process / Ex. 5 with some edits made by Simma this afternoon (copied below).

Deliberative Process / Ex. 5

1.

2. Deliberative Process /attorney client Ex. 5

B

Brittany K. Bennett
Ecologist
U.S. EPA, Office of Water
ph: 202.564.1896
Bennett.Brittany@epa.gov

From: Christensen, Damaris
Sent: Wednesday, May 10, 2017 1:45 PM
To: Bennett, Brittany <bennett.brittany@epa.gov>
Subject: FW: new WOTUS website

Simplified language check – Brittany, can you see how Jason Brush proposed changing the description of the two step process? Whatever we put on the website is going to drive the description we use in the press releases, new briefings, etc – basically, whatever goes up first/next, right? Because we won't have a lot of room/energy/ability to keep up with iterative changes and I just want to get it right.

Do you have his edited powerpoint? I know Mindy's been mulling over changes consistent with his suggestions.

Damaris

From: Kupchan, Simma
Sent: Wednesday, May 10, 2017 1:41 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: new WOTUS website

Thanks for the chance to review. Here are some initial quick edits. I'd like to review the revised version once Liz has reviewed, etc. Thanks!

Simma

DRAFT 404 JURISDICTION PAGE:

Existing first sentence:

Deliberative Process / Ex. 5

Proposed edited version:

Deliberative Process /attorney client Ex. 5

I would recommend putting up front, after the introductory sentence above, another two sentences or so with background on Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

I'd also suggest Deliberative Process /attorney client Ex. 5 Deliberative Process /attorney client Ex. 5

Finally, I'd include Deliberative Process /attorney client Ex. 5

ABOUT WOTUS PAGE:

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RULEMAKING PROCESS PAGE:

Under Two-Step Process, make the following edits:

Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Eisenberg, Mindy
Sent: Tuesday, May 09, 2017 6:34 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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We are also planning to include Deliberative Process / Ex. 5 we will need to decide what we want to post initially.

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

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Sent: Tuesday, May 09, 2017 5:12 PM
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Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: website update

Hi All – please review the text of the following pages before we send for review by Liz and Sarah. These are all now housed in the new web area for WOTUS 2. Notes below (**please read**):

1.
2.

Deliberative Process / Ex. 5

3.
4.

Deliberative Process / Ex. 5

B

Brittany K. Bennett
Ecologist
U.S. EPA, Office of Water
ph: 202.564.1896
Bennett.Brittany@epa.gov

From: Bennett, Brittany
Sent: Friday, May 05, 2017 5:38 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: website update

All

Attached are:

1.
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Deliberative Process / Ex. 5

Reminder that I will be out on Monday.

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3. **Deliberative Process / Ex. 5**
4.

I think that's all. Look forward to a draft of the 404 pages and s Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

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Subject: RE: website update

That works for me, Mindy. I can have everything ready by then. I'll send out a PDF of the drafted website to this group (and links to the revisions if you are able to log into Drupal) by the end of the day.

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Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Sent from my iPhone

On May 3, 2017, at 10:53 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

> I'm adding in Brittany, who I accidentally left off my original email.
>
> I think Brittany already has enough of a draft to give Liz a sense of what the new site might look like. Mindy, who do you think should participate in that meeting? Either Brittany or I can set something up. Liz' schedule looked pretty open assuming her calendar is up to date.
>
> I want to make sure we go through Antonio where appropriate, but Brittany can follow up with the people you mention below if needed.
>
> Damaris
>
> ---
>
> **From:** Eisenberg, Mindy
> **Sent:** Wednesday, May 03, 2017 9:21 PM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Cc:** Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
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> 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
>
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> **Subject:** website update

Deliberative Process / Ex. 5

Damaris

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/10/2017 6:57:03 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: FW: letter from NGO's on WOTUS rule
Attachments: 17-000-6900.pdf

Mindy et al.,

I just spoke about this issue again with Carrie, and wanted to confirm that Deliberative Process /attorney client Ex. 5 Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

It would certainly be consistent Deliberative Process /attorney client Ex. 5 Deliberative Process /attorney client Ex. 5 Again, we can wait till then to see if Deliberative Process /attorney client Ex. 5 Deliberative Process /attorney client Ex. 5. Again, though, this is OW's decision.

Let me know if you have further questions. Thanks.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Neugeboren, Steven
Sent: Monday, April 03, 2017 5:09 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: letter from NGO's on WOTUS rule

Ogc has received an fyi on this controlled correspondence and sending to our team and John in case hasn't reached you guys yet.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Veney, Carla
Sent: Monday, April 03, 2017 12:31 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: Emailing - 17-000-6900.pdf from OEX

Steve, this was sent to us as an FYI.

Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 5/10/2017 5:41:15 PM
To: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
CC: Bennett, Brittany [bennett.brittany@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]
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Subject: website update

Deliberative Process / Ex. 5

Damaris

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/9/2017 8:01:54 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Fwd: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Sent from my iPhone

Begin forwarded message:

From: "Bravo, Antonio" <Bravo.Antonio@epa.gov>
Date: May 9, 2017 at 3:06:37 PM EDT
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>
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>
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Deliberative Process / Ex. 5

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Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
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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>
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Deliberative Process / Ex. 5

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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. <!--[if !supportLists]--><!--[endif]-->It's my understanding that the governor's letters went out to the governors of all 50 states plus the U.S. territories.
2. <!--[if !supportLists]--><!--[endif]-->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. <!--[if !supportLists]--><!--[endif]-->Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

2. <!--[if !supportLists]--><!--[endif]-->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

<!--[if !vml]--><!--[endif]--> **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. <!--[if !supportLists]--><!--[endif]-->Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

2. <!--[if !supportLists]--><!--[endif]-->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: Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

From: Downing, Donna [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D853E50D3A2B489DAF2CC498C052E3D6-DDOWNING]
Sent: 5/9/2017 7:49:48 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Great. The email chain indicates it's been live since 11am this morning.

From: Eisenberg, Mindy
Sent: Tuesday, May 09, 2017 3:20 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

I sent a note to liz and sarah.

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: Kwok, Rose
Sent: Tuesday, May 09, 2017 3:11 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Tuesday, May 09, 2017 3:03 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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: Downing, Donna
Sent: Tuesday, May 09, 2017 2:59 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

Donna

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 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>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 6:59:26 PM
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

Donna

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 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>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
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R079

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Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

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]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Fuld, John[Fuld.John@epa.gov]
From: Cook-Shyovitz, Becky
Sent: Tue 5/9/2017 6:56:40 PM
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."
WOTUS- Branstad.pdf

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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."

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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.

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R079

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Moore, Kristie[Moore.Kristie@epa.gov]
Cc: Weinstock, Larry[Weinstock.Larry@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 6:56:14 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS
Fact Sheet for FY18 Budget -- WOTUS v1km.docx

Hi Kristie:
Attached is the revised 1-pager on WOTUS. Thanks for your suggestions about shortening, and the attached also reflects input from OGC. It's now one page!

Donna

From: Eisenberg, Mindy
Sent: Friday, May 05, 2017 2:43 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Fwd: For review -- Requested FY18 budget fact sheet on WOTUS

Sent from my iPhone
Begin forwarded message:

> **From:** "Moore, Kristie" <Moore.Kristie@epa.gov>
> **Date:** May 5, 2017 at 2:23:29 PM EDT
> **To:** "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
> **Cc:** "Weinstock, Larry" <Weinstock.Larry@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>
> **Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS**
>
> Mindy,
>
> Yes, this is way too long. We are strictly limited to one page. Can't cheat on the margins or the font. The talking points section is limited to 3 bullets.
>
> There are some redundancies in the factsheet. We could remove some of them to save space. Also, how strongly do you feel about including steps 1-5 in the background. For now I've removed them, but if they need to stay, maybe we can save some space by beefing-up the talking points with the info. in the issue section. The talking points include most of the information in the issue section anyway.
>
> Here are some suggested edits. I didn't make them in one drive because I didn't want to mess with the editing currently going on.
> I'm looping-in Sandra because I'll be leaving in about an hour. I know she is interested in reviewing this factsheet and it looks like you might be in a meeting until 4:30.
>
> When you have a final draft, can you please send a copy to Sandra? Otherwise, I'll follow-up with you on Monday to close the loop.
>
> Thank you,
>
> Kristie
>
> Kristie M. Moore
> Office of Wetlands Oceans and Watersheds
> U.S. Environmental Protection Agency
> EPA West
> 1200 Pennsylvania Ave., NW
> MC-4501 T
> Washington, DC, 20460
> office: (202) 566-1616
> fax: (202) 566-1544

From: Eisenberg, Mindy
Sent: Friday, May 05, 2017 1:50 PM
To: Moore, Kristie <Moore.Kristie@epa.gov>
Cc: Weinstock, Larry <Weinstock.Larry@epa.gov>
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

I haven't seen edits from OGC, but here is a draft. Is it too long?

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

From: Weinstock, Larry
Sent: Friday, May 05, 2017 9:27 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

Do you want me to forward this to Kristi or wait?

From: Downing, Donna
Sent: Thursday, May 04, 2017 7:34 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: For review -- Requested FY18 budget fact sheet on WOTUS

Hi Mindy and Larry:

Attached please find a draft FY18 budget fact sheet on the ongoing WOTUS rulemaking effort. The fact sheet has not been reviewed by OGC, although it is constructed from a variety of documents (including the draft rule preamble) that OGC helped draft.

With this email, I am cc'ing OGC's Carrie Wehling for her input. Carrie, could you please click "reply to all" with any suggested edits or other input?

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: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Weinstock, Larry[Weinstock.Larry@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 6:45:20 PM
Subject: RE: correspondence
NRDC_AX-17-000-7867-- DD edits .docx

Hi Mindy and Larry –

Attached are some suggested edits to the email response template, that bring our response up to date (at least to today! Who knows what next week may bring!)

Donna

From: Eisenberg, Mindy
Sent: Friday, May 05, 2017 9:26 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: correspondence

Thanks for taking a look today. As I said, I'm feeling like these don't quite respond/are out of date. Your edits would be much appreciated!

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

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/12/2017 4:17:02 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Fwd: need brief TPS on status WOUS, for Mike Meeting with WDD Wed
Attachments: WDD Talking Points 6-6-17.docx; ATT00001.htm

Think these tps are appropriate to send forward? If not I can turn to this around 2:30.

Sent from my iPhone

Begin forwarded message:

> **From:** "Christensen, Damaris" <Christensen.Damaris@epa.gov>
> **Date:** June 6, 2017 at 12:43:08 PM EDT
> **To:** "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Ruf, Christine" <Ruf.Christine@epa.gov>
> **Cc:** "Downing, Donna" <Downing.Donna@epa.gov>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov>
> **Subject: RE: need brief TPS on status WOUS, for Mike Meeting with WDD Wed**
>
> Here`you go. Please note that because of the tight turnaround this doesn't yet reflect review by Mindy.
>
> Damaris and Donna
>
> ---
>
> **From:** Eisenberg, Mindy
> **Sent:** Tuesday, June 06, 2017 12:32 PM
> **To:** Ruf, Christine <Ruf.Christine@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** RE: need brief TPS on status WOUS, for Mike Meeting with WDD Wed
>
> We'll provide something
>
> Mindy Eisenberg
> Acting Director, Oceans, Wetlands & Communities 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:** Ruf, Christine
> **Sent:** Tuesday, June 06, 2017 12:01 PM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Cc:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> **Subject:** need brief TPS on status WOUS, for Mike Meeting with WDD Wed
> **Importance:** High
>
> Hi Damaris, am forwarding this request, I haven't heard back from Mindy. Could you send me something today? Thanks so much. Christine

Christine Ruf
Associate Director, Water Policy Staff
Office of Water US EPA 20460
202.566.1220
http://water.epa.gov

From: Ruf, Christine
Sent: Monday, June 05, 2017 3:42 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: brief TPS on status WOUS, for Mike Meeting with WDD Wed

HI Mindy, Mike Shapiro has his monthly meeting scheduled with the WDD this Wed to talk about Transition and other issues. We don't have a lot to update the WDD on the EO 13777 reg reform since May 17. Mike wanted to briefly update them on WOUS items. Could you /your staff send one or two pages of TPS for Mike to use by 2.30 pm tomorrow to speak from? I don't think I have the latest versions. Thanks so much. Christine

Message

From: Fuld, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA505C8DD1DB43D1BCDDB800B2D0E300-FULD, JOHN]
Sent: 6/7/2017 5:22:27 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Thanks you so much

From: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 1:22 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

1986/status quo regulation

Waters of the United States means:

All waters which are currently used, were used in the past, or may be susceptible to us in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

All interstate waters including interstate wetlands.

All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters: Which are or could be used by interstate or foreign travelers for recreational or other purposes; or From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or Which are used or could be used for industrial purposes by industries in interstate commerce.

All impoundments of waters otherwise defined as waters of the United States under this definition;

Tributaries of waters identified in paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (q)(1)– (6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

Clean Water Rule Definition

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 et seq. and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a casespecific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not ''waters of the United States'' even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) Adjacent. The term adjacent means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100- year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) Tributary and tributaries. The terms tributary and tributaries each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) Wetlands. The term wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) Significant nexus. The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term ''in the region'' means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation, filtering, and transport,

(D) Retention and attenuation of flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) Ordinary high water mark. The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) High tide line. The term high tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Mindy Eisenberg
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From: Fuld, John
Sent: Wednesday, June 07, 2017 1:02 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Marked in yellow ....can someone fix this so it is readable.

Thanks

John W. Fuld, Ph.D.
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From: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 12:47 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
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From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:45 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Here you go:

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:

All waters which are currently used,

were used in the past, or may be susceptible

to us in interstate or foreign

commerce, including all waters which

are subject to the ebb and flow of the

tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

interstate commerce.

All impoundments of waters otherwise

defined as waters of the United

States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other

than waters that are themselves wetlands)

identified in paragraphs (q)(1)–

(6) of this section.

Waste treatment systems, including

treatment ponds or lagoons designed to

meet the requirements of the Act

(other than cooling ponds as defined in

40 CFR 123.11(m) which also meet the

criteria of this definition) are not

waters of the United States.

Waters of the United States means:

(1) For purposes of the Clean Water

Act, 33 U.S.C. 1251 et seq. and its implementing

regulations, subject to the exclusions

in paragraph (2) of this definition,

the term "waters of the United

States'' means:

(i) All waters which are currently

used, were used in the past, or may be

susceptible to use in interstate or foreign

commerce, including all waters

which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

(v) of this definition, including wetlands,

ponds, lakes, oxbows, impoundments,

and similar waters;

(vii) All waters in paragraphs

(1)(vii)(A) through (E) of this definition

where they are determined, on a casespecific

basis, to have a significant

nexus to a water identified in paragraphs

(1)(i) through (iii) of this definition.

The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

in parts of California and associated

with topographic depression, soils

with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

100-year floodplain of a water identified

in paragraphs (1)(i) through (iii) of this

definition and all waters located within

4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

(1)(i) through (iii) of this definition

or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not ''waters of

the United States'' even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

gravel that fill with water;

(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

(v) Groundwater, including groundwater

drained through subsurface

drainage systems.

(vi) Stormwater control features constructed

to convey, treat, or store

stormwater that are created in dry

land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The

term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

by physical characteristics such as a

clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

vegetation, the presence of litter and

debris, or other appropriate means that

consider the characteristics of the surrounding

areas.

(vii) High tide line. The term high tide

line means the line of intersection of

the land with the water's surface at the

maximum height reached by a rising

tide. The high tide line may be determined,

in the absence of actual data,

by a line of oil or scum along shore objects,

a more or less continuous deposit

of fine shell or debris on the foreshore

or berm, other physical markings or

characteristics, vegetation lines, tidal

gages, or other suitable means that delineate

the general height reached by a

rising tide. The line encompasses

spring high tides and other high tides

that occur with periodic frequency but

does not include storm surges in which

there is a departure from the normal or

predicted reach of the tide due to the

piling up of water against a coast by

strong winds such as those accompanying

a hurricane or other intense

storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

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> **Date:** June 7, 2017 at 12:01:52 PM EDT
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> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

From: Fuld, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA505C8DD1DB43D1BCDDB800B2D0E300-FULD, JOHN]
Sent: 6/7/2017 5:11:18 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
CC: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Thanks folks

From: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 1:10 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

I'm working on it now

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Wednesday, June 07, 2017 1:10 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: Re: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

My computer has the blue screen of an earlier than expected windows 10 update. I cannot easily fix this unless, Antonio, you have a spare computer I can log into?

Sent from my iPhone

On Jun 7, 2017, at 1:02 PM, Fuld, John <Fuld.John@epa.gov> wrote:

> Marked in yellow ....can someone fix this so it is readable.
>
> Thanks
>
> **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
Personal Phone / Ex. 6
Fuld.john@epa.gov

From: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 12:47 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
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Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Here you go:

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:

All waters which are currently used,

were used in the past, or may be susceptible

to us in interstate or foreign

commerce, including all waters which

are subject to the ebb and flow of the

tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

interstate commerce.

All impoundments of waters otherwise

defined as waters of the United

States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other

than waters that are themselves wetlands)

identified in paragraphs (q)(1)–

(6) of this section.

Waste treatment systems, including

treatment ponds or lagoons designed to

meet the requirements of the Act

(other than cooling ponds as defined in

40 CFR 123.11(m) which also meet the

criteria of this definition) are not

waters of the United States.

Waters of the United States means:

(1) For purposes of the Clean Water

Act, 33 U.S.C. 1251 et seq. and its implementing

regulations, subject to the exclusions

in paragraph (2) of this definition,

the term ''waters of the United

States'' means:

(i) All waters which are currently

used, were used in the past, or may be

susceptible to use in interstate or foreign

commerce, including all waters

which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

(v) of this definition, including wetlands,

ponds, lakes, oxbows, impoundments,

and similar waters;

(vii) All waters in paragraphs

(1)(vii)(A) through (E) of this definition

where they are determined, on a casespecific

basis, to have a significant

nexus to a water identified in paragraphs

(1)(i) through (iii) of this definition.

The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

in parts of California and associated

with topographic depression, soils

with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

100-year floodplain of a water identified

in paragraphs (1)(i) through (iii) of this

definition and all waters located within

4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

(1)(i) through (iii) of this definition

or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not ''waters of

the United States'' even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

gravel that fill with water;

(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

(v) Groundwater, including groundwater

drained through subsurface

drainage systems.

(vi) Stormwater control features constructed

to convey, treat, or store

stormwater that are created in dry

land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

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term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

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clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

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debris, or other appropriate means that

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Cc: Christensen, Damaris
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Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities Division

Office of Wetlands, Oceans and Watersheds

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Can you help?

Sent from my iPhone

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Subject: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

<image003.png>**Office of Water**

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

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Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

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BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

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

Web-link or source material.

****
****

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

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Sent: 6/7/2017 4:54:28 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Re: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Thanks Mindy. I had no idea what this was and have been in meetings.

Sent from my iPhone

On Jun 7, 2017, at 12:47 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
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Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:45 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Here you go:

1. <!--[if !supportLists]--><!--[endif]-->Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:

All waters which are currently used,

were used in the past, or may be susceptible

to us in interstate or foreign

commerce, including all waters which

are subject to the ebb and flow of the

tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

interstate commerce.

All impoundments of waters otherwise

defined as waters of the United

States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other

than waters that are themselves wetlands)

identified in paragraphs (q)(1)–

(6) of this section.

Waste treatment systems, including

treatment ponds or lagoons designed to

meet the requirements of the Act

(other than cooling ponds as defined in

40 CFR 123.11(m) which also meet the

criteria of this definition) are not

waters of the United States.

Waters of the United States means:

(1) For purposes of the Clean Water

Act, 33 U.S.C. 1251 et seq. and its implementing

regulations, subject to the exclusions

in paragraph (2) of this definition,

the term ''waters of the United

States'' means:

(i) All waters which are currently

used, were used in the past, or may be

susceptible to use in interstate or foreign

commerce, including all waters

which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

(v) of this definition, including wetlands,

ponds, lakes, oxbows, impoundments,

and similar waters;

(vii) All waters in paragraphs

(1)(vii)(A) through (E) of this definition

where they are determined, on a casespecific

basis, to have a significant

nexus to a water identified in paragraphs

(1)(i) through (iii) of this definition.

The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not ''waters of

the United States'' even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The

term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

by physical characteristics such as a

clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

vegetation, the presence of litter and

debris, or other appropriate means that

consider the characteristics of the surrounding

areas.

(vii) High tide line. The term high tide

line means the line of intersection of

the land with the water's surface at the

maximum height reached by a rising

tide. The high tide line may be determined,

in the absence of actual data,

by a line of oil or scum along shore objects,

a more or less continuous deposit

of fine shell or debris on the foreshore

or berm, other physical markings or

characteristics, vegetation lines, tidal

gages, or other suitable means that delineate

the general height reached by a

rising tide. The line encompasses

spring high tides and other high tides

that occur with periodic frequency but

does not include storm surges in which

there is a departure from the normal or

predicted reach of the tide due to the

piling up of water against a coast by

strong winds such as those accompanying

a hurricane or other intense

storm.

2. <!--[if !supportLists]--><!--[endif]-->What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am

From: Fuld, John
Sent: Wednesday, June 07, 2017 11:17 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

<!--[if !vml]--><!--[endif]--> **Office of Water**

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. <!--[if !supportLists]--><!--[endif]-->Can you provide the specific language for the definition being removed?

2. <!--[if !supportLists]--><!--[endif]-->What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
****

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

Web-link or source material.

****
****

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

<image003.png>

Message

From: Fuld, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA505C8DD1DB43D1BCDDB800B2D0E300-FULD, JOHN]
Sent: 6/7/2017 4:50:13 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
CC: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Thanks Team

From: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 12:47 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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

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Here you go:

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Waters of the United States means:

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tide.

All interstate waters including interstate

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All other waters, such as intrastate

lakes, rivers, streams (including intermittent

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wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

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Which are used or could be used for

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of the tide;

(ii) All interstate waters, including

interstate wetlands;

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identified as waters of the

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(3)(iii) of this definition, of

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identified in paragraphs (1)(i) through

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and similar waters;

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basis, to have a significant

nexus to a water identified in paragraphs

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The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

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identified in this paragraph shall not

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under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

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Carolina bays and Delmarva bays are

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shrub and tree dominated wetlands

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(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

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with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

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in paragraphs (1)(i) through (iii) of this

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4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

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or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

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this definition, they are an adjacent

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nexus analysis is required.

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the United States'' even where they

otherwise meet the terms of paragraphs

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treatment ponds or lagoons designed

to meet the requirements of the

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the determination of an

area's status as prior converted cropland

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the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

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(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

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(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

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drained through subsurface

drainage systems.

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to convey, treat, or store

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recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The

term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

by physical characteristics such as a

clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

vegetation, the presence of litter and

debris, or other appropriate means that

consider the characteristics of the surrounding

areas.

(vii) High tide line. The term high tide

line means the line of intersection of

the land with the water's surface at the

maximum height reached by a rising

tide. The high tide line may be determined,

in the absence of actual data,

by a line of oil or scum along shore objects,

a more or less continuous deposit

of fine shell or debris on the foreshore

or berm, other physical markings or

characteristics, vegetation lines, tidal

gages, or other suitable means that delineate

the general height reached by a

rising tide. The line encompasses

spring high tides and other high tides

that occur with periodic frequency but

does not include storm surges in which

there is a departure from the normal or

predicted reach of the tide due to the

piling up of water against a coast by

strong winds such as those accompanying

a hurricane or other intense

storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn

Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**

Hey just to let you know this is over there…I HAVE to have this back by 1 pm. It went over at 11:17 am

---

From: Fuld, John
Sent: Wednesday, June 07, 2017 11:17 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/7/2017 6:15:33 PM
To: Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]
Subject: Fwd: REMINDER! TODAY! Wed., June 7th, 4:30-5:30 ET- LGAC Protecting America's Waters Workgroup-Call in: [redacted] Nonresponsive Conference Code/ Ex. 6 -ATTACHMENTS ADDED
Attachments: WaterWG-ChargeIssues-June5-17(2).docx; ATT00001.htm; LGAC-ChargeQs-06-05-17 (002).docx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Eargle, Frances" <Eargle.Frances@epa.gov>
Date: June 7, 2017 at 2:10:34 PM EDT
To: Susan Hann <Hann.Susan@brevardschools.org>, "Elizabeth B. Kautz" <Elizabeth.Kautz@burnsvillemn.gov>, Robert Cope <Personal Email / Ex. 6 Bob Bozien <bobziend@reno.gov>, Brad Pierce <bpierce@auroragov.org>, Cynthia Koehler <ckoehler@marinwater.org>, "Hector F. Gonzalez" <hgonzalez@ci.laredo.tx.us>, Jill Duson <Personal Email / Ex. 6>, "jwitte@nmda.nmsu.edu" <jwitte@nmda.nmsu.edu>, "norm.archibald@abilenetx.com" <norm.archibald@abilenetx.com>, Kevin Shafer <kshafer@mmsd.com>, Kim Driscoll <kdriscoll@salem.com>, Mark Stodola <mstodola@littlerock.gov>, Miro Weinberger <mayor@burlingtonvt.gov>, Shawn Yanity <syanity@stillaguamish.com>, Terri Goomann <tgoodman@cityofdubuque.org>, "victoria.reinhardt@co.ramsey.mn.us" <victoria.reinhardt@co.ramsey.mn.us>, Sal Panto <spanto@easton-pa.gov>, Stephanie Chang <SChang@house.mi.gov>, Rodney Bartlett <rbartlett@peterboroughnh.gov>
Cc: "Lyons, Troy" <lyons.troy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Bowles, Jack" <Bowles.Jack@epa.gov>, "Matthews, Demond" <matthews.demond@epa.gov>, "Cook-Shyovitz, Becky" <Cook-Shyovitz.Becky@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, Andy Beerman <andy@parkcity.org>, Dawn Zimmer <dzimmer@hobokennj.gov>, "Elizabeth B. Kautz" <elizabeth.kautz@ci.burnsville.mn.us>, Hardie Davis <mayordavis@augustaga.gov>, Jacqueline Goodall <Personal Email / Ex. 6>, Johnny DuPree <mayor@hattiesburgms.com>, Karen Freeman-Wilson <kfreemanwilson@ci.gary.in.us>, "Kitty Barnes (kbarnes@catawbacountync.gov)" <kbarnes@catawbacountync.gov>, "mannajo@clearwater.org" <mannajo@clearwater.org>, Maria Salas <msalas@chulavistaca.gov>, mayor <mayor@greensburgks.org>, Merceria Ludgood <mludgood@mobile-county.net>, Ryan Sundberg <rsundberg@co.humboldt.ca.us>, Samara Swanston <Personal Email / Ex. 6>, "scott.bouchie@mesaaz.gov" <scott.bouchie@mesaaz.gov>, Steve Williams <swilliams@cityofhuntington.com>, Sue Hann <Personal Email / Ex. 6>, Susan Anderson <Susan.Anderson@portlandoregon.gov>, Tom Sloan <tom.sloan@house.ks.gov>, Angie Bracey <braceya@cityofhuntington.com>, Anna Kettlewell <akettlewell@mmsd.com>, Debbie Orth <Debbie.orth@co.ramsey.mn.us>, Deborah Delk <ddelk@cityofgary.onmicrosoft.com>, "donna.difrancesco@mesaaz.gov" <donna.difrancesco@mesaaz.gov>, Ellen Heinitz <eheinitz@house.mi.gov>, Erika Martinez <emartinez8@ci.laredo.tx.us>, Jamie Hartranft <jhartranft@easton-pa.gov>, Jen Wessell <JWessell@Salem.com>, Joanne Buonarota <jbuonarota@hobokennj.gov>, Joi Whiteside <jwhiteside@ci.gary.in.us>, Jordan

<jordan@burlingtonvt.gov>, Kathy Hayes <Khayes@co.humboldt.ca.us.>, Kim O'Farrell <O'Farrell>, Kim <Kim.O'Farrell@leg.wa.gov>, Lalosa Burns <ldburns@ci.gary.in.us>, "Lindsay Rogers (ler@waternow.org)" <ler@waternow.org>, Macheal Brooks <macheal.brooks@ci.burnsville.mn.us>, Nellie Flores <nflores@chulavistaca.gov>, Seichner <seichner@marinwater.org>, Stephanie Valentine <Svalenti@cityofdubuque.org>

Subject: FW: REMINDER! TODAY! Wed., June 7th, 4:30-5:30 ET- LGAC Protecting America's Waters Workgroup-Call in: Nonresponsive Conference Code/ Ex. 6 ATTACHMENTS ADDED

***REMINDER! TODAY*! Wednesday, June 7th, 4:30-5:30 ET-** LGAC Protecting America's Waters Workgroup-**Call in:** Nonresponsive Conference Code/ Ex. 6
Attachments added

PLEASE REPLACE THESE ATTACHMENTS: LGAC WOTUS Charge Issues (June 07) and LGAC Charge Questions (June 07)

From: Eargle, Frances
Sent: Monday, June 5, 2017 8:11 PM
To: Susan Hann <Hann.Susan@brevardschools.org>; 'Elizabeth B. Kautz' <Elizabeth.Kautz@burnsvillemn.gov>; Bob Bozien <bobziend@reno.gov>; Brad Pierce <bpierce@auroragov.org>; Cynthia Koehler <ckoehler@marinwater.org>; 'Hector F. Gonzalez' <hgonzalez@ci.laredo.tx.us>; Jeff Witte <jwitte@nmda.nmsu.edu>; 'norm.archibald@abilenetx.com' <norm.archibald@abilenetx.com>; Jill Duson <Personal Email / Ex. 6>; Kevin Shafer <kshafer@mmsd.com>; Kim Driscoll <kdriscoll@salem.com>; Mark Stodola <mstodola@littlerock.gov>; Miro Weinberger <mayor@burlingtonvt.gov>; 'Sundberg, Ryan' <RSundberg@co.humboldt.ca.us>; 'Scott Bouchie' <scott.bouchie@mesaaz.gov>; Terri Goomann <tgoodman@cityofdubuque.org>; 'Stephanie Chang' <SChang@house.mi.gov>; 'victoria.reinhardt@co.ramsey.mn.us' <victoria.reinhardt@co.ramsey.mn.us>; Sal Panto <spanto@easton-pa.gov>; Robert Cope <Personal Email / Ex. 6>; Rodney Bartlett <rbartlett@peterboroughnh.gov>
Cc: mayor <mayor@greensburgks.org>; Johnny DuPree <mayor@hattiesburgms.com>; Karen Freeman-Wilson <kfreemanwilson@ci.gary.in.us>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Matthews, Demond <matthews.demond@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Andy Beerman <andy@parkcity.org>; Dawn Zimmer <dzimmer@hobokennj.gov>; Elizabeth B. Kautz <elizabeth.kautz@ci.burnsville.mn.us>; Hardie Davis <mayordavis@augustaga.gov>; Jacqueline Goodall <Personal Email / Ex. 6>; Kitty Barnes (kbarnes@catawbacountync.gov) <kbarnes@catawbacountync.gov>; Manna Jo Greene <mannajo@clearwater.org>; Maria Salas <msalas@chulavistaca.gov>; Merceria Ludgood <mludgood@mobile-county.net>; Samara Swanston <Personal Email / Ex. 6>; Shawn Yanity <syanity@stillaguamish.com>; Steve Williams <swilliams@cityofhuntington.com>; Sue Hann <Personal Email / Ex. 6>; Susan Anderson <Susan.Anderson@portlandoregon.gov>; Tom Sloan <tom.sloan@house.ks.gov>; Angie Bracey <braceya@cityofhuntington.com>; Anna Kettlewell <akettlewell@mmsd.com>; Debbie Orth <Debbie.orth@co.ramsey.mn.us>; Deborah Delk <ddelk@cityofgary.onmicrosoft.com>; Donna DiFrancesco <Donna.DiFrancesco@MesaAZ.gov>; Ellen Heinitz <eheinitz@house.mi.gov>; Erika Martinez <emartinez8@ci.laredo.tx.us>; Jamie Hartranft <jhartranft@easton-pa.gov>; Jen Wessell <JWessell@Salem.com>; Joanne Buonarota <jbuonarota@hobokennj.gov>; Joi Whiteside <jwhiteside@ci.gary.in.us>; Jordan <jordan@burlingtonvt.gov>; Kathy Hayes <Khayes@co.humboldt.ca.us.>; Kim O'Farrell <O'Farrell,Kim<Kim.O'Farrell@leg.wa.gov>>; Lalosa Burns <ldburns@ci.gary.in.us>; Lindsay Rogers (ler@waternow.org) <ler@waternow.org>; Macheal Brooks <macheal.brooks@ci.burnsville.mn.us>; Nellie Flores <nflores@chulavistaca.gov>; Seichner <seichner@marinwater.org>; Stephanie Valentine

<Svalenti@cityofdubuque.org>
Subject: LGAC Protecting America's Waters Workgroup-Wed, June 7, 4:30-5:30 ET-Call in: Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6 Agenda and Meeting Materials

Hi, LGAC Protecting America's Waters Workgroup (*And LGAC & SCAS Members*):

The ***LGAC Protecting America's Waters Workgroup*** **will meet Wednesday, June 7th, 4:30-5:30 ET. The call in number is:** Nonresponsive Conference Code/ Ex. 6

The Workgroup will continue the discussion on the Waters of the U.S. Charge (WOTUS) and specific areas where the LGAC's input is needed (see Meeting Agenda). LGAC and SCAS Members are also invited to take part (*pending any quorum issues*).

The purpose of this meeting will be to review and discuss the LGAC WOTUS General Issues and the Charge response. Thanks to Workgroup and LGAC Members who have provided written responses!!

The LGAC is on a tight schedule by the end of June to respond to the Charge. Your discussions have been very helpful and will contribute greatly to the Final Report!

There is an additional meeting of the Water Workgroup planned for **Thursday, June 22nd, 4:30-5:30 ET** to review the final draft of the LGAC WOTUS Report. So please mark this date on your calendar so that we can clear this action for the Full Committee.

Please also make sure that the **LGAC Full Committee Teleconference** is on your calendar for **Thursday, June 29th, 2:00-3:00 ET** to take action on the LGAC Draft WOTUS Report.

Your photos are needed! Please consider sending in any photos of 'Waters' you would like to include in the Report (jpeg). Please provide information on the photo and photo source. We would like to include as many of LGAC photographs as possible in the Final Report.

For your reference, LGAC 2014 Waters of the U.S. Report:
https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14_w.o.t.u.s._report.pdf

Thanks so much for all your great work!

Fran Eargle
202-564-3115

Attachments:
-Agenda June 7th Water Workgroup
-LGAC WOTUS Charge
-Draft LGAC WOTUS Issues Paper
-Notes-May 18th Water Workgroup
-WOTUS PowerPoint (*for reference*)

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/7/2017 5:21:53 PM
To: Fuld, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ea505c8dd1db43d1bcddb800b2d0e300-Fuld, John]
CC: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

1986/status quo regulation

Waters of the United States means:

All waters which are currently used, were used in the past, or may be susceptible to us in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

All interstate waters including interstate wetlands.

All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters: Which are or could be used by interstate or foreign travelers for recreational or other purposes; or From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or Which are used or could be used for industrial purposes by industries in interstate commerce.

All impoundments of waters otherwise defined as waters of the United States under this definition;

Tributaries of waters identified in paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (q)(1)– (6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

Clean Water Rule Definition

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 et seq. and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a casespecific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not ''waters of the United States'' even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) Adjacent. The term adjacent means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100- year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) Tributary and tributaries. The terms tributary and tributaries each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water

that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) Wetlands. The term wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) Significant nexus. The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term ''in the region'' means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation, filtering, and transport,

(D) Retention and attenuation of flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) Ordinary high water mark. The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) High tide line. The term high tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Fuld, John
Sent: Wednesday, June 07, 2017 1:02 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Marked in yellow ....can someone fix this so it is readable.

Thanks

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
Personal Phone / Ex. 6
Fuld.john@epa.gov

From: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 12:47 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
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1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
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eisenberg.mindy@epa.gov

From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:45 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Here you go:

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:

All waters which are currently used,

were used in the past, or may be susceptible

to us in interstate or foreign

commerce, including all waters which

are subject to the ebb and flow of the

tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

interstate commerce.

All impoundments of waters otherwise

defined as waters of the United

States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other

than waters that are themselves wetlands)

identified in paragraphs (q)(1)–

(6) of this section.

Waste treatment systems, including

treatment ponds or lagoons designed to

meet the requirements of the Act

(other than cooling ponds as defined in

40 CFR 123.11(m) which also meet the

criteria of this definition) are not

waters of the United States.

Waters of the United States means:

(1) For purposes of the Clean Water

Act, 33 U.S.C. 1251 et seq. and its implementing

regulations, subject to the exclusions

in paragraph (2) of this definition,

the term ''waters of the United

States'' means:

(i) All waters which are currently

used, were used in the past, or may be

susceptible to use in interstate or foreign

commerce, including all waters

which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

(v) of this definition, including wetlands,

ponds, lakes, oxbows, impoundments,

and similar waters;

(vii) All waters in paragraphs

(1)(vii)(A) through (E) of this definition

where they are determined, on a casespecific

basis, to have a significant

nexus to a water identified in paragraphs

(1)(i) through (iii) of this definition.

The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

in parts of California and associated

with topographic depression, soils

with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

100-year floodplain of a water identified

in paragraphs (1)(i) through (iii) of this

definition and all waters located within

4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

(1)(i) through (iii) of this definition

or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not "waters of

the United States" even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

gravel that fill with water;

(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

(v) Groundwater, including groundwater

drained through subsurface

drainage systems.

(vi) Stormwater control features constructed

to convey, treat, or store

stormwater that are created in dry

land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The

term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

by physical characteristics such as a

clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

vegetation, the presence of litter and

debris, or other appropriate means that

consider the characteristics of the surrounding

areas.

(vii) High tide line. The term high tide

line means the line of intersection of

the land with the water's surface at the

maximum height reached by a rising

tide. The high tide line may be determined,

in the absence of actual data,

by a line of oil or scum along shore objects,

a more or less continuous deposit

of fine shell or debris on the foreshore

or berm, other physical markings or

characteristics, vegetation lines, tidal

gages, or other suitable means that delineate

the general height reached by a

rising tide. The line encompasses

spring high tides and other high tides

that occur with periodic frequency but

does not include storm surges in which

there is a departure from the normal or

predicted reach of the tide due to the

piling up of water against a coast by

strong winds such as those accompanying

a hurricane or other intense

storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there…I HAVE to have this back by 1 pm. It went over at 11:17 am
>
> ---
>
> **From:** Fuld, John
> **Sent:** Wednesday, June 07, 2017 11:17 AM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/7/2017 5:10:23 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Fuld, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ea505c8dd1db43d1bcddb800b2d0e300-Fuld, John]
CC: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

I'm working on it now

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Wednesday, June 07, 2017 1:10 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: Re: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

My computer has the blue screen of an earlier than expected windows 10 update. I cannot easily fix this unless, Antonio, you have a spare computer I can log into?

Sent from my iPhone

On Jun 7, 2017, at 1:02 PM, Fuld, John <Fuld.John@epa.gov> wrote:

> Marked in yellow ....can someone fix this so it is readable.
>
> Thanks
>
> **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: Eisenberg, Mindy
Sent: Wednesday, June 07, 2017 12:47 PM
To: Fuld, John <Fuld.John@epa.gov>
Cc: Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:45 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Here you go:

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:

All waters which are currently used,

were used in the past, or may be susceptible

to us in interstate or foreign

commerce, including all waters which

are subject to the ebb and flow of the

tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

interstate commerce.

All impoundments of waters otherwise

defined as waters of the United

States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other

than waters that are themselves wetlands)

identified in paragraphs (q)(1)–

(6) of this section.

Waste treatment systems, including

treatment ponds or lagoons designed to

meet the requirements of the Act

(other than cooling ponds as defined in

40 CFR 123.11(m) which also meet the

criteria of this definition) are not

waters of the United States.

Waters of the United States means:

(1) For purposes of the Clean Water

Act, 33 U.S.C. 1251 et seq. and its implementing

regulations, subject to the exclusions

in paragraph (2) of this definition,

the term ''waters of the United

States'' means:

(i) All waters which are currently

used, were used in the past, or may be

susceptible to use in interstate or foreign

commerce, including all waters

which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

(v) of this definition, including wetlands,

ponds, lakes, oxbows, impoundments,

and similar waters;

(vii) All waters in paragraphs

(1)(vii)(A) through (E) of this definition

where they are determined, on a casespecific

basis, to have a significant

nexus to a water identified in paragraphs

(1)(i) through (iii) of this definition.

The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

in parts of California and associated

with topographic depression, soils

with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

100-year floodplain of a water identified

in paragraphs (1)(i) through (iii) of this

definition and all waters located within

4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

(1)(i) through (iii) of this definition

or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not ''waters of

the United States'' even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

gravel that fill with water;

(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

(v) Groundwater, including groundwater

drained through subsurface

drainage systems.

(vi) Stormwater control features constructed

to convey, treat, or store

stormwater that are created in dry

land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The

term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

by physical characteristics such as a

clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

vegetation, the presence of litter and

debris, or other appropriate means that

consider the characteristics of the surrounding

areas.

(vii) High tide line. The term high tide

line means the line of intersection of

the land with the water's surface at the

maximum height reached by a rising

tide. The high tide line may be determined,

in the absence of actual data,

by a line of oil or scum along shore objects,

a more or less continuous deposit

of fine shell or debris on the foreshore

or berm, other physical markings or

characteristics, vegetation lines, tidal

gages, or other suitable means that delineate

the general height reached by a

rising tide. The line encompasses

spring high tides and other high tides

that occur with periodic frequency but

does not include storm surges in which

there is a departure from the normal or

predicted reach of the tide due to the

piling up of water against a coast by

strong winds such as those accompanying

a hurricane or other intense

storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am
>
> ---
>
> **From:** Fuld, John
> **Sent:** Wednesday, June 07, 2017 11:17 AM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

<image003.png>**Office of Water**

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
****

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

Web-link or source material.

****
****

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

(Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/7/2017 5:05:03 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

No worries

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Wednesday, June 07, 2017 12:54 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Thanks Mindy. I had no idea what this was and have been in meetings.

Sent from my iPhone

On Jun 7, 2017, at 12:47 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

> Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.
>
> Mindy Eisenberg
> Acting Director, Oceans, Wetlands & Communities 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
>
> ---
>
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> **To:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
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> **Subject:** Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY
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were used in the past, or may be susceptible

to us in interstate or foreign

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tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

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All impoundments of waters otherwise

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States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

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Wetlands adjacent to waters (other

than waters that are themselves wetlands)

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Waste treatment systems, including

treatment ponds or lagoons designed to

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which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

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ponds, lakes, oxbows, impoundments,

and similar waters;

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where they are determined, on a casespecific

basis, to have a significant

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and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

in parts of California and associated

with topographic depression, soils

with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

100-year floodplain of a water identified

in paragraphs (1)(i) through (iii) of this

definition and all waters located within

4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

(1)(i) through (iii) of this definition

or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not ''waters of

the United States'' even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

gravel that fill with water;

(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

(v) Groundwater, including groundwater

drained through subsurface

drainage systems.

(vi) Stormwater control features constructed

to convey, treat, or store

stormwater that are created in dry

land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

wetlands, either alone or in combination

with other similarly situated

waters in the region, significantly affects

the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) High tide line. The term high tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense

storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

From: "Fuld, John" <Fuld.John@epa.gov>
Date: June 7, 2017 at 12:01:52 PM EDT
To: "Bravo, Antonio" <Bravo.Antonio@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am

---

From: Fuld, John
Sent: Wednesday, June 07, 2017 11:17 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
****

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

Web-link or source material.

****
****

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

<image003.png>

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/7/2017 4:47:09 PM
To: Fuld, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ea505c8dd1db43d1bcddb800b2d0e300-Fuld, John]
CC: Bravo, Antonio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bcc8340b32c49888b4ec35177a70aa6-ABravo]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Please see our response to the reporter below. Bottom line is that the OFR had made a mistake in the CFR and so is doing a simple correction and this has nothing to do with the EPA/Army rulemaking.

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:45 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Here you go:

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:

All waters which are currently used,

were used in the past, or may be susceptible

to us in interstate or foreign

commerce, including all waters which

are subject to the ebb and flow of the

tide.

All interstate waters including interstate

wetlands.

All other waters, such as intrastate

lakes, rivers, streams (including intermittent

streams), mudflats, sandflats,

wetlands, sloughs, prairie potholes, wet

meadows, playa lakes, or natural

ponds, the use, degradation, or destruction

of which would or could affect

interstate or foreign commerce including

any such waters:

Which are or could be used by interstate

or foreign travelers for recreational

or other purposes; or

From which fish or shellfish are or

could be taken and sold in interstate or

foreign commerce; or

Which are used or could be used for

industrial purposes by industries in

interstate commerce.

All impoundments of waters otherwise

defined as waters of the United

States under this definition;

Tributaries of waters identified in

paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other

than waters that are themselves wetlands)

identified in paragraphs (q)(1)–

(6) of this section.

Waste treatment systems, including

treatment ponds or lagoons designed to

meet the requirements of the Act

(other than cooling ponds as defined in

40 CFR 123.11(m) which also meet the

criteria of this definition) are not

waters of the United States.

Waters of the United States means:

(1) For purposes of the Clean Water

Act, 33 U.S.C. 1251 et seq. and its implementing

regulations, subject to the exclusions

in paragraph (2) of this definition,

the term ''waters of the United

States'' means:

(i) All waters which are currently

used, were used in the past, or may be

susceptible to use in interstate or foreign

commerce, including all waters

which are subject to the ebb and flow

of the tide;

(ii) All interstate waters, including

interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise

identified as waters of the

United States under this section;

(v) All tributaries, as defined in paragraph

(3)(iii) of this definition, of

waters identified in paragraphs (1)(i)

through (iii) of this definition;

(vi) All waters adjacent to a water

identified in paragraphs (1)(i) through

(v) of this definition, including wetlands,

ponds, lakes, oxbows, impoundments,

and similar waters;

(vii) All waters in paragraphs

(1)(vii)(A) through (E) of this definition

where they are determined, on a casespecific

basis, to have a significant

nexus to a water identified in paragraphs

(1)(i) through (iii) of this definition.

The waters identified in each of

paragraphs (1)(vii)(A) through (E) of

this definition are similarly situated

and shall be combined, for purposes of

a significant nexus analysis, in the watershed

that drains to the nearest

water identified in paragraphs (1)(i)

through (iii) of this definition. Waters

identified in this paragraph shall not

be combined with waters identified in

paragraph (1)(vi) of this definition

when performing a significant nexus

analysis. If waters identified in this

paragraph are also an adjacent water

under paragraph (1)(vi), they are an adjacent

water and no case-specific significant

nexus analysis is required.

(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands,

usually occurring in depressions

that lack permanent natural outlets,

located in the upper Midwest.

(B) Carolina bays and Delmarva bays.

Carolina bays and Delmarva bays are

ponded, depressional wetlands that

occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen

shrub and tree dominated wetlands

found predominantly along the Central

Atlantic coastal plain.

(D) Western vernal pools. Western

vernal pools are seasonal wetlands located

in parts of California and associated

with topographic depression, soils

with poor drainage, mild, wet winters

and hot, dry summers.

(E) Texas coastal prairie wetlands.

Texas coastal prairie wetlands are

freshwater wetlands that occur as a

mosaic of depressions, ridges,

intermound flats, and mima mound

wetlands located along the Texas Gulf

Coast.

(viii) All waters located within the

100-year floodplain of a water identified

in paragraphs (1)(i) through (iii) of this

definition and all waters located within

4,000 feet of the high tide line or ordinary

high water mark of a water identified

in paragraphs (1)(i) through (v) of

this definition where they are determined

on a case-specific basis to have a

significant nexus to a water identified

in paragraphs (1)(i) through (iii) of this

definition. For waters determined to

have a significant nexus, the entire

water is a water of the United States if

a portion is located within the 100-year

floodplain of a water identified in paragraphs

(1)(i) through (iii) of this definition

or within 4,000 feet of the high tide

line or ordinary high water mark.

Waters identified in this paragraph

shall not be combined with waters

identified in paragraph (1)(vi) of this

definition when performing a significant

nexus analysis. If waters identified

in this paragraph are also an adjacent

water under paragraph (1)(vi) of

this definition, they are an adjacent

water and no case-specific significant

nexus analysis is required.

(2) The following are not ''waters of

the United States'' even where they

otherwise meet the terms of paragraphs

(1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including

treatment ponds or lagoons designed

to meet the requirements of the

Clean Water Act are not waters of the

United States.

(ii) Prior converted cropland. Notwithstanding

the determination of an

area's status as prior converted cropland

by any other Federal agency, for

the purposes of the Clean Water Act,

the final authority regarding Clean

Water Act jurisdiction remains with

EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that

are not a relocated tributary or excavated

in a tributary.

(B) Ditches with intermittent flow

that are not a relocated tributary, excavated

in a tributary, or drain wetlands.

(C) Ditches that do not flow, either

directly or through another water, into

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that

would revert to dry land should application

of water to that area cease;

(B) Artificial, constructed lakes and

ponds created in dry land such as farm

and stock watering ponds, irrigation

ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or

cooling ponds;

(C) Artificial reflecting pools or

swimming pools created in dry land;

(D) Small ornamental waters created

in dry land;

(E) Water-filled depressions created

in dry land incidental to mining or

construction activity, including pits

excavated for obtaining fill, sand, or

gravel that fill with water;

(F) Erosional features, including gullies,

rills, and other ephemeral features

that do not meet the definition of tributary,

non-wetland swales, and lawfully

constructed grassed waterways;

and

(G) Puddles.

(v) Groundwater, including groundwater

drained through subsurface

drainage systems.

(vi) Stormwater control features constructed

to convey, treat, or store

stormwater that are created in dry

land.

(vii) Wastewater recycling structures

constructed in dry land; detention and

retention basins built for wastewater

recycling; groundwater recharge basins;

percolation ponds built for wastewater

recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following

terms apply:

(i) Adjacent. The term adjacent means

bordering, contiguous, or neighboring a

water identified in paragraphs (1)(i)

through (v) of this definition, including

waters separated by constructed dikes

or barriers, natural river berms, beach

dunes, and the like. For purposes of adjacency,

an open water such as a pond

or lake includes any wetlands within or

abutting its ordinary high water mark.

Adjacency is not limited to waters located

laterally to a water identified in

paragraphs (1)(i) through (v) of this definition.

Adjacent waters also include

all waters that connect segments of a

water identified in paragraphs (1)(i)

through (v) or are located at the head

of a water identified in paragraphs

(1)(i) through (v) of this definition and

are bordering, contiguous, or neighboring

such water. Waters being used

for established normal farming, ranching,

and silviculture activities (33

U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring

means:

(A) All waters located within 100 feet

of the ordinary high water mark of a

water identified in paragraphs (1)(i)

through (v) of this definition. The entire

water is neighboring if a portion is

located within 100 feet of the ordinary

high water mark;

(B) All waters located within the 100-

year floodplain of a water identified in

paragraphs (1)(i) through (v) of this definition

and not more than 1,500 feet

from the ordinary high water mark of

such water. The entire water is neighboring

if a portion is located within

1,500 feet of the ordinary high water

mark and within the 100-year floodplain;

(C) All waters located within 1,500

feet of the high tide line of a water

identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within

1,500 feet of the ordinary high water

mark of the Great Lakes. The entire

water is neighboring if a portion is located

within 1,500 feet of the high tide

line or within 1,500 feet of the ordinary

high water mark of the Great Lakes.

(iii) Tributary and tributaries. The

terms tributary and tributaries each

mean a water that contributes flow, either

directly or through another water

(including an impoundment identified

in paragraph (1)(iv) of this definition),

to a water identified in paragraphs

(1)(i) through (iii) of this definition

that is characterized by the presence of

the physical indicators of a bed and

banks and an ordinary high water

mark. These physical indicators demonstrate

there is volume, frequency,

and duration of flow sufficient to create

a bed and banks and an ordinary

high water mark, and thus to qualify

as a tributary. A tributary can be a

natural, man-altered, or man-made

water and includes waters such as rivers,

streams, canals, and ditches not

excluded under paragraph (2) of this

definition. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if, for any length, there are one

or more constructed breaks (such as

bridges, culverts, pipes, or dams), or

one or more natural breaks (such as

wetlands along the run of a stream, debris

piles, boulder fields, or a stream

that flows underground) so long as a

bed and banks and an ordinary high

water mark can be identified upstream

of the break. A water that otherwise

qualifies as a tributary under this definition

does not lose its status as a tributary

if it contributes flow through a

water of the United States that does

not meet the definition of tributary or

through a non-jurisdictional water to a

water identified in paragraphs (1)(i)

through (iii) of this definition.

(iv) Wetlands. The term wetlands

means those areas that are inundated

or saturated by surface or groundwater

at a frequency and duration sufficient

to support, and that under normal circumstances

do support, a prevalence of

vegetation typically adapted for life in

saturated soil conditions. Wetlands

generally include swamps, marshes,

bogs, and similar areas.

(v) Significant nexus. The term significant

nexus means that a water, including

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the chemical, physical, or biological

integrity of a water identified in

paragraphs (1)(i) through (iii) of this

definition. The term ''in the region''

means the watershed that drains to the

nearest water identified in paragraphs

(1)(i) through (iii) of this definition.

For an effect to be significant, it must

be more than speculative or insubstantial.

Waters are similarly situated

when they function alike and are sufficiently

close to function together in affecting

downstream waters. For purposes

of determining whether or not a

water has a significant nexus, the

water's effect on downstream (1)(i)

through (iii) waters shall be assessed

by evaluating the aquatic functions

identified in paragraphs (3)(v)(A)

through (I) of this definition. A water

has a significant nexus when any single

function or combination of functions

performed by the water, alone or together

with similarly situated waters

in the region, contributes significantly

to the chemical, physical, or biological

integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of

this definition. Functions relevant to

the significant nexus evaluation are

the following:

(A) Sediment trapping,

(B) Nutrient recycling,

(C) Pollutant trapping, transformation,

filtering, and transport,

(D) Retention and attenuation of

flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding,

nesting, breeding, spawning, or use

as a nursery area) for species located in

a water identified in paragraphs (1)(i)

through (iii) of this definition.

(vi) Ordinary high water mark. The

term ordinary high water mark means

that line on the shore established by

the fluctuations of water and indicated

by physical characteristics such as a

clear, natural line impressed on the

bank, shelving, changes in the character

of soil, destruction of terrestrial

vegetation, the presence of litter and

debris, or other appropriate means that

consider the characteristics of the surrounding

areas.

(vii) High tide line. The term high tide

line means the line of intersection of

the land with the water's surface at the

maximum height reached by a rising

tide. The high tide line may be determined,

in the absence of actual data,

by a line of oil or scum along shore objects,

a more or less continuous deposit

of fine shell or debris on the foreshore

or berm, other physical markings or

characteristics, vegetation lines, tidal

gages, or other suitable means that delineate

the general height reached by a

rising tide. The line encompasses

spring high tides and other high tides

that occur with periodic frequency but

does not include storm surges in which

there is a departure from the normal or

predicted reach of the tide due to the

piling up of water against a coast by

strong winds such as those accompanying

a hurricane or other intense

storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there…I HAVE to have this back by 1 pm. It went over at 11:17 am
>
> ---
>
> **From:** Fuld, John
> **Sent:** Wednesday, June 07, 2017 11:17 AM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water
Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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

Personal Phone / Ex. 6

Fuld.john@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/2/2017 5:06:03 PM
To: Thomas, Latosha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a405bd473fff4b80b3065d03d9b48eb9-LaThomas]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Christensen, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8f3dbcdb914046fb8e223ce7c1eea03d-CJARVIS]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
Subject: RE: Request for Talking Points: Enviro Stakeholders Meeting (6.7.17 @12PM)
Attachments: WOTUS TPs.docx

Hi Latosha,
Here are the latest talking points on waters rule.

thanks

Mindy Eisenberg
Acting Director, Oceans, Wetlands and Communities 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: Thomas, Latosha
Sent: Tuesday, May 30, 2017 10:25 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>
Subject: FW: Request for Talking Points: Enviro Stakeholders Meeting (6.7.17 @12PM)

FYI!

From: Thomas, Latosha
Sent: Tuesday, May 30, 2017 9:59 AM
To: Klos, Caroline <Klos.caroline@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Fontaine, Tim <Fontaine.Tim@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>
Cc: 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>; Campbell, Ann <Campbell.Ann@epa.gov>;

Penman, Crystal <Penman.Crystal@epa.gov>
Subject: Request for Talking Points: Enviro Stakeholders Meeting (6.7.17 @12PM)

Hi All,

Our enviros stakeholder meeting is scheduled for **Wednesday, June 7 from 12-1PM**. The requested topics for the agenda are below. If you all have anything to add, please let me know. Please submit your talking points to me by **COB Monday, June 5**. Thanks!

- Budget
- Update on implementation of the Stoner Nutrient Framework letter that was endorsed by Administrator Pruitt
- Information on how the conductivity guidance will be handled
- Clean Water Rule

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)
(Personal Phone / Ex. 6
thomas.latosha@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/26/2017 7:54:03 PM
To: Shapiro, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c70af880ba747b5a8b6baa45a040125-MShapiro]; Best-Wong, Benita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6ee79b3d0fc0429b99f2c05481b0b957-bbestwon]
CC: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Peck, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=633d0632187140118ea1387b7a8169b0-GPeck]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]
Subject: step 2 options paper
Attachments: WOTUS2_options v2.docx; ATT00001.htm

Mike and Benita,
For your review - attached is our proposed options table for our meeting with Sarah and others on Wednesday afternoon. OGC/OWOW/Corps took the lead in preparing based on our conversation two weeks ago with Sarah and building off of **Deliberative Process /attorney client Ex. 5** We're looking for comments from folks (see below) by Tuesday so that we can send it to Sarah/Justin/David.

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

Begin forwarded message:

> **From:** "Christensen, Damaris" <Christensen.Damaris@epa.gov>
> **Date:** May 26, 2017 at 2:17:44 PM EDT
> **To:** "Peck, Gregory" <Peck.Gregory@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Kwok, Rose" <kwok.rose@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Flannery-Keith, Erin" <Flannery-Keith.Erin@epa.gov>, "Frazer, Brian" <Frazer.Brian@epa.gov>, "David.F.Dale@usace.army.mil" <David.F.Dale@usace.army.mil>, "Hewitt, Julie" <Hewitt.Julie@epa.gov>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov>, "Stokely, Peter" <Stokely.Peter@epa.gov>, "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, "jennifer.a.moyer@usace.army.mil" <jennifer.a.moyer@usace.army.mil>, "Orvin, Chris" <Orvin.Chris@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>
> **Subject: step 2 options paper**

> Hi all,

Attached is a table laying out a variety of options for describing the scope of CWA jurisdiction in preparation for a meeting with Sarah, Justin and David on May 31. We would appreciate your thoughts and edits, preferably on the Sharepoint site (link below), although I have attached a Word document for your convenience.

Nonresponsive Internal URL/ Ex. 6

Please note that Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Damaris

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/26/2017 7:42:57 PM
To: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]
Subject: FW: updated WOTUS comms plan
Attachments: WOTUS Step 1 Comms Plan 5.21.2017 (002)AD.docx

fyi

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: Dennis, Allison
Sent: Friday, May 26, 2017 2:02 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: updated WOTUS comms plan

Hi Mike and Benita,

Thank you for your comments and edits on the previous version. Attached is a revised version where Damaris made the following changes:

- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5 OCIR is planning to get back to us next week with feedback on this section.
- This version has been approved by Army and the Corps. They only had a few minor edits.
- OPA confirmed that they plan to issue a press release on this action.

If you are comfortable with this revised version, we'll re-share with OPA and OCIR on Tuesday.

Also, as an FYI- Damaris received invitations from OMB for listening sessions for this action on June 5 and June 8.

Lastly, a huge shout out to Damaris for spending an hour+ with OPA earlier this week handling questions on this rulemaking and what's to come, the APA, and more.

Have a great weekend everyone! -Allison

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/25/2017 10:52:20 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: RE: Options table
Attachments: WOTUS2_options v2_mge.docx

Hey Rose,
Here are some edits. Thanks!

Shutting down my computer and getting on the plane shortly.

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

From: Kwok, Rose
Sent: Thursday, May 25, 2017 6:13 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Options table

Here's the current version and the link on Sharepoint. Let me know if you have any edits (that aren't made in Sharepoint).

Nonresponsive Internal URL/ Ex. 6

I'm out tomorrow **Personal Matters / Ex. 6** but I'll be checking email and will check the status of this.

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/25/2017 9:45:06 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
Subject: Fwd: WOTUS Step 1 Comms Plan 5.21.2017.docx
Attachments: WOTUS Step 1 Comms Plan 5.21.2017.docx; ATT00001.htm

FYI. Note that there are 12866 meeting scheduled thru June 8 (on my calendar) so I don't know what that actually means for timing of OMB releasing proposal. Flag for Mike?

Sent from my iPhone

Begin forwarded message:

> **From:** "Christensen, Damaris" <Christensen.Damaris@epa.gov>
> **Date:** May 25, 2017 at 12:53:20 PM PDT
> **To:** "Dennis, Allison" <Dennis.Allison@epa.gov>
> **Cc:** "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Bennett, Brittany" <bennett.brittany@epa.gov>, "Thomas, Latosha" <Thomas.Latosha@epa.gov>
> **Subject: WOTUS Step 1 Comms Plan 5.21.2017.docx**
>
> Hey Allison,
>
> I just got final comments from Army on the comms strategy. Not many changes. (Brittany, they did make a few tweaks to the FAQs (like numbering them) so we may want to update the website once these go public.)
>
> There are a couple places where there are questions for Mike (Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 ?) and for OPA (Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 ?) We can also send the press release to Ginah Mortensen here at EPA who can then distribute it to a wide variety of ag stakeholders.
>
> Re: timing – I just got invitations from OMB for listening sessions June 5 and June 8, so I think that Deliberative Process / Ex. 5
>
> Allison - it would be ideal if Latosha can cross compare the stakeholder table to provide phone numbers and names for the calls, and also get a list together for a broader distribution.
>
> Damaris

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/25/2017 3:28:40 PM
To: Weinstock, Larry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abf6ef85ed154d13aa590ea7c0addac2-Weinstock, Larry]
Subject: RE: HEADS UP: CMS For Concurrence - Sara Terry - AL-17-000-8303

Thanks Larry. Just a couple of edits below.

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: Weinstock, Larry
Sent: Thursday, May 25, 2017 9:58 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: HEADS UP: CMS For Concurrence - Sara Terry - AL-17-000-8303

Mindy,

OAR is taking the lead on this letter since it raises 3 issues the Clean Power Plan, the Ozone Standard and WOTUS. The OAR letter has a paragraph on each rule and is asking for a paragraph on WOTUS from us. I suggest this:

Deliberative Process / Ex. 5

Larry

From: Smothers, Yvonne
Sent: Thursday, May 25, 2017 9:47 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Brown, Sineta <Brown.Sineta@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: FW: HEADS UP: CMS For Concurrence - Sara Terry - AL-17-000-8303
Importance: High

Hi Mindy

CMS control, AL-17-000-8303, was sent to you today, 5/25/17, through the CMS system, **for review and concurrence.**

Please review the email note below from Diane Jones Coleman with instructions to follow.

I have attached a ***copy of the Incoming Letter***, the ***Draft Response Document***, and ***a Copy of the Address List*** for review.

Per Ms. Jones-Coleman, if you have questions, please contact Sara Terry at 919-541-7576.

Thank you for your assistance.

Yvonne
OWOW-PCRMS
566-1176

-----Original Message-----
From: Jones-Coleman, Diane
Sent: Thursday, May 25, 2017 7:47 AM
To: Weinstock, Larry <Weinstock.Larry@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Smothers, Yvonne <Smothers.Yvonne@epa.gov>
Cc: Orvin, Chris <Orvin.Chris@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>
Subject: HEADS UP: CMS For Concurrence - Sara Terry - AL-17-000-8303

Good morning all,

The above control was forwarded from Sara Terry of OAR for Wetlands to provide input re WOTUS into the OAR response that has been uploaded.

Questions - call Sara Terry at 919-541-7576.

Thanks.

Diane C. Coleman
OW Correspondence Team Leader
(202) 564-0379
(202) 564-0500 FAX
E-mail: Jones-Coleman.Diane@epa.gov

-----Original Message-----
From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Wednesday, May 24, 2017 4:39 PM
To: Fields, Wanda <Fields.Wanda@epa.gov>; Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>
Subject: CMS For Concurrence - Sara Terry - AL-17-000-8303

The response for control AL-17-000-8303 has been sent to you for concurrence on 5/24/17 4:38 PM. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AL-17-000-8303
Control Subject: CLEAN POWER PLAN
From: McSally, Martha; Gosar, Paul; Wagner, Ann; Westerman, Bruce; Rutherford, John; Barletta, Lou; Kelly, Mike; Barr, Andy; Franks, Trent; Jones, Walter B; Yoho, Ted; Griffith, Morgan; Gibbs, Bob; LAMBORN, DOUG; Cramer, Kevin; Thornberry, Mac; Walters, Mimi; Chabot, Steve; Hartzler, Vicky; Aderholt, Robert B; Valadao, David G; Noem, Kristi L.; Fleischmann, Charles "Chuck"; Tipton, Scott; Loudermilk, Barry; Graves, Sam; Bost, Mike; Grothman, Glenn S.; Lewis, Jason; Babin, Brian; Palmer, Gary; Newhouse, Dan; Mcclintock, Tom (Thomas); LaMalfa, Doug; Banks, Jim; Walorski, Jackie; Duncan, Jeff; Abraham, Ralph

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at Nonresponsive Internal URL/ Ex. 6 Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Sun 5/21/2017 8:17:21 PM
Subject: Fwd: For your review: WOTUS Step 1 Comms Plan
WOTUS Step 1 Comms Plan 5.21.2017.docx
ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

From: "Dennis, Allison" <Dennis.Allison@epa.gov>
Date: May 21, 2017 at 3:37:14 PM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
Cc: "Campbell, Ann" <Campbell.Ann@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Bravo, Antonio" <Bravo.Antonio@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Subject: For your review: WOTUS Step 1 Comms Plan

Mike and Benita,

Attached for your review is the WOTUS Step 1 Proposal Comms Plan. We would like to get your input on this before starting conversations with OPA. The Corps is also reviewing this comms plan too.

Damaris and Mindy- if I left any important notes out please chime in!

Looking forward to your feedback. =

Best,

Allison

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/17/2017 1:51:31 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]
CC: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
Subject: RE: for 10:00 meeting today
Attachments: 2017 WOTUS 2 Draft Proposed Rule Text for 3.29.17 meeting.docx

Staff had started 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: Greenwalt, Sarah
Sent: Wednesday, May 17, 2017 9:46 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>
Subject: RE: for 10:00 meeting today

Well, that's what I thought, but Benita said you Deliberative Process / Ex. 5 t made me wonder. Can you then send me t Deliberative Process / Ex. 5

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: Eisenberg, Mindy
Sent: Wednesday, May 17, 2017 9:44 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>
Subject: RE: for 10:00 meeting today

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Greenwalt, Sarah
Sent: Wednesday, May 17, 2017 9:42 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>
Subject: RE: for 10:00 meeting today

Thanks, Mindy. Can you send me Deliberative Process / Ex. 5

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: Eisenberg, Mindy
Sent: Wednesday, May 17, 2017 9:19 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>
Subject: for 10:00 meeting today

Hi Sarah,
John and I were chatting this morning about today's 10:00 and want to ensure that we have an opportunity to briefly touch on direction for staff in developing some options for step 2 so that we can stay focused. As you and I have discussed, it would be useful for our group to reorient ourselves so that we are focused on Deliberative Process / Ex. 5 Deliberative Process / Ex. 5. We had a discussion within our staff workgroup yesterday and folks are trying to wrap their heads around this so that we can develop options for consideration.

I'd like to tee this up today so that folks can benefit from your framing of the direction so that we don't spin off in the wrong direction.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460

(202) 566-1290
eisenberg.mindy@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/16/2017 4:10:12 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: Re: Addition of links to Wetlands and 404 homepages

Sure go ahead

Sent from my iPhone

On May 16, 2017, at 10:38 AM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Mindy –

Are you ok with adding a link to Deliberative Process / Ex. 5 on the streams page under Additional Resources? I'd add it similarly to the wetlands page wherever Brittany added the links to the literature

Additional Resources:

- Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Thursday, May 11, 2017 2:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Addition of links to Wetlands and 404 homepages

great

Mindy Eisenberg
Acting Director, Wetlands Division
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Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Kwok, Rose
Sent: Thursday, May 11, 2017 2:05 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: Addition of links to Wetlands and 404 homepages

Antonio was fine with us adding these links. I also let him know that we'd have to make some link changes to reflect the new website/archiving of the CWR page.

From: Bravo, Antonio
Sent: Thursday, May 11, 2017 2:02 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Johnson, CynthiaN <Johnson.CynthiaN@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>
Subject: RE: Addition of links to Wetlands and 404 homepages

Go ahead and make the changes, as I know that OPA and OWC know you are building/modifying the old site.

I will let folks know though as a courtesy.

From: Kwok, Rose
Sent: Thursday, May 11, 2017 2:00 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Johnson, CynthiaN <Johnson.CynthiaN@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>
Subject: Addition of links to Wetlands and 404 homepages

Hi Antonio,

I spoke to Mindy about this earlier today, and she wanted me to touch base with you regarding the addition of a link on both the CWA 404 and the Wetlands sites. We know that even minor edits to the website right now are being reviewed, so I wanted to get your approval (or the approval from whatever level is needed) for this very minor edits to the websites. As we are working to make a new WOTUS website (and archiving the CWR website), we realize that a link to our Streams page is left off both the 404 homepage and the wetlands homepage. It should have been there to begin with, but with the archiving of the CWR page, we realize that we need to make certain pages easily accessible to the public. We would like to add:

On the Wetlands Page (https://www.epa.gov/wetlands):

- A link to the Streams page (https://www.epa.gov/cwa-404/streams) under "Related Topics" (would read simply "Streams")

On the 404 page (https://www.epa.gov/cwa-404):

- A link to the Streams page (https://www.epa.gov/cwa-404/streams) under "Jurisdiction" (would read "Learn about streams")

Thanks – let me know if you need more information. These are of course easy edits that we can make on our end, but we want to make sure we have the okay to do so.

Rose

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/15/2017 10:15:48 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
CC: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: RE: LGAC meeting Thursday May 18

I've gotten a little more insight from Sarah on step 2. We can talk more during the interagency discussion tomorrow.

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, May 15, 2017 2:46 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: LGAC meeting Thursday May 18

When is John back from Personal Matters / Ex. 6? I couldn't remember/ tell if it was this week or next.

I ask because I just talked with Fran about the LGAC and want to pin down who is attending and how to split time between the LGAC and the R10 RTOC.

This is the meeting where the LGAC is pulling in the local government organizations like UCM, NACo, and NLC. Fran said the LGAC would appreciate a brief overview of what we've done since we last met with them a couple weeks ago – I think, basically, I can pull together a few TPs about Deliberative Process / Ex. 5 Then, maybe frame for them the questions we are asking in a little more detail – she said examples would be helpful. Along those lines, I'm thinking (generally):

1. Deliberative Process / Ex. 5
2.
3.

I know Cindy said she could attend the LGAC. Not sure about Stacey. Chip might be able to participate for the Army with tribes.

Damaris

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/15/2017 10:12:02 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: LGAC meeting Thursday May 18

John is here this week except for Friday. He was on work travel last week.

Mindy Eisenberg
Acting Director, Wetlands Division
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eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, May 15, 2017 2:46 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: LGAC meeting Thursday May 18

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1. Deliberative Process / Ex. 5
2.
3.

I know Cindy said she could attend the LGAC. Not sure about Stacey. Chip might be able to participate for the Army with tribes.

Damaris

Message

From: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Sent: 5/15/2017 5:34:20 PM
To: Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]
CC: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: Re: 5.12.17 pm Version of Website

Great! I'm good with your change.

Sent from my iPhone

On May 15, 2017, at 1:08 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Okay – a slight tweak:

Deliberative Process / Ex. 5

Other than that, I think the website is good to go.

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: Eisenberg, Mindy
Sent: Monday, May 15, 2017 1:00 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: 5.12.17 pm Version of Website

I think Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Greenwalt, Sarah
Sent: Monday, May 15, 2017 12:56 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: 5.12.17 pm Version of Website

Mindy, What about something like this:

Deliberative Process / Ex. 5

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: Eisenberg, Mindy
Sent: Friday, May 12, 2017 4:56 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Goodin, John <Goodin.John@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: FW: 5.12.17 pm Version of Website

Hi All,
Attached are PDFs of the latest iteration of the new WOTUS rulemaking website and the updated Section 404 web page for jurisdiction (Thank You Brittany!). Please take a look and send Brittany and me any comments/edits by 10 AM on Monday so Brittany can make any changes. Our goal is to be able to go live by early afternoon.

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

From: Bennett, Brittany
Sent: Friday, May 12, 2017 4:51 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: 5.12.17 pm Version of Website

Hey All,

Attached is the latest iteration of the pages. The edits I received were scattered throughout a lot of email chains, but I think I incorporated them all. I'll also give this a proofread Sunday evening or Monday morning when I'm a little less cross-eyed. Please note that I changed the headline for the homepage banner (it used to read: **Deliberative Process / Ex. 5** '). I have checked all of the links (but, again, will double check post-crosseye) and created all of the document pages necessary.

Mindy, please include Carrie Wehling in your distribution, per Simma's request.

B

Brittany K. Bennett
Ecologist
U.S. EPA, Office of Water
ph: 202.564.1896
Bennett.Brittany@epa.gov

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/15/2017 5:34:07 PM
To: Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]
Subject: Fwd: 5.12.17 pm Version of Website

Can you make this edit to the faqs?
Thanks!

Sent from my iPhone

Begin forwarded message:

From: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Date: May 15, 2017 at 1:08:18 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Bowman, Liz" <Bowman.Liz@epa.gov>
Subject: RE: 5.12.17 pm Version of Website

Okay – a slight tweak:

Deliberative Process / Ex. 5

Other than that, I think the website is good to go.

Sarah A. Greenwalt
Senior Advisor to the Administrator
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To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
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Deliberative Process / Ex. 5

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Sent: Monday, May 15, 2017 12:56 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: 5.12.17 pm Version of Website

Mindy, What about something like this:

Deliberative Process / Ex. 5

Sarah A. Greenwalt
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From: Eisenberg, Mindy
Sent: Friday, May 12, 2017 4:56 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Goodin, John <Goodin.John@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
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Sent: Friday, May 12, 2017 4:51 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Mindy, please include Carrie Wehling in your distribution, per Simma's request.

B

Brittany K. Bennett
Ecologist
U.S. EPA, Office of Water
ph: 202.564.1896
Bennett.Brittany@epa.gov

To: Shaw, Hanh[Shaw.Hanh@epa.gov]; Allnutt, David[Allnutt.David@epa.gov]; Amato, Paul[Amato.Paul@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 5/9/2017 10:01:47 PM
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."
WOTUS- Branstad.pdf

FYI

Mindy Eisenberg
Acting Director, Wetlands Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 5:40 PM
To: OW-OWOW-WD <OWOWOWWD@epa.gov>; EPA Wetlands Managers <EPA_Wetlands_Managers@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>; 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>; 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>; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Alexander, Laurie <Alexander.Laurie@epa.gov>; Downing, Donna <Downing.Donna@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>; Kovac, Steve <Kovac.Steve@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Hi Folks,
FYI, letters signed by the Administrator and Mr. Douglas Lamont (Senior Official Performing the Duties of the Assistant Secretary of the Army, Civil Works) are being sent out today to all of the governors (the last we heard from OCIR earlier this afternoon, they were still transmitting the letters via email and would be mailing a hard copy soon) regarding the forthcoming WOTUS rulemakings. I've attached a sample of the letters that were sent out, and the press release is below. We have notified the Administrator's office of a typo in the press release (Deliberative Process / Ex. 5 but wanted to be sure you had these materials as an FYI. I'll also be posting these items to the SharePoint site. Please let us know if you have any questions. We heard that this press release went out at 11 am today.

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.

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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.

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R079

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/9/2017 8:09:46 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
Subject: RE: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Yep. **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: Goodin, John
Sent: Tuesday, May 09, 2017 4:09 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

Sent from my iPhone

On May 9, 2017, at 4:02 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

> I sent a note to Liz and Sarah noting **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
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>
> Sent from my iPhone
>
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Date: May 9, 2017 at 3:06:37 PM EDT
To: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>
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Deliberative Process / Ex. 5

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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."

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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>
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Deliberative Process / Ex. 5

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Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

<image002.png>**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.

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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: Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

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CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

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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: May 9, 2017

OUTLET: CQ Roll Call

REPORTER: Jackie Toth

TOPIC: RE: WOTUS News Release

DEADLINE: 3 pm

OW PROGRAM OFFICE: OWOW

PERTINENT INFORMATION:

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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: Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

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Sent: 5/9/2017 7:19:33 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
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Unfortunately, **Deliberative Process / Ex. 5**

From: Eisenberg, Mindy
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To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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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: Downing, Donna
Sent: Tuesday, May 09, 2017 2:59 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

Donna

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 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>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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

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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

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Bowman, Liz[Bowman.Liz@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 5/9/2017 7:13:48 PM
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Glad that the letters are going out today. Just wanted to flag an Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks

Mindy Eisenberg
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(202) 566-1290
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CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

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R079

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Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/9/2017 7:02:40 PM
To: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Guess they meant **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: Downing, Donna
Sent: Tuesday, May 09, 2017 2:59 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
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Deliberative Process / Ex. 5

Donna

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Sent: Tuesday, May 09, 2017 2:57 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>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

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R079

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Nandi, Romell[Nandi.Romell@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 5/8/2017 4:54:28 PM
Subject: RE: ignore the part of my VM about the OW Action Tracker - I do see you sent update - eom
Agricultural Stakeholders Meeting Agenda (ANNOTATED).docx

Slightly updated.

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: Nandi, Romell
Sent: Monday, May 08, 2017 12:53 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: ignore the part of my VM about the OW Action Tracker - I do see you sent update - eom

OK – will let OW know. I had told them we would use the same TPs we used for the ag stakeholder meeting. If you are using something different, let me know.

From: Eisenberg, Mindy
Sent: Monday, May 08, 2017 12:52 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Subject: RE: ignore the part of my VM about the OW Action Tracker - I do see you sent update - eom

I can make the utilities meeting tomorrow.

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: Nandi, Romell
Sent: Monday, May 08, 2017 12:01 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: ignore the part of my VM about the OW Action Tracker - I do see you sent update - eom

To: Brown, Sineta[Brown.Sineta@epa.gov]
Cc: Weinstock, Larry[Weinstock.Larry@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 5/5/2017 8:19:26 PM
Subject: use these for cms responses
NRDC_AX-17-000-7867.docx
Van Dyke_AX-17-000-7456.docx
Earthjustice_AX-17-000-6900.docx

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: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 5/5/2017 7:15:05 PM
Subject: letter
AX-17-000-6900 Earth Justice.pdf
Earthjustice_AX-17-000-6900.docx

Here is a draft response and the original incoming. I think we decided to include in the document CMS controls that Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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: Brown, Sineta[Brown.Sineta@epa.gov]
Cc: Weinstock, Larry[Weinstock.Larry@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 5/5/2017 6:52:26 PM
Subject: NRDC letter
NRDC_AX-17-000-7867.docx

Hi Sineta,
Here is a revised version of the NRDC response for administrator's signature.

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: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 5/5/2017 6:43:29 PM
Subject: Fwd: For review -- Requested FY18 budget fact sheet on WOTUS
Fact Sheet for FY18 Budget -- WOTUS v1km.docx
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Moore, Kristie" <Moore.Kristie@epa.gov>
Date: May 5, 2017 at 2:23:29 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Weinstock, Larry" <Weinstock.Larry@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Mindy,

Yes, this is way too long. We are strictly limited to one page. Can't cheat on the margins or the font. The talking points section is limited to 3 bullets.

There are some redundancies in the factsheet. We could remove some of them to save space. Also, how strongly do you feel about including steps 1-5 in the background. For now I've removed them, but if they need to stay, maybe we can save some space by beefing-up the talking points with the info. in the issue section. The talking points include most of the information in the issue section anyway.

Here are some suggested edits. I didn't make them in one drive because I didn't want to mess with the editing currently going on.
I'm looping-in Sandra because I'll be leaving in about an hour. I know she is interested in reviewing this factsheet and it looks like you might be in a meeting until 4:30.

When you have a final draft, can you please send a copy to Sandra? Otherwise, I'll follow-up with you on Monday to close the loop.

Thank you,

Kristie

Kristie M. Moore
Office of Wetlands Oceans and Watersheds
U.S. Environmental Protection Agency
EPA West
1200 Pennsylvania Ave., NW
MC-4501 T
Washington, DC, 20460
office: (202) 566-1616
fax: (202) 566-1544

From: Eisenberg, Mindy
Sent: Friday, May 05, 2017 1:50 PM
To: Moore, Kristie <Moore.Kristie@epa.gov>
Cc: Weinstock, Larry <Weinstock.Larry@epa.gov>
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

I haven't seen edits from OGC, but here is a draft. Is it too long?

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

From: Weinstock, Larry
Sent: Friday, May 05, 2017 9:27 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

Do you want me to forward this to Kristi or wait?

From: Downing, Donna
Sent: Thursday, May 04, 2017 7:34 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: For review -- Requested FY18 budget fact sheet on WOTUS

Hi Mindy and Larry:

Attached please find a draft FY18 budget fact sheet on the ongoing WOTUS rulemaking effort. The fact sheet has not been reviewed by OGC, although it is constructed from a variety of documents (including the draft rule preamble) that OGC helped draft.

With this email, I am cc'ing OGC's Carrie Wehling for her input. Carrie, could you please click "reply to all" with any suggested edits or other input?

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

Message

From: Wehling, Carrie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3E55F11FDC7489698BE69849B301DA6-CWEHLING]
Sent: 6/7/2017 4:49:43 PM
To: Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Minoli, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c9c0070d651a4625ac20258369f9b050-KMINOLI]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: Heads up on WOTUS CFR correction and MEDIA INQUIRY

Heads up that the OFR is correcting a mistake they made in publishing the CWR in 2015. In one of the places we amended the rule text (as you recall, it's in many places in the CFR), the OFR erroneously added the CWR without taking out the prior language. The OFR is, on its own, publishing a correction tomorrow. We are already, of course, getting inquiries from folks wondering how it's related to the EO and the WOTUS rulemakings (answer: it's not).

Thought you should know in case you get questions. It would normally be a totally routine matter but the unfortunate timing is likely to confuse folks.

Let us know if you need more – the email below has more details if you need it.

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

From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:30 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Looks like OFR moved quickly!

How do these draft answers look?

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:
All waters which are currently used,
were used in the past, or may be susceptible
to us in interstate or foreign
commerce, including all waters which
are subject to the ebb and flow of the
tide.
All interstate waters including interstate
wetlands.
All other waters, such as intrastate
lakes, rivers, streams (including intermittent
streams), mudflats, sandflats,
wetlands, sloughs, prairie potholes, wet
meadows, playa lakes, or natural
ponds, the use, degradation, or destruction
of which would or could affect
interstate or foreign commerce including
any such waters:
Which are or could be used by interstate
or foreign travelers for recreational
or other purposes; or
From which fish or shellfish are or
could be taken and sold in interstate or
foreign commerce; or
Which are used or could be used for
industrial purposes by industries in
interstate commerce.
All impoundments of waters otherwise
defined as waters of the United
States under this definition;
Tributaries of waters identified in
paragraphs (g)(1)–(4) of this section;
The territorial sea; and
Wetlands adjacent to waters (other
than waters that are themselves wetlands)
identified in paragraphs (q)(1)–
(6) of this section.
Waste treatment systems, including
treatment ponds or lagoons designed to
meet the requirements of the Act
(other than cooling ponds as defined in
40 CFR 123.11(m) which also meet the
criteria of this definition) are not
waters of the United States.

Waters of the United States means:
(1) For purposes of the Clean Water
Act, 33 U.S.C. 1251 et seq. and its implementing
regulations, subject to the exclusions
in paragraph (2) of this definition,
the term ''waters of the United
States'' means:
(i) All waters which are currently
used, were used in the past, or may be
susceptible to use in interstate or foreign
commerce, including all waters
which are subject to the ebb and flow
of the tide;
(ii) All interstate waters, including
interstate wetlands;
(iii) The territorial seas;
(iv) All impoundments of waters otherwise
identified as waters of the
United States under this section;
(v) All tributaries, as defined in paragraph
(3)(iii) of this definition, of
waters identified in paragraphs (1)(i)
through (iii) of this definition;

(vi) All waters adjacent to a water
identified in paragraphs (1)(i) through
(v) of this definition, including wetlands,
ponds, lakes, oxbows, impoundments,
and similar waters;
(vii) All waters in paragraphs
(1)(vii)(A) through (E) of this definition
where they are determined, on a casespecific
basis, to have a significant
nexus to a water identified in paragraphs
(1)(i) through (iii) of this definition.
The waters identified in each of
paragraphs (1)(vii)(A) through (E) of
this definition are similarly situated
and shall be combined, for purposes of
a significant nexus analysis, in the watershed
that drains to the nearest
water identified in paragraphs (1)(i)
through (iii) of this definition. Waters
identified in this paragraph shall not
be combined with waters identified in
paragraph (1)(vi) of this definition
when performing a significant nexus
analysis. If waters identified in this
paragraph are also an adjacent water
under paragraph (1)(vi), they are an adjacent
water and no case-specific significant
nexus analysis is required.
(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.
(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.
(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.
(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.
(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.
(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.
(2) The following are not ''waters of the United States'' even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.
(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.
(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.
(iii) The following ditches:
(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.
(iv) The following features:
(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
(C) Artificial reflecting pools or swimming pools created in dry land;
(D) Small ornamental waters created in dry land;
(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
(F) Erosional features, including gullies,

rills, and other ephemeral features
that do not meet the definition of tributary,
non-wetland swales, and lawfully
constructed grassed waterways;
and
(G) Puddles.
(v) Groundwater, including groundwater
drained through subsurface
drainage systems.
(vi) Stormwater control features constructed
to convey, treat, or store
stormwater that are created in dry
land.
(vii) Wastewater recycling structures
constructed in dry land; detention and
retention basins built for wastewater
recycling; groundwater recharge basins;
percolation ponds built for wastewater
recycling; and water distributary
structures built for wastewater recycling.
(3) In this definition, the following
terms apply:
(i) Adjacent. The term adjacent means
bordering, contiguous, or neighboring a
water identified in paragraphs (1)(i)
through (v) of this definition, including
waters separated by constructed dikes
or barriers, natural river berms, beach
dunes, and the like. For purposes of adjacency,
an open water such as a pond
or lake includes any wetlands within or
abutting its ordinary high water mark.
Adjacency is not limited to waters located
laterally to a water identified in
paragraphs (1)(i) through (v) of this definition.
Adjacent waters also include
all waters that connect segments of a
water identified in paragraphs (1)(i)
through (v) or are located at the head
of a water identified in paragraphs
(1)(i) through (v) of this definition and
are bordering, contiguous, or neighboring
such water. Waters being used
for established normal farming, ranching,
and silviculture activities (33
U.S.C. 1344(f)) are not adjacent.
(ii) Neighboring. The term neighboring
means:
(A) All waters located within 100 feet
of the ordinary high water mark of a
water identified in paragraphs (1)(i)
through (v) of this definition. The entire
water is neighboring if a portion is
located within 100 feet of the ordinary
high water mark;
(B) All waters located within the 100-
year floodplain of a water identified in
paragraphs (1)(i) through (v) of this definition
and not more than 1,500 feet
from the ordinary high water mark of
such water. The entire water is neighboring
if a portion is located within
1,500 feet of the ordinary high water
mark and within the 100-year floodplain;
(C) All waters located within 1,500
feet of the high tide line of a water
identified in paragraphs (1)(i) or (1)(iii)
of this definition, and all waters within
1,500 feet of the ordinary high water
mark of the Great Lakes. The entire
water is neighboring if a portion is located
within 1,500 feet of the high tide
line or within 1,500 feet of the ordinary
high water mark of the Great Lakes.
(iii) Tributary and tributaries. The
terms tributary and tributaries each
mean a water that contributes flow, either
directly or through another water
(including an impoundment identified
in paragraph (1)(iv) of this definition),
to a water identified in paragraphs
(1)(i) through (iii) of this definition
that is characterized by the presence of
the physical indicators of a bed and
banks and an ordinary high water
mark. These physical indicators demonstrate
there is volume, frequency,
and duration of flow sufficient to create
a bed and banks and an ordinary
high water mark, and thus to qualify
as a tributary. A tributary can be a
natural, man-altered, or man-made
water and includes waters such as rivers,
streams, canals, and ditches not
excluded under paragraph (2) of this
definition. A water that otherwise
qualifies as a tributary under this definition
does not lose its status as a tributary
if, for any length, there are one
or more constructed breaks (such as
bridges, culverts, pipes, or dams), or
one or more natural breaks (such as
wetlands along the run of a stream, debris
piles, boulder fields, or a stream

that flows underground) so long as a
bed and banks and an ordinary high
water mark can be identified upstream
of the break. A water that otherwise
qualifies as a tributary under this definition
does not lose its status as a tributary
if it contributes flow through a
water of the United States that does
not meet the definition of tributary or
through a non-jurisdictional water to a
water identified in paragraphs (1)(i)
through (iii) of this definition.
(iv) Wetlands. The term wetlands
means those areas that are inundated
or saturated by surface or groundwater
at a frequency and duration sufficient
to support, and that under normal circumstances
do support, a prevalence of
vegetation typically adapted for life in
saturated soil conditions. Wetlands
generally include swamps, marshes,
bogs, and similar areas.
(v) Significant nexus. The term significant
nexus means that a water, including
wetlands, either alone or in combination
with other similarly situated
waters in the region, significantly affects
the chemical, physical, or biological
integrity of a water identified in
paragraphs (1)(i) through (iii) of this
definition. The term ''in the region''
means the watershed that drains to the
nearest water identified in paragraphs
(1)(i) through (iii) of this definition.
For an effect to be significant, it must
be more than speculative or insubstantial.
Waters are similarly situated
when they function alike and are sufficiently
close to function together in affecting
downstream waters. For purposes
of determining whether or not a
water has a significant nexus, the
water's effect on downstream (1)(i)
through (iii) waters shall be assessed
by evaluating the aquatic functions
identified in paragraphs (3)(v)(A)
through (I) of this definition. A water
has a significant nexus when any single
function or combination of functions
performed by the water, alone or together
with similarly situated waters
in the region, contributes significantly
to the chemical, physical, or biological
integrity of the nearest water identified
in paragraphs (1)(i) through (iii) of
this definition. Functions relevant to
the significant nexus evaluation are
the following:
(A) Sediment trapping,
(B) Nutrient recycling,
(C) Pollutant trapping, transformation,
filtering, and transport,
(D) Retention and attenuation of
flood waters,
(E) Runoff storage,
(F) Contribution of flow,
(G) Export of organic matter,
(H) Export of food resources, and
(I) Provision of life cycle dependent
aquatic habitat (such as foraging, feeding,
nesting, breeding, spawning, or use
as a nursery area) for species located in
a water identified in paragraphs (1)(i)
through (iii) of this definition.
(vi) Ordinary high water mark. The
term ordinary high water mark means
that line on the shore established by
the fluctuations of water and indicated
by physical characteristics such as a
clear, natural line impressed on the
bank, shelving, changes in the character
of soil, destruction of terrestrial
vegetation, the presence of litter and
debris, or other appropriate means that
consider the characteristics of the surrounding
areas.
(vii) High tide line. The term high tide
line means the line of intersection of
the land with the water's surface at the
maximum height reached by a rising
tide. The high tide line may be determined,
in the absence of actual data,
by a line of oil or scum along shore objects,
a more or less continuous deposit
of fine shell or debris on the foreshore
or berm, other physical markings or
characteristics, vegetation lines, tidal
gages, or other suitable means that delineate
the general height reached by a
rising tide. The line encompasses
spring high tides and other high tides
that occur with periodic frequency but
does not include storm surges in which
there is a departure from the normal or

predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,
Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am
>
> ---
>
> **From:** Fuld, John
> **Sent:** Wednesday, June 07, 2017 11:17 AM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water
Media Inquiry

John W. Fuld, Ph.D.
U.S. Media Relations Mgr.-Water
fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?
2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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
Personal Phone / Ex. 6
Fuld.john@epa.gov

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/31/2017 4:27:14 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
CC: Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Dale, David F Jr SES CELRD CELRD (US) [David.F.Dale@usace.army.mil]; Schaefer-Gomez, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5f0868369304bef91d8aece8386fc8c-Schaefer-Go]
BCC: DCRoomWest7129/DC-CCW-OWOW [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user9494729e]

Subject: WOTUS2: Federalism webinar w/NWRA and ASHTO
Attachments: federalism NWRA ASHTO ppt 6-12-17 (002).pdf; ASHTO NWRA state federalism outreach invite (002).pdf
Location: DCRoomWest7129/DC-CCW-OWOW

Start: 6/12/2017 7:00:00 PM
End: 6/12/2017 8:00:00 PM
Show Time As: Busy

Topic: WOTUS Briefing with ASHTO and NWRA

Conference ID: Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

WEBINAR URL: **Nonresponsive Internal URL/ Ex. 6**

Meeting Location: US EPA, WJCW, 1301 Constitution Ave., NW, Room 7129 West, Washington, DC 20004

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/31/2017 4:18:16 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
CC: Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Dale, David F Jr SES CELRD CELRD (US) [David.F.Dale@usace.army.mil]
BCC: DCRoomWest7129/DC-CCW-OWOW [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user9494729e]

Subject: WOTUS2: Federalism webinar w/ACWA
Attachments: ACWA state federalism outreach invite.pdf; federalism ACWA ppt 6-9-17.pptx
Location: DCRoomWest7129/DC-CCW-OWOW

Start: 6/9/2017 7:00:00 PM
End: 6/9/2017 8:00:00 PM
Show Time As: Busy

Conference Number(s): Nonresponsive Internal URL/ Ex. 6
Participant Code: Nonresponsive Internal URL/ Ex. 6
WEBINAR URL:

Nonresponsive Internal URL/ Ex. 6

Agenda will be updated shortly.

Please Note: EPA will be on the call at 3 pm to present via the adobeconnect webinar URL, take questions/discuss concerns, and then they will drop off the call. As we get closer to the call, we will let you know if we decide to move the call start time back past 2:00 pm ET to 2:30 or 3:00.

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From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/30/2017 3:36:27 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; cindy.s.barger.civ@mail.mil; Kathy Hurld (Hurld.Kathy@epa.gov) [Hurld.Kathy@epa.gov]; stacey.m.jensen@usace.army.mil; Swackhammer, J-Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=920dab7d8ef047f8ba91cbb7d7b0c2bb-TSWACKHA]; Smalley, Bryant [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30f620d6fe746fe8647c918d053daa8-Smalley, Bryant]
CC: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Kenney, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ce6ff86939e44da49d88840b2353f022-Kenney, James]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]
BCC: DCRoomWest6300D/DC-CCW-OW-WEST [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2ca6030d]

Subject: WOTUS-2: Federalism Webinar with ASFM & IOGCC
Attachments: WOTUSIOGCCandASFMinvite.docx; WOTUSIOGCCandASFPMPPT.PPTX
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below

Start: 6/7/2017 6:00:00 PM
End: 6/7/2017 7:00:00 PM
Show Time As: Busy

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in number: Nonresponsive Conference Code/ Ex. 6
The leader line is (Nonresponsive Conference Code/ Ex. 6 You must call into the leader line to have speaking privileges (if you call into the participant line, tell the operator when you speak to her that you should have speaking privileges).

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From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/26/2017 3:44:30 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; cindy.s.barger.civ@mail.mil; Stacey.M.Jensen@usace.army.mil; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]
CC: Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Dale, David F Jr SES CELRD CELRD (US) [David.F.Dale@usace.army.mil]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Wagner, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=048236ab99bc4d5ea16c139b1b67719c-Wagner, Ken]

Subject: WOTUS2: Federalism webinar with ASWM
Attachments: federalism ASWM ppt 6-6-17 (002).pdf; ASWM state federalism outreach invite.pdf; federalism ASWM ppt 6-6-17 (002).pdf
Location: DCRoomWest6300D/DC-CCW-OW-WEST

Start: 6/6/2017 6:00:00 PM
End: 6/6/2017 7:00:00 PM
Show Time As: Busy

Be sure to register a day or two prior to the webinar to get a unique call in number.

Here is the link to register: **Nonresponsive Internal URL/ Ex. 6**

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/26/2017 3:43:06 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Kathy Hurld (Hurld.Kathy@epa.gov) [Hurld.Kathy@epa.gov]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; cindy.s.barger.civ@mail.mil; Stacey.M.Jensen@usace.army.mil; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]
CC: Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Schaefer-Gomez, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5f0868369304bef91d8aece8386fc8c-Schaefer-Go]

Subject: WOTUS2: Federalism webinar with WSWC
Attachments: federalism WSWC ppt 6-2-17final.pdf; state federalism outreach invite WSWCfinal.pdf
Location: WJCW 7129; webinar: Nonresponsive Internal URL/ Ex. 6 call in:
Start: 6/2/2017 6:00:00 PM
End: 6/2/2017 7:00:00 PM
Show Time As: Busy

Webinar Adobe Connect: Nonresponsive Internal URL/ Ex. 6
Call in to be added.

Agenda

Introductions

Welcome – Association chair

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- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/26/2017 3:40:34 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
CC: Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Nitsch, Chad [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d1d117eb89ff410fb6ccd21643b34447-CNitsch]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]

Subject: WOTUS2: Federalism webinar w/NASADA
Attachments: federalism NASDA ppt 5-31-17.pdf; state federalism outreach invite NASDA.PDF
Location: WJCW 7129; webinar Nonresponsive Conference Code/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6 Conference ID Nonresponsive Conference Code/ Ex. 6 below:
Start: 5/31/2017 8:00:00 PM
End: 5/31/2017 9:00:00 PM
Show Time As: Busy

Note: Agenda added below and Room change

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Nandi, Romell [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=07F5F4A9453A42DA82D3B0FD083B5EE0-RNANDI]
Sent: 5/22/2017 8:48:57 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]; Barger, Cindy S CIV USARMY HQDA ASA CW (US) [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Barbery, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e219352056ea405a97c93fd9756ceb2b-ABarbery]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Ward Scott [wscott@westgov.org]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; David.F.Dale@usace.army.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=323c0ae43d59410ebcf97e2218200a14-David.F.Dale@usace.army.mil]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
BCC: DCRoomWest7114M/DC-CCW-OWOW [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user8e36dd7d]

Subject: WOTUS - WGA federalism call
Attachments: federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF; federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF
Location: DCRoomWest7114M/DC-CCW-OWOW

Start: 6/8/2017 5:00:00 PM
End: 6/8/2017 6:00:00 PM
Show Time As: Busy

Call in Nonresponsive Conference Code/ Ex. 6 (this is for the agencies to use, the WGA members have the number on the PPT)

Conference ID Nonresponsive Conference Code/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

If you will be speaking or responding to questions at this meeting you should use the Leader number.

Conference ID: Nonresponsive Conference Code/ Ex. 6
Leader Toll-Free Dial-In Number:
Participant Toll Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

Webinar:

URL: Nonresponsive Internal URL/ Ex. 6

Appointment

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/9/2017 3:24:28 PM
To: Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Schaefer-Gomez, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5f0868369304bef91d8aece8386fc8c-Schaefer-Go]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]

Subject: NACo Federalism meeting
Attachments: WOTUSNACoInvite.docx; WOTUSNACo1.pdf; WOTUSNACoPPT.pptx
Location: DCRoomWest7301/DC-CCW-OWOW

Start: 6/12/2017 4:00:00 PM
End: 6/12/2017 5:00:00 PM
Show Time As: Tentative

This was discussed over email earlier this week, but I didn't pull together the meeting room and info until just now – my apologies for the delay.

This is framed as a listening session for NACO. We'll quickly run through the webinar and leave most of the time for comments/questions. We think there will be a lot of people on the line. Like more than 100. Becky will be managing the Leaderview to help if we need to prioritize questions.

Nonresponsive Internal URL/ Ex. 6

Please call on the leader line, **Nonresponsive Conference Code/ Ex. 6**

Agenda
If Tate is present, she'll open with a few remarks.
Then we'll turn to John/Mindy for a brief welcome,
Then Army,
We can ask if Julie Uffner would like to say a few words
Then John/ Mindy for briefing.
Then Q&A mostly moderated through Leaderview and the Operator
Closing remarks by John/Mindy

Becky will run Leaderview, hopefully Julia or Rose can run the powerpoint or loan me a computer to do it (mine is still having connectivity issues)

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]
From: Reid, Darren
Sent: Tue 6/6/2017 1:27:55 PM
Subject: RE: Meet with John @ 4pm

This is on the calendar for 4:00 today. Let me know if I should invite the cc's in John's email.

From: Christensen, Damaris
Sent: Tuesday, June 6, 2017 9:17 AM
To: Reid, Darren <Reid.Darren@epa.gov>
Subject: Meet with John @ 4pm

Darren,

Can you put me in johns calendar at 4 pm? To discuss LGAC.

I'm not sure whether I should invite those CC'd or not.

Thanks

Sent from my iPhone
Begin forwarded message:

> **From:** "Goodin, John" <Goodin.John@epa.gov>
> **Date:** June 6, 2017 at 7:31:14 AM EDT
> **To:** "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Reid, Darren" <Reid.Darren@epa.gov>
> **Cc:** "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov>, "Klos, Caroline" <Klos.caroline@epa.gov>
> **Subject: Re: LGAC meeting Wednesday**
>
> My schedule is open 11-12n or 4-5p today-- please schedule 30 min via Darren.
> Thanks
> Sent from my iPhone
> On Jun 5, 2017, at 11:17 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:
>
> > (Just saw this didn't send)
> >
> > I had a long conversation with Fran this morning and would like to download with you before Wednesday, but in brief what I can say in an email
> > 1. They would appreciate a brief update, if we have anything to add from the last time. (Deliberative Process / Ex. 5 Deliberative Process / Ex. 5)
> > 2. This will be mostly a working meeting and we would be available mostly for technical assistance.
> > 3. They hope to discuss a draft report which Fran will circulate once it's developed (Deliberative Process / Ex. 5 Deliberative Process / Ex. 5)
> > 4. They are very interested in the Rapanos guidance approach (I can say more in person)
> >
> > There's a subcommittee meeting of the Small Communities and Agriculture Subcommittee June 29. No invite is out yet but likely they would appreciate someone who can talk about WOTUS and agriculture – specifically PCC and pesticides. For pesticides, I'm going to see what info I have from the CWR and also see if Prasad Chumble, who works on the PGP, can attend. For PCC, maybe Donna? Tim did PCC a while ago, and handed it over to me, but we've done nothing with it in the past few years. Is there more generally a person who could bring more of the ag perspective to this discussion?
> >
> > Damaris

Message

From: Hurld, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F3B04131F1145FCB4CCF5B0A64C1AC4-KHURLD]
Sent: 6/6/2017 1:29:39 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]
Subject: RE: WOTUS2: Federalism webinar w/ACWA
Attachments: ACWA state federalism outreach invite.pdf; federalism ACWA ppt 6-9-17.pptx

Darren,

Can you please update this meeting with this information. And these documents. Thanks. - Kathy

Conference Number(s): Nonresponsive Conference Code/ Ex. 6
Participant Code: Nonresponsive Conference Code/ Ex. 6
WEBINAR URL:
Nonresponsive Internal URL/ Ex. 6

Agenda will be updated shortly.
Please Note: EPA will be on the call at 3 pm to present via the adobeconnect webinar URL, take questions/discuss concerns, and then they will drop off the call. As we get closer to the call, we will let you know if we decide to move the call start time back past 2:00 pm ET to 2:30 or 3:00.

-----Original Appointment-----
From: Goodin, John
Sent: Wednesday, May 31, 2017 12:18 PM
To: Goodin, John; Eisenberg, Mindy; Bennett, Tate; Hurld, Kathy; Christensen, Damaris; Stacey.M.Jensen@usace.army.mil; Cindy Barger; Reid, Darren; Klos, Caroline
Cc: Hanson, Andrew; Wesson, Dolores; McDavit, Michael W.; Downing, Donna; David.F.Dale@usace.army.mil
Subject: WOTUS2: Federalism webinar w/ACWA
When: Friday, June 09, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

URL: Nonresponsive Internal URL/ Ex. 6
Call-in number TBD

Agenda

Introductions

Welcome – Association chair
- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Message

From: Hurld, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F3B04131F1145FCB4CCF5B0A64C1AC4-KHURLD]
Sent: 5/30/2017 6:46:55 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]
CC: Barbery, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e219352056ea405a97c93fd9756ceb2b-ABarbery]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Wagner, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=048236ab99bc4d5ea16c139b1b67719c-Wagner, Ken]; Cheatham-Strickland, Latonia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e0153e074b9640f1b6aa32cfda4f4bf9-Strickland,]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: Room change to 7114 West RE: WOTUS - ECOS federalism call agenda and PPT change
Attachments: Draft Agenda - 5.30.17 ECOS Water Committee Call.docx; federalism ECOS ppt 5-30-17 (002).pdf

The phone in West 7301 does not work, please meet in 7114 West or call in.

From: Hurld, Kathy
Sent: Tuesday, May 30, 2017 2:21 PM
To: Goodin, John <Goodin.John@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Barbery, Andrea <Barbery.Andrea@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Cheatham-Strickland, Latonia <Cheatham-Strickland.Latonia@epa.gov>
Subject: RE: WOTUS - ECOS federalism call agenda and PPT

Note this is not a webinar, just a call.

Two points:

- ECOS wants us to reiterate that while EPA will take notes for the purposes of a summary of all input received under our federalism efforts, states, associations, and individuals will not be identified in the summary. We are required to provide such a summary for the rulemaking effort.

- We are only on for 30 minutes and this needs to leave time for their questions and input to the questions. They have a copy of the PPT, it was suggested that we reference a few key slides but not cover the whole PPT. Focus on questions at the end and their Q&A.

John or Mindy will present after Sarah, Tate and Cindy (on behalf of Army) give a few remarks.

-----Original Appointment-----
From: Goodin, John
Sent: Monday, May 22, 2017 4:37 PM
To: Goodin, John; Greenwalt, Sarah; Bennett, Tate; Hurld, Kathy
Cc: Barbery, Andrea; Bowles, Jack; Christensen, Damaris; Eisenberg, Mindy; McDavit, Michael W.; Nandi, Romell; Cindy Barger; Jensen, Stacey M CIV USARMY HQDA (US); Schmauder, Craig R SES (US); Wagner, Kenneth; Cheatham-Strickland, Latonia
Subject: WOTUS - ECOS federalism call
When: Tuesday, May 30, 2017 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW call in: Nonresponsive Conference Code/ Ex. 6

Call in number:
Nonresponsive Conference Code/ Ex. 6

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/26/2017 6:17:44 PM
To: Peck, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=633d0632187140118ea1387b7a8169b0-GPeck]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Campbell, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8c25a0c2fb648b6a947694a8492311e-Campbell, Ann]; Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]; Flannery-Keith, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5bd351c4e79145438b3fa7a4cef79665-Flannery, Erin]; Frazer, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=572986d047624669891da90708433da1-Brian Frazer]; David.F.Dale@usace.army.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=323c0ae43d59410ebcf97e2218200a14-David.F.Dale@usace.army.mil]; Hewitt, Julie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c4a982bf82a0413187bff3b54135b7ff-JHewitt]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Stokely, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fb626d422e64300b1bd64f44a195515-Stokely, Peter]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; jennifer.a.moyer@usace.army.mil; Orvin, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8702df7cbbe9418584febf8e639a5c66-Orvin, Chris]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
Subject: step 2 options paper
Attachments: WOTUS2_options v2.docx

Hi all,

Attached is a table laying out a variety of options for describing the scope of CWA jurisdiction in preparation for a meeting with Sarah, Justin and David on May 31. We would appreciate your thoughts and edits, preferably on the Sharepoint site (link below), although I have attached a Word document for your convenience.

Nonresponsive Internal URL/ Ex. 6

Please note that Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/17/2017 6:58:51 PM
To: Penman, Crystal [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=93662678a6fd4d4695c3df22cd95935a-Penman, Crystal]
CC: Campbell, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8c25a0c2fb648b6a947694a8492311e-Campbell, Ann]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nandi, Romell [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07f5f4a9453a42da82d3b0fd083b5ee0-RNandi]
Subject: RE: Tribal Consultation Webinars for Waters of the U.S. Rule
Attachments: WOTUS2 tribal info and consultation - 5-18-2017.pptx; 18May2017_TribalRunofShow.docx

WOTUS2 tribal info and consulta... 18May2017_Trib...

Hi Crystal,

Attached are the materials for tomorrow's webinar. Thank you! Do you want me to bring over any hard copies?

From: Penman, Crystal
Sent: Wednesday, May 17, 2017 11:32 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Tribal Consultation Webinars for Waters of the U.S. Rule

Are there any materials for this meeting for Mike? Materials are due nlt 3:00pm today.

Subject: Tribal Consultation Webinars for Waters of the U.S. Rule
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6

Start: Thu 5/18/2017 1:30 PM
End: Thu 5/18/2017 3:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Best-Wong, Benita; Goodin, John; Eisenberg, Mindy; Gude, Karen; Downing, Donna; Kwok, Rose; Christensen, Damaris; Bennett, Brittany; Kupchan, Simma; Jefferson, Tricia; McDavit, Michael W.; Neugeboren, Steven; Bathersfield, Nizanna; Hudiburgh, Gary; Charles.r.smith567.civ@mail.mil; Craig.r.schmauder.civ@mail.mil; Jennifer.a.moyer@usace.army.mil; Amy.s.klein@usace.army.mil; David.F.Dale@usace.army.mil; David.r.cooper@usace.army.mil
Optional Attendees: Greenwalt, Sarah; Brown, Byron; Kutschenreuter, Kathleen; Auerbach, Daniel; Nandi, Romell; Harris, Adrienne; cindy.s.barger.civ@mail.mil

To: Reid, Darren[Reid.Darren@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]
From: Nandi, Romell
Sent: Wed 5/17/2017 5:28:40 PM
Subject: FW: Materials for NGA
federalism FINAL ppt 5-16-17.pptx
WOTUS Federalism_04-10-17 signed.pdf
Sarah TPs NGA.docx
WOTUS- Branstad.pdf

Darren:

John asked me to print these (I guess he was not thinking that I was working from home today). Please print for his 3pm meeting today – he is leaving around 2:45 or so, so please print now.

Romell

From: Kwok, Rose
Sent: Wednesday, May 17, 2017 11:18 AM
To: Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: Materials for NGA

John,

Here are the materials that you requested for the NGA meeting

To: Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Hurld, Kathy[Hurld.Kathy@epa.gov]
From: Kwok, Rose
Sent: Wed 5/17/2017 3:18:22 PM
Subject: Materials for NGA
federalism FINAL ppt 5-16-17.pptx
WOTUS Federalism 04-10-17 signed.pdf
Sarah TPs NGA.docx
WOTUS- Branstad.pdf

John,

Here are the materials that you requested for the NGA meeting

To: Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Hurld, Kathy
Sent: Tue 5/16/2017 6:50:06 PM
Subject: Re: For tomorrow's Federalism meeting with NGA
federalism FINAL ppt 5-16-17.pptx
Sarah Greenwalt.docx

sorry

From: Goodin, John
Sent: Tuesday, May 16, 2017 2:33 PM
To: Hurld, Kathy
Subject: RE: For tomorrow's Federalism meeting with NGA

Not attached :)

-----Original Message-----
From: Hurld, Kathy
Sent: Tuesday, May 16, 2017 12:39 PM
To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: For tomorrow's Federalism meeting with NGA

Hi,

I've attached the Federalism PPT used in April (new title slide and decrease in number of weeks before comments due) here as well as potential talking points for Sarah Greenwalt.

Please let me know if you have any comments or if I can send these to Jack Bowles to forward to NGA and to Sarah for the meeting tomorrow.

BTW, If I'm taking notes it is easier in person, but understand if you want to keep this small. Please let me know if I can attend or should listen in.

Thanks, Kathy

Kathy Hurld
U.S. EPA
Wetlands Division
202-566-1269
hurld.kathy@epa.gov

Message

From: Brown, Robert [Brown.Robert@epa.gov]
Sent: 5/10/2017 8:46:14 PM
To: Goodin, John [Goodin.John@epa.gov]
CC: Connors, Sandra [Connors.Sandra@epa.gov]; Chancey, Barbara [Chancey.Barbara@epa.gov]; Moore, Kristie [Moore.Kristie@epa.gov]
Subject: RE: FY17 Budget Discussion - OWOW
Attachments: FY17 owow workplan(n).xlsx; FY17 workplan - org view.pdf; FY17 workplan category view.pdf; FY17 Op Plan 5-10-17 disc.docx

John,

For the Monday mtg with Mike and Benita:

- I've got a meeting slated with you Friday at 9 to discuss.
- I've taken a crack at proposing how our numbers would look, given the OW targets.
- Attached are some docs, which we discussed at today's mgt council meeting:
  - bullets on process/approach (Word doc)
  - pdf ("...category view") of what I'm suggesting you speak to at the Mike meeting. This shows the Deliberative Process / Ex. 5 Also shows how we'd apply Deliberative Process / Ex. 5
  - other pdf ("...org view") shows how it looks across divs/branches.
- The numbers reflect previous decisions, with one exception – Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 My proposal (shown in the "OW Reduction" column), is that we Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

I'll walk you through this on Friday; if by chance you have a look/want to discuss prior, feel free to call.

Brown 1307

FY17 Op Plan 5-10-17 disc.docx | FY17 workplan category view.pdf | FY17 workplan - org view.pdf | FY17 owow workplan(n).xlsx

-----Original Message-----
From: Goodin, John
Sent: Tuesday, May 09, 2017 9:23 AM
To: Connors, Sandra <Connors.Sandra@epa.gov>; Chancey, Barbara <Chancey.Barbara@epa.gov>; Brown, Robert <Brown.Robert@epa.gov>; Moore, Kristie <Moore.Kristie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Zobrist, Marcus <Zobrist.Marcus@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Simon, Roy <Simon.Roy@epa.gov>
Subject: Re: FY17 Budget Discussion - OWOW

Folks-- see Mike's charge for next Monday's meeting below.

Bob et al.-- seems like a summary one pager or equivalent would be useful to keep us on track. Happy to have whomever we need from OWOW in the discussion.

Thanks
John

Sent from my iPhone

> On May 9, 2017, at 9:16 AM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:
>
> Each OD should be prepared to discuss the major elements of their work plans, any adjustments made to original plans in light of the Administrator's priorities. ODs can bring staff.
>
> <meeting.ics>

To: Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Flaharty, Stephanie[Flaharty.Stephanie@epa.gov]; Farber, Kit[Farber.Kit@epa.gov]; Gerstein, Arielle[gerstein.arielle@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@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]; Campbell, Ann[Campbell.Ann@epa.gov]; Trombley, Michael[Trombley.Michael@epa.gov]; Rose, Bob[Rose.Bob@epa.gov]
From: Ruf, Christine
Sent: Tue 5/9/2017 8:15:55 PM
Subject: FW: Materials for May 12 EO 13777 meeting, need your suggestions by 12 noon thursday, May 11
EPA-HQ-OW-5-2-2017.docx
Themes and Suggestions from May 2nd Listening Session.xlsx
Regional Input EO 13777 complete summary rule and text.docx
summary of Regional input and HQ input.xlsx

Good afternoon everyone, by this coming Monday, May 15, OW will need to send some initial information to the Administrator's office on common themes from our May 2 Regulatory Reform Listening Session and possibly some suggestions about specific regs/guidance that could be considered for further evaluation to reduce regulatory burden. Mike Shapiro has scheduled a meeting with Office Directors this Friday, May 12 at 10 am to discuss this and develop a preliminary list of a handful of recommendations that OW could send forward.

In preparation for this meeting, please see the attached documents related to this effort. Some have already been sent around, but we wanted to include them in one email.

(1) The Word Document, EPA-HQ-OW5-2-2017 is a transcript of all the verbal and written comments we heard in the May 2 Listening Session. It is 65 pages. This is being uploaded to the docket.
(2) The xlsx spreadsheet, Themes and Suggestions, is a summary of general themes we heard from the May 2 Listening Session (see Tab 1) and a summary of the more detailed suggestions (Tab 2). At the end of Tab 2 we also included some specific items that were mentioned in the small business listening session and the OCIR listening session.
(3) The word document, Regional Input, is a compilation of all the comments the Regions sent.
(4) The xls spreadsheet is a short summary of all the Regional input, plus a section at the end **for your offices to add specific rules, guidance etc.** for initial consideration and discussion on Friday. Please put your initial office suggestions in this matrix no later than **Thursday May 11th at 12 Noon**. Please send this info in the xlsx file to Christine Ruf and Macara Lousberg. Please keep the descriptions similar to how the Regional suggestions are noted. We will likely choose just a few actions from these to forward along on Monday, if any.

Thanks! Please call us with any questions. Christine

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 5/9/2017 8:02:58 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
Subject: RE: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

I sent a note to Liz and Sarah noting **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: Goodin, John
Sent: Tuesday, May 09, 2017 4:02 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Fwd: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Sent from my iPhone

Begin forwarded message:

> **From:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Date:** May 9, 2017 at 3:06:37 PM EDT
> **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>
> **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

Deliberative Process / Ex. 5

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: Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

From: Wehling, Carrie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3E55F11FDC7489698BE69849B301DA6-CWEHLING]
Sent: 6/7/2017 4:42:30 PM
To: Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Looks fine. 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

From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:30 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Looks like OFR moved quickly!

How do these draft answers look?

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:
All waters which are currently used,
were used in the past, or may be susceptible
to us in interstate or foreign
commerce, including all waters which
are subject to the ebb and flow of the
tide.
All interstate waters including interstate
wetlands.
All other waters, such as intrastate
lakes, rivers, streams (including intermittent
streams), mudflats, sandflats,
wetlands, sloughs, prairie potholes, wet
meadows, playa lakes, or natural
ponds, the use, degradation, or destruction
of which would or could affect
interstate or foreign commerce including
any such waters:
Which are or could be used by interstate
or foreign travelers for recreational
or other purposes; or
From which fish or shellfish are or
could be taken and sold in interstate or
foreign commerce; or
Which are used or could be used for

industrial purposes by industries in
interstate commerce.
All impoundments of waters otherwise
defined as waters of the United
States under this definition;
Tributaries of waters identified in
paragraphs (g)(1)–(4) of this section;
The territorial sea; and
Wetlands adjacent to waters (other
than waters that are themselves wetlands)
identified in paragraphs (q)(1)–
(6) of this section.
Waste treatment systems, including
treatment ponds or lagoons designed to
meet the requirements of the Act
(other than cooling ponds as defined in
40 CFR 123.11(m) which also meet the
criteria of this definition) are not
waters of the United States.

Waters of the United States means:
(1) For purposes of the Clean Water
Act, 33 U.S.C. 1251 et seq. and its implementing
regulations, subject to the exclusions
in paragraph (2) of this definition,
the term ''waters of the United
States'' means:
(i) All waters which are currently
used, were used in the past, or may be
susceptible to use in interstate or foreign
commerce, including all waters
which are subject to the ebb and flow
of the tide;
(ii) All interstate waters, including
interstate wetlands;
(iii) The territorial seas;
(iv) All impoundments of waters otherwise
identified as waters of the
United States under this section;
(v) All tributaries, as defined in paragraph
(3)(iii) of this definition, of
waters identified in paragraphs (1)(i)
through (iii) of this definition;

(vi) All waters adjacent to a water
identified in paragraphs (1)(i) through
(v) of this definition, including wetlands,
ponds, lakes, oxbows, impoundments,
and similar waters;
(vii) All waters in paragraphs
(1)(vii)(A) through (E) of this definition
where they are determined, on a casespecific
basis, to have a significant
nexus to a water identified in paragraphs
(1)(i) through (iii) of this definition.
The waters identified in each of
paragraphs (1)(vii)(A) through (E) of
this definition are similarly situated
and shall be combined, for purposes of
a significant nexus analysis, in the watershed
that drains to the nearest
water identified in paragraphs (1)(i)
through (iii) of this definition. Waters
identified in this paragraph shall not
be combined with waters identified in
paragraph (1)(vi) of this definition
when performing a significant nexus
analysis. If waters identified in this
paragraph are also an adjacent water
under paragraph (1)(vi), they are an adjacent
water and no case-specific significant
nexus analysis is required.
(A) Prairie potholes. Prairie potholes
are a complex of glacially formed wetlands,
usually occurring in depressions
that lack permanent natural outlets,
located in the upper Midwest.
(B) Carolina bays and Delmarva bays.
Carolina bays and Delmarva bays are
ponded, depressional wetlands that
occur along the Atlantic coastal plain.
(C) Pocosins. Pocosins are evergreen
shrub and tree dominated wetlands
found predominantly along the Central
Atlantic coastal plain.
(D) Western vernal pools. Western
vernal pools are seasonal wetlands located
in parts of California and associated
with topographic depression, soils
with poor drainage, mild, wet winters
and hot, dry summers.
(E) Texas coastal prairie wetlands.
Texas coastal prairie wetlands are
freshwater wetlands that occur as a
mosaic of depressions, ridges,
intermound flats, and mima mound
wetlands located along the Texas Gulf
Coast.
(viii) All waters located within the
100-year floodplain of a water identified
in paragraphs (1)(i) through (iii) of this
definition and all waters located within
4,000 feet of the high tide line or ordinary
high water mark of a water identified

in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not ''waters of the United States'' even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) Adjacent. The term adjacent means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or

abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) Neighboring. The term neighboring means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) Tributary and tributaries. The terms tributary and tributaries each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) Wetlands. The term wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) Significant nexus. The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term ''in the region''

means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:
(A) Sediment trapping,
(B) Nutrient recycling,
(C) Pollutant trapping, transformation, filtering, and transport,
(D) Retention and attenuation of flood waters,
(E) Runoff storage,
(F) Contribution of flow,
(G) Export of organic matter,
(H) Export of food resources, and
(I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.
(vi) Ordinary high water mark. The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
(vii) High tide line. The term high tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,

Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am
>
> ---
>
> **From:** Fuld, John
> **Sent:** Wednesday, June 07, 2017 11:17 AM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water
Media Inquiry

John W. Fuld, Ph.D.
U.S. Media Relations Mgr.-Water
fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?
2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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
Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

From: Chang, Elle [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5A289AD96974B6696D42584AE8A6265-CHANG, ELLE]
Sent: 6/7/2017 1:16:17 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

They are welcome to join as well. If they do end up joining, can you please make sure to announce it during the call? Check your inbox for the invite. Thanks again, Rose!

From: Kwok, Rose
Sent: Wednesday, June 07, 2017 9:12 AM
To: Chang, Elle <chang.elle@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

I may be able to call in right at 2 until 2:30 to listen in. Elle, can you add me to the invite? And do you mind if I invite our Corps and Army colleagues as an FYI, though they're also double booked (Chip may be able to call in)

Sent from my iPhone

On Jun 7, 2017, at 8:25 AM, Chang, Elle <chang.elle@epa.gov> wrote:

> Thanks, Rose – I'll share the PDF with the NTC.
>
> ---
>
> **From:** Kwok, Rose
> **Sent:** Tuesday, June 06, 2017 5:51 PM
> **To:** Chang, Elle <chang.elle@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
> **Subject:** Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
>
> I added a few slides about the decisions that we already have presented on SCOTUS and did an updated to the next steps slide. Simma, if this works for you, the PDF (not the PPT) can be version that Elle sends out. Thanks!
>
> I'll add these to Sharepoint.
>
> Rose Kwok

U.S. Environmental Protection Agency
Wetlands Division
kwok.rose@epa.gov
202-566-0657, 202-566-1375 (fax)

From: Chang, Elle
Sent: Tuesday, June 6, 2017 5:15:51 PM
To: Kupchan, Simma; Kwok, Rose
Cc: Gude, Karen; Wehling, Carrie; Christensen, Damaris; Downing, Donna
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

That would be great – thanks, Rose!

From: Kupchan, Simma
Sent: Tuesday, June 06, 2017 5:06 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Ok, thanks, Rose!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 5:05 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

We do have some written up already from various trainings and ppt. I can send you a version when I get back to the hotel

Sent from my iPhone

On Jun 6, 2017, at 5:02 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Hi,
>
> Elle sent me the note below:
>
> 'There was a powerpoint presentation sent out as part of the WOTUS call. Would it be okay to provide these slides to the NTC or are they internal only? I'll add Simma as the first presenter to begin around 2pm tomorrow.'

I assume it's ok for her to send these out? I don't think we need to add slides about the SCOTUS decisions, unless you have slides already written – I can just speak to those orally.

Let me know what you think.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 4:28 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma, do you want a PowerPoint to talk from or will just speak without one? I could add slides about the Supreme Court Opinions to our standard presentation

Sent from my iPhone

On Jun 6, 2017, at 2:48 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Thanks, Karen. Yes, I'd be happy to cover this any time between 2-3. It would be great to just see the Agenda when it's finalized, though. Thanks!
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> Simma Kupchan
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> William Jefferson Clinton Building North Room 7426Q
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> **Sent:** Tuesday, June 06, 2017 2:11 PM
> **To:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
> **Subject:** RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
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Thank you for helping to cover this request. The meeting is between 2-3 tomorrow; and AIEO can be flexible on the timing on the agenda. So, if there is a block of time between 2-3 that might work better for you, please just let me know.

Thanks again,

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831

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Sent: Tuesday, June 06, 2017 2:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma – as we discussed. Can you cover this? If not, let me know and I will do it.
Thanks.
Carrie

Caroline (Carrie) Wehling
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wehling.carrie@epa.gov

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Sorry for the last minute ask.

Thanks,
Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA

RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
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Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

Message

From: Gude, Karen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E6565E5DD6BD4FDFBCF069C842177E58-GUDE, KAREN]
Sent: 6/6/2017 7:07:08 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma,

Thanks so much. I will let AIEO know. They are finalizing the agenda now; and I will be sure to send you a copy. I will also forward the meeting invitation to you.

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831

From: Kupchan, Simma
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Sent: 6/6/2017 6:10:51 PM
To: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
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Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

> There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there
>
> Sent from my iPhone
>
> On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:
>
>> Donna,
>>
>> Hi. Given that Rose is on travel this week, I am reaching out to you. There is a National Tribal Caucus call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)
>>
>> Sorry for the last minute ask.
>>
>> Thanks,
>> Karen
>> (202) 564-0831
>>
>> ----------
>> **bject:** FW: 2017 NTC Monthly Meeting - ALL
>> **cation:** OITA Fishbowl - DCRoomRRB 31207
>>
>> **art:** Wed 6/7/2017 2:00 PM
>> **d:** Wed 6/7/2017 3:00 PM
>>
>> **currence:** Monthly
>> **currence Pattern:** Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

eeting Status: Accepted

ganizer: Chang, Elle
quired Attendees: Chang, Elle; EPA HICS; EPA RICS
tional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
Subject: 2017 NTC Monthly Meeting - ALL
When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

Appointment

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/16/2017 7:54:27 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Downing, Donna [Downing.Donna@epa.gov]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Schaller, Andrea [schaller.andrea@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]
CC: Hurld, Kathy [Hurld.Kathy@epa.gov]

Subject: federalism letters and analysis
Attachments: Draft Federalism Comment Summar format.docx
Location: DCRoomWest7129/DC-CCW-OWOW

Start: 5/24/2017 2:00:00 PM
End: 5/24/2017 3:00:00 PM
Show Time As: Busy

As I indicated, this is a meeting for us to talk through:

1.
2.
3.
4.

Deliberative Process / Ex. 5

I'm scheduling for an hour, not because I expect it to take that long, but to provide a buffer to walk over to our 11 o'clock.

Let me know if anyone besides Andrea will be calling in; if so I can set up a conference line. Otherwise we can call Andrea directly.

Damaris

From: Schaller, Andrea
Sent: Tuesday, May 16, 2017 12:37 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: federalism

Hey ladies
Working on setting up a framework for reading all the federalism comments. Pulled out a template for a summary used when reviewing the IR comments. (see attached)

Let me know if these are the topics that decision makers will find useful.

Are we putting all the comments into and excel document and categorizing? If so are who is doing, or do you need me to tackle that as they come in. Think it will be helpful if we sort/categorize comments in a standard way to start rather than waiting for themes to emerge once they come in.

Andrea

Andrea Schaller

USEPA-Region 5
77 W. Jackson Blvd, WW-16J
Chicago, IL 60604

schaller.andrea@epa.gov
312-886-0746

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/9/2017 8:10:29 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]

Subject: WOTUS rule record
Attachments: 17-000-6900.pdf
Location: carrie's office

Start: 5/10/2017 5:45:00 PM
End: 5/10/2017 6:00:00 PM
Show Time As: Busy

Carrie,

We wanted to follow up with you very briefly on Deliberative Process /attorney work product Ex. 5

Deliberative Process /attorney work product Ex. 5

Thanks,
Simma

To: Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Neugeboren, Steven
Sent: Thur 6/1/2017 3:49:44 PM
Subject: FW: WOTUS rewrite to align with Scalia opinion, seek feedback from Colorado; PLF uses Congressional Review Act to challenge illegally enforced wetlands guidance

FYI

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

-----Original Message-----
From: Schmauder, Craig R SES (US) [mailto:craig.r.schmauder.civ@mail.mil]
Sent: Thursday, June 01, 2017 10:29 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: WOTUS rewrite to align with Scalia opinion, seek feedback from Colorado; PLF uses Congressional Review Act to challenge illegally enforced wetlands guidance

FYI

****

https://www.coloradostatesman.com/wotus-rewrite-align-scalia-opinion-seek-feedback-colorado/
The Colorado Statesman - Denver, CO - 5/31/17

By Adam McCoy

Federal environmental regulators are seeking "input and wisdom" from Colorado as they begin the process of rewriting a Barack Obama-era water protection rule known as WOTUS, which the White House says it now wants aligned with a Supreme Court opinion on water rights from the late Justice Antonin Scalia.

The U.S. Environmental Protection Agency under Scott Pruitt and the Army Corps of Engineers wrote a letter earlier this month to Colorado asking for written feedback on the state's "experiences and expertise" as the agencies work to redefine the Waters of the U.S. Rule (WOTUS).

WOTUS, also known as the Clean Water Rule, defines the jurisdiction of the EPA over waterways and wetlands "to restore and maintain the chemical, physical, and biological integrity of waters of the United States."

The rule is the EPA's interpretation, under the Obama administration, of the the Clean Water Act of 1972, which aimed to curtail pollutants in water. Under WOTUS, the EPA expanded what falls into the category of a federally regulated body of water. The rule previously stated only waterways that could be navigable by ships for interstate commerce were to be federally regulated, according to a Congressional Research Service analysis.

Environmentalists have praised the rule, but it has also come under fire by farmers and ranchers who label the rule federal overreach. Colorado joined a lawsuit in 2015 that called WOTUS "unreasonable federal overreach." A total of 16 states sought legal action against the rule.

A Feb. 28 executive order signed by President Donald Trump directed the EPA and Army Corps to

review the rule and ensure it prioritizes 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 States under the Constitution."

Now, after years of remaining in judicial limbo with court-ordered delays, the Trump administration looks to revise WOTUS.

State preparing comment

The governor's office said in a statement to The Colorado Statesman, it is in the process of developing comments in reply to the EPA.

"It is important to Colorado that a revised rule provide clarity so that projects are able to proceed efficiently, and that the rule be legally defensible," spokesperson Jacque Montgomery said. "It is also important that the rule protect the headwaters of Colorado and retain the agricultural exemptions."

U.S. Rep. Scott Tipton, R-CO3, has voiced support for the WOTUS redefining effort, urging Hickenlooper and Colorado Attorney General Cynthia Coffman to weigh in with feedback.

"We all want access to clean and reliable water supplies. This is why the Clean Water Act was signed into law in 1948 and expanded in 1972," Tipton said in a statement. "What we don't want is for unelected bureaucrats to legislate through rulemaking. This is what the EPA did with WOTUS, and Colorado responded by joining several other Western States in a lawsuit against the rule."

Coffman's office said it has not received any correspondence from the EPA or the Army Corps of Engineers.

The Scalia opinion

The letter to state officials across the country said the order will be enacted in two steps including re-codifying the Clean Water Act before WOTUS, and writing a replacement act that aligns with an opinion written by Justice Scalia in a legal challenge.

That refers to an opinion coming out of a dispute between a Michigan farmer and the EPA over development on a wetland. It was heard by the U.S. Supreme Court in 2006 and the case questioned whether the EPA has jurisdiction over bodies "that do not even have a navigable water," according to the Congressional Research Service.

In a plurality opinion written by Scalia, the justice argued the word "waters" in "waters of the United States" refers to "relatively permanent, standing or continuously flowing bodies of water." Scalia was pointing to streams, rivers and lakes and wetlands that have a "continuous surface connection," the research service wrote.

The nation's highest court was expected to provide clarity on the EPA's jurisdiction, but instead couldn't come to a consensus on a standard.

Impact in Colorado

The Army Corps of Engineers and EPA face the challenge of how to combine the best watershed science into an effort to define federal jurisdiction that provides clarity to regulators and those facing regulations, said Reagan Waskom, director of the Colorado Water Institute.

"As scientists, we see that everything in the watershed is connected at some level, so the challenge is defining what is 'significant' in the significant nexus," he said, referring to a different Supreme Court opinion from Justice Anthony Kennedy that argued the Army Corps should judge on a case-by-case basis whether a body of water has "significant nexus," or significant impact, on a navigable water.

"We also view the landscape as highly heterogeneous and see case-by-case evaluation as the most likely approach to get it right (from a scientific point of view)," Waskom said.

He said the Scalia approach overlooks the science and "may have trouble withstanding court challenges from citizen-initiated lawsuits."

Waskom said farmers and developers deserve regulatory certainty, and know the rules when it comes to managing their land and development projects, but there won't be much impact on Colorado agriculture.

"Here in Colorado, I think agriculture would generally have been in the same position as before with the Clean Water Rule as promulgated as we do not have any of the five categories of 'isolated waters' called out for expanded jurisdiction," he said.

Government overreach versus water conservation

Farmers and ranchers have been vocal opponents of WOTUS, arguing the rule is ambiguous and its broad reach is unlawful.

Colorado Farm Bureau Executive Vice President Chad Vorthmann said his organization's members will again ask the EPA to "ditch the rule" in favor of clear, objective rule defining where the federal authority begins and ends for bodies of water.

"We hope a new rule will provide specific limits on federal jurisdiction, especially to features that are ordinarily dry like many in Colorado now regulated by EPA," Vorthmann said. "By working more cooperatively with state authorities, EPA can provide regulatory certainty to farmers and other stakeholders while allowing the flexibility necessary to achieve the goals of the Clean Water Act."

But Garrett Garner-Wells, director of state conservationist group Environment Colorado, has little faith in the EPA and Trump administration in rewriting the rule. He said to see water protections undone would be devastating.

"For more than two-thirds of Coloradans, the Clean Water Rule is a vital drinking water protection and a bulwark against pollution," Garner-Wells said. "The Clean Water rule protects more than 73,000 miles of our rivers and streams, and repealing the rule is an assault on Colorado's residents, environment, and commonsense values."

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https://blog.pacificlegal.org/plf-uses-congressional-review-act-challenge-illegally-enforced-wetlands-guidance/

By Tony Francois

Last Friday, we filed a motion in federal court in the Duarte Nursery case, asking the judge to exclude evidence based on the 2008 Post-Rapanos Guidance because it was never submitted to Congress for review under the Congressional Review Act and is therefore, under that Act, not in effect and unenforceable.

Followers of PLF's Red Tape Rollback project will be familiar with the basic concept. Under the Congressional Review Act, federal agencies are required to submit each of their rules, along with a report, to each House of Congress and the Comptroller General. Rules cannot take effect before they have been so submitted. Once a rule is submitted, Congress has a period of time in which it can use expedited procedures to disapprove the rule. If the president signs a joint resolution of disapproval, then the rule can not take effect and the agency is permanently barred from adopting a substantially similar one absent statutory approval.

In the Duarte Nursery case, the government is claiming that a series of small and isolated vernal pools and swales on the company's property are federally protected wetlands. But they are not navigable in any sense, nor do they meet the only test that the Supreme Court has approved for federal regulation of non-navigable wetlands (i.e. they are not directly abutting navigable waters in a way that you cannot tell where one ends and the other begins).

So how can the United States claim that small, isolated, and seasonal pools are really federal navigable waters? Enter the Army Corps' 2008 Rapanos Guidance. In 2006, the Supreme Court, in a case litigated by PLF, ruled against the EPA's assertion of jurisdiction over wetlands on John Rapanos' property, because they were too tenuously connected to any actually navigable waters. The EPA and Army Corps of Engineers then issued a guidance document in 2008 that purports to interpret and implement the Supreme Court's decision in Rapanos, although it stretches that decision beyond the breaking point to continue the agencies expansive view of how much of your land they can call their water.

This is the guidance document under which the United States claims that damp spots on Duarte Nursery's land are the federal navigable waters. But here's the rub: because the Rapanos Guidance was never submitted to Congress under the Review Act, it is not legally in effect.

As my PLF colleague Jonathan Wood explains in this Daily Caller op ed, the Rapanos Guidance is not only an invalid effort to expand federal authority beyond limits set by the Supreme Court. It is also a rule that the Congressional Review Act required the agencies to submit to Congress before it can take effect. And since it was not submitted, it is not in effect and cannot be relied on for enforcement or court proceedings.

****

Respectfully -- Craig
Craig R. Schmauder, SES
Deputy General Counsel
Installations, Environment & Civil Works
(703) 695-2253
NOTICE: This message may contain information protected by the attorney-client, attorney work-product, deliberative-process, or other privilege. Do not disseminate without the approval of the Office of the General Counsel, Department of the Army. If you have received this message in error, please notify the sender immediately by email or telephone and delete this message.

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/25/2017 4:13:44 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: Latest draft of preamble comments

I'm done now. I just noticed that Damaris had made some comments, so I wanted to clean those up.

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:59 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Latest draft of preamble comments

Thanks for flagging. I propose an edit along the lines with Damaris' suggestion below.

Rose, just so I can mention to Steve, so it looks like you are still doing editing cleanup at this point?

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:56 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Latest draft of preamble comments

Hi Simma,

I want to get your thoughts on Damaris' comment on page 11-12 regarding the second sentence in the below.
Comment: **Deliberative Process / attorney client Ex. 5**
Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:45 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Latest draft of preamble comments

Thanks, Rose. And I think Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:35 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Latest draft of preamble comments

I believe that Craig did see your comments – I've deleted all of the comments where he simply concurred with Simma or Steve's comments and only kept the ones Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:30 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Latest draft of preamble comments

Steve,

Here is the link to the latest version of the preamble, which I believe Mindy would like to send to politicals later today.

You'll notice that Craig Schmauder's comments (which I think were made without seeing WLO's) are Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Rose, can you let Steve know the extent to which any other edits will be made prior to submission to politicals? Thanks!

Nonresponsive Internal URL/ Ex. 6

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/25/2017 4:10:52 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: Latest draft of preamble comments

Yes, I also added Deliberative Process / attorney client Ex. 5

From: Kupchan, Simma
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Subject: RE: Latest draft of preamble comments

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Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

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Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Latest draft of preamble comments

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Sent: Thursday, May 25, 2017 11:30 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Latest draft of preamble comments

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You'll notice that Craig Schmauder's comments (which I think were made without seeing WLO's) are Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Rose, can you let Steve know the extent to which any other edits will be made prior to submission to politicals? Thanks!

Nonresponsive Internal URL/ Ex. 6

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/17/2017 1:43:14 PM
To: Muellerleile, Caryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b86f484dca634a46ba81be8009ffc290-CMueller]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Caryn –

Just checking to see if there is any update or if we need anything additional. Thanks!

From: Muellerleile, Caryn
Sent: Monday, May 08, 2017 11:32 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

I have asked my managers – hold before anything further.

From: Kwok, Rose
Sent: Monday, May 08, 2017 11:31 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Caryn – do we need to actually highlight the errors in the PDF documents? If so, I'll do that now. Thanks

---

From: Kupchan, Simma
Sent: Monday, May 08, 2017 11:29 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Thanks, Caryn.

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Please let me know if you need more than this. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Muellerleile, Caryn
Sent: Monday, May 08, 2017 9:30 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Again, I know this is tedious work, but the only way for us to move ahead to get this corrected is to have these two documents ready to go with the highlighted errors:

***
So the way to resolve is that you need to review the amendatory instruction(s) within https://www.gpo.gov/fdsys/pkg/FR-2015-06-29/pdf/2015-13435.pdf, and compare to the result that is codified in https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27.pdf.

If Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Friday, May 05, 2017 11:08 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: Re: CWR Correction Memo_final_SEC.docx

Thanks, Sandy. It's my opinion that Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 If others have a different opinion, it would be great to discuss that further

Sent from my iPhone

On May 5, 2017, at 11:04 AM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

> Rose/Donna: I know that you all have too much work so this is a friendly reminder not to forget about this....
>
> Sandy
>
> ---
>
> **From:** Evalenko, Sandy
> **Sent:** Friday, April 28, 2017 8:53 AM
> **To:** Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Muellerleile,

Caryn <Muellerleile.Caryn@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FYI: CWR Correction Memo_final_SEC.docx

Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment. I printed the first part below…

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

15. The authority citation for part 230 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et.seq.*

16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v)

of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

****

From: Kwok, Rose
Sent: Thursday, April 27, 2017 5:27 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Weird thing with 40 CFR 232.2
Importance: High

Sandy and Caryn,

Simma noticed today that that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Thanks!

From: Kwok, Rose
Sent: Friday, June 19, 2015 11:39 AM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Folks,

I've attached the latest copies of the correction memo (with Ken's edits) and the attachment with the corrected FRN. I've left it with Crystal, and Ken said he would sign it when he is back from his meeting. I'll then pick it up and drop it off to Karyn.

Thanks everyone,
Rose

From: Klasen, Matthew
Sent: Thursday, June 18, 2015 2:02 PM
To: Kwok, Rose; Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi folks – this all sounds good to me, and I'll be here to facilitate signature tomorrow.

I was filling in for one of the other special assistants here when the technical correction memo was signed on the coal ash rule, so I've (fortunately or unfortunately?) seen one of these before.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Great, thanks, Caryn!

From: Muellerleile, Caryn
Sent: Thursday, June 18, 2015 1:50 PM
To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,

Rose

To: Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Wehling, Carrie
Sent: Tue 5/16/2017 3:37:13 PM
Subject: RE: fyi re OMB review of WOTUS2

I know right. Crazy.

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: Kupchan, Simma
Sent: Tuesday, May 16, 2017 11:35 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: fyi re OMB review of WOTUS2

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Tuesday, May 16, 2017 11:33 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: fyi re OMB review of WOTUS2

Deliberative Process / Ex. 5

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

From: Kupchan, Simma
Sent: Tuesday, May 16, 2017 11:32 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: fyi re OMB review of WOTUS2

And this one is interesting, too:

CLEAN WATER RULE

Will Scalia's dictionary haunt Trump's WOTUS overhaul?

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second.* Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition.*

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent surface waters and wetlands connected to larger water bodies.

Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.

But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,

Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary*. That volume was the most recent edition when Congress wrote and passed the landmark water law.

It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."

The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."

But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."

Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.

Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.

Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.

"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"

Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.

"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.

An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."

And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.

He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.

mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water*; it never enters salt *waters*; also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water*; often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+] How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."

Scalia was not alone in criticizing the dictionary.

The New York Times and Associated Press both shunned the volume when it debuted in 1961.

Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.

The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.

"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."

The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes : WATERING PLACE **2** : a particular quantity or mass of water: as **a** : a portion of water to drink ⟨brought her ~ in a silver cup⟩ **b** (1) **waters** *pl* : the water occupying or flowing in a particular bed ⟨the limpid ~*s* of a mountain brook⟩ (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER; *also* : land abutting a stream : the bank of a stream **c** : a portion of water for a particular use — usu. used in pl. ⟨wash the greens in three ~*s*⟩ **d** : a quantity or depth of water adequate for

[+] "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.

Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.

That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.

Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.

"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."

In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.

"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third.*

For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.

More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.

Chief among those is the fact that the administration is breaking precedent by relying on Scalia's opinion in *Rapanos*. Justice Anthony Kennedy's stand-alone opinion in that case has long been considered the ruling one by both circuit courts and the George W. Bush and Obama administrations.

Kennedy wrote that wetlands and small waterways fall under federal jurisdiction if they have a "significant nexus" to an actual navigable waterway, meaning there must be a surface, chemical or biological connection.

Environmental groups challenging a Trump regulation are far more likely to seize upon the Trump administration's break from precedent than Scalia's dictionary choice, said Larry Liebesman, a senior adviser with Dawson & Associates, a Washington lobby shop and consulting firm that specializes in water resources.

"No court has said that the holding of the court is Scalia's opinion and Scalia alone," he said.

Harvard Law School professor Richard Lazarus agrees, saying arguing about Webster's dictionaries "is probably not a viable argument" as long as Kennedy remains on the bench.

But dictionary definitions of "waters" could once again become significant if Kennedy leaves the court during the Trump administration, Lazarus said.

The Trump administration would likely replace the court's usual swing vote with a student of Scalia's "textualism."

"The question then would be if they admire Scalia's use of dictionaries, do they use the same one he did?" Lazarus said.

It's not yet clear whether Justice Neil Gorsuch, who replaced Scalia last month, also favors *Webster's Second.*

But John Calhoun, an attorney at Choate Hall & Stewart who has written about Scalia's dictionary use for the *Yale Law Journal*,

notes there is still hope for the newer volume: "Samuel Alito often uses *Webster's Third.*"
"He's often considered Scalia's mini-me, but in this one instance he is not," Calhoun said.
And Sokolowski, at Merriam-Webster, notes there is just one more twist to the question of which Webster's dictionary best defines congressional intent circa 1972: The dictionary divide is often a generational one.
So, while *Webster's Third* may have been the most recent volume when Congress passed the Clean Water Act, it's possible that lawmakers would have favored *Webster's Second*.
"Congress is full of older men, so it would hardly be surprising," he said.

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(p) 202-564-3105

From: Wehling, Carrie
Sent: Tuesday, May 16, 2017 11:26 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: fyi re OMB review of WOTUS2

Greens to meet with White House on WOTUS

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

The White House Office of Information and Regulatory Affairs has meetings scheduled with environmentalists this week on the Clean Water Rule. Photo by Corbin Hiar.

White House officials will meet with environmental groups this week and next to hear arguments for keeping the contentious Clean Water Rule in place.
Three environmental organizations have requested meetings with the White House Office of Information and Regulatory Affairs, which is currently reviewing a proposal from U.S. EPA and Army Corps of Engineers to rescind the Obama-era regulation that clarifies the reach of the Clean Water Act over small waterways and wetlands.
The Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule, has drawn fire from farmers, land developers and energy companies who say it amounts to government overreach.
Though WOTUS has been stayed by the 6th U.S. Circuit Court of Appeals, the Trump administration has made repealing and replacing the regulation a priority.
Environmental groups, however, have celebrated the regulation as providing critical protection to smaller waterways, which in turn protects larger ones.
OIRA officials will meet with the Natural Resources Defense Council on Wednesday, followed by the Theodore Roosevelt Conservation Partnership on Thursday and the Alliance of Nurses for Healthy Environments on May 25.
"Clean water is vital to human health, it is an essential part of it and making sure the administration realizes that health care providers think this is a vital regulation is key," said Katie Huffling, executive director of the Alliance of Nurses for Healthy Environments. "These regulations have significant positive impacts on public health, and there is a cost savings from that."
Text of the proposed regulation being reviewed by OIRA has not been released.

But EPA and Army Corps officials have said they will revert back to a 1986 regulation and 2008 guidance to define "waters of the United States" covered by the Clean Water Act while the agencies work on a new definition for the Trump administration.
Huffling said she does not expect to learn any additional details during her meeting but will present the case for keeping WOTUS in place.
"We feel like this current administration hasn't been taking the health benefits of these regulations into account, and so making sure they hear our message is really important," she said.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

Message

From: Kwok, Rose [Kwok.Rose@epa.gov]
Sent: 5/8/2017 3:31:18 PM
To: Kupchan, Simma [Kupchan.Simma@epa.gov]; Muellerleile, Caryn [Muellerleile.Caryn@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]
CC: Downing, Donna [Downing.Donna@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: CWR Correction Memo_final_SEC.docx

Caryn – do we need to actually highlight the errors in the PDF documents? If so, I'll do that now. Thanks

From: Kupchan, Simma
Sent: Monday, May 08, 2017 11:29 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Thanks, Caryn.

Deliberative Process / Ex. 5

Please let me know if you need more than this. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Muellerleile, Caryn
Sent: Monday, May 08, 2017 9:30 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Again, I know this is tedious work, but the only way for us to move ahead to get this corrected is to have these two documents ready to go with the highlighted errors:

***
So the way to resolve is that you need to review the amendatory instruction(s) within https://www.gpo.gov/fdsys/pkg/FR-2015-06-29/pdf/2015-13435.pdf, and compare to the result that is codified in https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27.pdf.

If Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Friday, May 05, 2017 11:08 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: Re: CWR Correction Memo_final_SEC.docx

Thanks, Sandy. It's my opinion that Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 If others have a different opinion, it would be great to discuss that further

Sent from my iPhone

On May 5, 2017, at 11:04 AM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

> Rose/Donna: I know that you all have too much work so this is a friendly reminder not to forget about this....
>
> Sandy
>
> **From:** Evalenko, Sandy
> **Sent:** Friday, April 28, 2017 8:53 AM
> **To:** Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
> **Cc:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
> **Subject:** FYI: CWR Correction Memo_final_SEC.docx
>
> Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment. I printed the first part below...
>
> **PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS**
>
> 15. The authority citation for part 230 is revised to read as follows:
>
> **Authority:** 33 U.S.C. 1251 *et.seq.*
>
> 16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:
>
> **§232.2 Definitions.**
>
> * * * * *
>
> *Waters of the United States* means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

****

From: Kwok, Rose
Sent: Thursday, April 27, 2017 5:27 PM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Weird thing with 40 CFR 232.2
Importance: High

Sandy and Caryn,

Simma noticed today that that Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

From: Kwok, Rose
Sent: Friday, June 19, 2015 11:39 AM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Folks,

I've attached the latest copies of the correction memo (with Ken's edits) and the attachment with the corrected FRN. I've left it with Crystal, and Ken said he would sign it when he is back from his meeting. I'll then pick it up and drop it off to Karyn.

Thanks everyone,
Rose

From: Klasen, Matthew
Sent: Thursday, June 18, 2015 2:02 PM
To: Kwok, Rose; Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon

Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi folks -- this all sounds good to me, and I'll be here to facilitate signature tomorrow.

I was filling in for one of the other special assistants here when the technical correction memo was signed on the coal ash rule, so I've (fortunately or unfortunately?) seen one of these before.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Great, thanks, Caryn!

From: Muellerleile, Caryn
Sent: Thursday, June 18, 2015 1:50 PM
To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine

Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,
Rose

Message

From: Wendelowski, Karyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1D913E7D7397466A803149761A0BDF18-KWENDELO]
Sent: 6/7/2017 4:29:32 PM
To: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Looks like OFR moved quickly!

How do these draft answers look?

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:
All waters which are currently used,
were used in the past, or may be susceptible
to us in interstate or foreign
commerce, including all waters which
are subject to the ebb and flow of the
tide.
All interstate waters including interstate
wetlands.
All other waters, such as intrastate
lakes, rivers, streams (including intermittent
streams), mudflats, sandflats,
wetlands, sloughs, prairie potholes, wet
meadows, playa lakes, or natural
ponds, the use, degradation, or destruction
of which would or could affect
interstate or foreign commerce including
any such waters:
Which are or could be used by interstate
or foreign travelers for recreational
or other purposes; or
From which fish or shellfish are or
could be taken and sold in interstate or
foreign commerce; or
Which are used or could be used for
industrial purposes by industries in
interstate commerce.
All impoundments of waters otherwise
defined as waters of the United
States under this definition;
Tributaries of waters identified in
paragraphs (g)(1)–(4) of this section;
The territorial sea; and
Wetlands adjacent to waters (other
than waters that are themselves wetlands)
identified in paragraphs (q)(1)–
(6) of this section.
Waste treatment systems, including
treatment ponds or lagoons designed to
meet the requirements of the Act
(other than cooling ponds as defined in
40 CFR 123.11(m) which also meet the
criteria of this definition) are not
waters of the United States.

Waters of the United States means:
(1) For purposes of the Clean Water
Act, 33 U.S.C. 1251 et seq. and its implementing
regulations, subject to the exclusions
in paragraph (2) of this definition,
the term ''waters of the United
States'' means:
(i) All waters which are currently
used, were used in the past, or may be
susceptible to use in interstate or foreign
commerce, including all waters
which are subject to the ebb and flow
of the tide;
(ii) All interstate waters, including
interstate wetlands;
(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;
(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;
(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a casespecific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.
(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.
(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.
(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.
(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.
(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.
(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.
(2) The following are not "waters of the United States" even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.
(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.
(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for

the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.
(iii) The following ditches:
(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.
(iv) The following features:
(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
(C) Artificial reflecting pools or swimming pools created in dry land;
(D) Small ornamental waters created in dry land;
(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and
(G) Puddles.
(v) Groundwater, including groundwater drained through subsurface drainage systems.
(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.
(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
(3) In this definition, the following terms apply:
(i) Adjacent. The term adjacent means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.
(ii) Neighboring. The term neighboring means:
(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;
(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;
(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii)

of this definition, and all waters within
1,500 feet of the ordinary high water
mark of the Great Lakes. The entire
water is neighboring if a portion is located
within 1,500 feet of the high tide
line or within 1,500 feet of the ordinary
high water mark of the Great Lakes.
(iii) Tributary and tributaries. The
terms tributary and tributaries each
mean a water that contributes flow, either
directly or through another water
(including an impoundment identified
in paragraph (1)(iv) of this definition),
to a water identified in paragraphs
(1)(i) through (iii) of this definition
that is characterized by the presence of
the physical indicators of a bed and
banks and an ordinary high water
mark. These physical indicators demonstrate
there is volume, frequency,
and duration of flow sufficient to create
a bed and banks and an ordinary
high water mark, and thus to qualify
as a tributary. A tributary can be a
natural, man-altered, or man-made
water and includes waters such as rivers,
streams, canals, and ditches not
excluded under paragraph (2) of this
definition. A water that otherwise
qualifies as a tributary under this definition
does not lose its status as a tributary
if, for any length, there are one
or more constructed breaks (such as
bridges, culverts, pipes, or dams), or
one or more natural breaks (such as
wetlands along the run of a stream, debris
piles, boulder fields, or a stream
that flows underground) so long as a
bed and banks and an ordinary high
water mark can be identified upstream
of the break. A water that otherwise
qualifies as a tributary under this definition
does not lose its status as a tributary
if it contributes flow through a
water of the United States that does
not meet the definition of tributary or
through a non-jurisdictional water to a
water identified in paragraphs (1)(i)
through (iii) of this definition.
(iv) Wetlands. The term wetlands
means those areas that are inundated
or saturated by surface or groundwater
at a frequency and duration sufficient
to support, and that under normal circumstances
do support, a prevalence of
vegetation typically adapted for life in
saturated soil conditions. Wetlands
generally include swamps, marshes,
bogs, and similar areas.
(v) Significant nexus. The term significant
nexus means that a water, including
wetlands, either alone or in combination
with other similarly situated
waters in the region, significantly affects
the chemical, physical, or biological
integrity of a water identified in
paragraphs (1)(i) through (iii) of this
definition. The term ''in the region''
means the watershed that drains to the
nearest water identified in paragraphs
(1)(i) through (iii) of this definition.
For an effect to be significant, it must
be more than speculative or insubstantial.
Waters are similarly situated
when they function alike and are sufficiently
close to function together in affecting
downstream waters. For purposes
of determining whether or not a
water has a significant nexus, the
water's effect on downstream (1)(i)
through (iii) waters shall be assessed
by evaluating the aquatic functions
identified in paragraphs (3)(v)(A)
through (I) of this definition. A water
has a significant nexus when any single
function or combination of functions
performed by the water, alone or together
with similarly situated waters
in the region, contributes significantly
to the chemical, physical, or biological
integrity of the nearest water identified
in paragraphs (1)(i) through (iii) of
this definition. Functions relevant to
the significant nexus evaluation are
the following:
(A) Sediment trapping,
(B) Nutrient recycling,
(C) Pollutant trapping, transformation,
filtering, and transport,
(D) Retention and attenuation of
flood waters,
(E) Runoff storage,
(F) Contribution of flow,
(G) Export of organic matter,

(H) Export of food resources, and
(I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.
(vi) Ordinary high water mark. The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
(vii) High tide line. The term high tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,
Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

From: "Fuld, John" <Fuld.John@epa.gov>
Date: June 7, 2017 at 12:01:52 PM EDT
To: "Bravo, Antonio" <Bravo.Antonio@epa.gov>
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am

---

From: Fuld, John
Sent: Wednesday, June 07, 2017 11:17 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water Media Inquiry

John W. Fuld, Ph.D.
U.S. Media Relations Mgr.-Water
fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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
Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 6/7/2017 1:12:27 PM
To: Chang, Elle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5a289ad96974b6696d42584ae8a6265-Chang, Elle]
CC: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

I may be able to call in right at 2 until 2:30 to listen in. Elle, can you add me to the invite? And do you mind if I invite our Corps and Army colleagues as an FYI, though they're also double booked (Chip may be able to call in)

Sent from my iPhone

On Jun 7, 2017, at 8:25 AM, Chang, Elle <chang.elle@epa.gov> wrote:

> Thanks, Rose – I'll share the PDF with the NTC.
>
> ---
>
> **From:** Kwok, Rose
> **Sent:** Tuesday, June 06, 2017 5:51 PM
> **To:** Chang, Elle <chang.elle@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
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> Rose Kwok
> U.S. Environmental Protection Agency
> Wetlands Division
> kwok.rose@epa.gov
> 202-566-0657, 202-566-1375 (fax)
>
> ---
>
> **From:** Chang, Elle
> **Sent:** Tuesday, June 6, 2017 5:15:51 PM
> **To:** Kupchan, Simma; Kwok, Rose
> **Cc:** Gude, Karen; Wehling, Carrie; Christensen, Damaris; Downing, Donna
> **Subject:** RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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To: Kwok, Rose <Kwok.Rose@epa.gov>
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Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Ok, thanks, Rose!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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> Phone: (202) 564-0831

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Simma – as we discussed. Can you cover this? If not, let me know and I will do it.
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

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Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
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Sent: Monday, June 05, 2017 6:48 PM
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Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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Sent from my iPhone

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>> (202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie;

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Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

Message

From: Chang, Elle [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5A289AD96974B6696D42584AE8A6265-CHANG, ELLE]
Sent: 6/7/2017 12:25:55 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose – I'll share the PDF with the NTC.

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To: Chang, Elle <chang.elle@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
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> Assistant General Counsel
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> U.S. Environmental Protection Agency

Washington DC 20004
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wehling.carrie@epa.gov

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Sent: 6/7/2017 11:38:20 AM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
Attachments: WOTUS2 tribal info and consultation - 6-7-2017_NTC.PPTX; 6-7-17 NTC.PDF

Thanks, Rose!!

And Simma, thanks again for covering the NTC meeting today!

Karen

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William Jefferson Clinton Building North Room 7426Q
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> **From:** Kwok, Rose
> **Sent:** Tuesday, June 06, 2017 4:28 PM
> **To:** Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
> **Subject:** Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
>
> Simma, do you want a PowerPoint to talk from or will just speak without one? I could add slides about the Supreme Court Opinions to our standard presentation
>
> Sent from my iPhone

On Jun 6, 2017, at 2:48 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

Thanks, Karen. Yes, I'd be happy to cover this any time between 2-3. It would be great to just see the Agenda when it's finalized, though. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Gude, Karen
Sent: Tuesday, June 06, 2017 2:11 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Carrie & Simma,

Thank you for helping to cover this request. The meeting is between 2-3 tomorrow; and AIEO can be flexible on the timing on the agenda. So, if there is a block of time between 2-3 that might work better for you, please just let me know.

Thanks again,

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831

From: Wehling, Carrie
Sent: Tuesday, June 06, 2017 2:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma – as we discussed. Can you cover this? If not, let me know and I will do it.
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

From: Christensen, Damaris
Sent: Tuesday, June 06, 2017 12:12 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Hey guys –

See below for a request from the National Tribal Caucus for an update on WOTUS and a discussion of SWANCC and Rapanos. Do you think you could go and give this update? We have a conflict that is important for understanding the effects of 311. If needed we can send you the tribal powerpoint/ our runs of shows for other meetings, which talk about why it's important for tribes.

It would be great if you can let us know ASAP, they are apparently trying to finalize the agenda by 3 pm today. I'm copying Karen and Donna.

Thanks!

Damaris

From: Gude, Karen
Sent: Tuesday, June 06, 2017 12:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

From: Gude, Karen
Sent: Monday, June 05, 2017 6:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

> There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there
>
> Sent from my iPhone
>
> On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:
>
>> Donna,

Hi. Given that Rose is on travel this week, I am reaching out to you. There is a National Tribal Caucus call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)

Sorry for the last minute ask.

Thanks,
Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM

To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
Subject: 2017 NTC Monthly Meeting - ALL
When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

To: Kupchan, Simma[Kupchan.Simma@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Wendelowski, Karyn
Sent: Thur 5/11/2017 3:07:57 PM
Subject: RE: May I see the 509 paper- even if only in hard copy?
CWR 509 Issue briefing paper.docx

Just gave MEL a hardcopy, but here it is electronically in case you're interested Simma

Karyn Wendelowski
Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

-----Original Message-----
From: Kupchan, Simma
Sent: Thursday, May 11, 2017 10:40 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: May I see the 509 paper- even if only in hard copy?

Assume you are talking about something related to the SCT case? I don't have any paper.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

-----Original Message-----
From: Levine, MaryEllen
Sent: Thursday, May 11, 2017 10:35 AM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: May I see the 509 paper- even if only in hard copy?

Mary Ellen Levine
Assistant General Counsel
Water Law Office
(202) 564-5487

To: Kupchan, Simma[Kupchan.Simma@epa.gov]
Cc: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Wehling, Carrie
Sent: Tue 5/16/2017 3:33:14 PM
Subject: RE: fyi re OMB review of WOTUS2

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

From: Kupchan, Simma
Sent: Tuesday, May 16, 2017 11:32 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: fyi re OMB review of WOTUS2

And this one is interesting, too:

CLEAN WATER RULE
Will Scalia's dictionary haunt Trump's WOTUS overhaul?

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second.* Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition.*

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent

surface waters and wetlands connected to larger water bodies.
Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.
But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,
Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary*. That volume was the most recent edition when Congress wrote and passed the landmark water law.
It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."
The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."
But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."
Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.
Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.
Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.
"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"
Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.
"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.
An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."
And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.
He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.

mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water*; it never enters salt *waters*; also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water*; often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+] How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."
Scalia was not alone in criticizing the dictionary.
The New York Times and Associated Press both shunned the volume when it debuted in 1961.
Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.
The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.
"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."
The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes : WATERING PLACE **2** : a particular quantity or mass of water: as **a** : a portion of water to drink ⟨brought her ~ in a silver cup⟩ **b** (1) **waters** *pl* : the water occupying or flowing in a particular bed ⟨the limpid ~*s* of a mountain brook⟩ (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER; *also* : land abutting a stream : the bank of a stream **c** : a portion of water for a particular use — usu. used in pl. ⟨wash the greens in three ~*s*⟩ **d** : a quantity or depth of water adequate for

[+] "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.
Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.
That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.
Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.

"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."
In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.
"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third*.
For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.
More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.
Chief among those is the fact that the administration is breaking precedent by relying on Scalia's opinion in *Rapanos*. Justice Anthony Kennedy's stand-alone opinion in that case has long been considered the ruling one by both circuit courts and the George W. Bush and Obama administrations.
Kennedy wrote that wetlands and small waterways fall under federal jurisdiction if they have a "significant nexus" to an actual navigable waterway, meaning there must be a surface, chemical or biological connection.
Environmental groups challenging a Trump regulation are far more likely to seize upon the Trump administration's break from precedent than Scalia's dictionary choice, said Larry Liebesman, a senior adviser with Dawson & Associates, a Washington lobby shop and consulting firm that specializes in water resources.
"No court has said that the holding of the court is Scalia's opinion and Scalia alone," he said.
Harvard Law School professor Richard Lazarus agrees, saying arguing about Webster's dictionaries "is probably not a viable argument" as long as Kennedy remains on the bench.
But dictionary definitions of "waters" could once again become significant if Kennedy leaves the court during the Trump administration, Lazarus said.
The Trump administration would likely replace the court's usual swing vote with a student of Scalia's "textualism."
"The question then would be if they admire Scalia's use of dictionaries, do they use the same one he did?" Lazarus said.
It's not yet clear whether Justice Neil Gorsuch, who replaced Scalia last month, also favors *Webster's Second.*
But John Calhoun, an attorney at Choate Hall & Stewart who has written about Scalia's dictionary use for the *Yale Law Journal*, notes there is still hope for the newer volume: "Samuel Alito often uses *Webster's Third.*"
"He's often considered Scalia's mini-me, but in this one instance he is not," Calhoun said.
And Sokolowski, at Merriam-Webster, notes there is just one more twist to the question of which Webster's dictionary best defines congressional intent circa 1972: The dictionary divide is often a generational one.
So, while *Webster's Third* may have been the most recent volume when Congress passed the Clean Water Act, it's possible that lawmakers would have favored *Webster's Second*.
"Congress is full of older men, so it would hardly be surprising," he said.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Tuesday, May 16, 2017 11:26 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: fyi re OMB review of WOTUS2

Greens to meet with White House on WOTUS

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

The White House Office of Information and Regulatory Affairs has meetings scheduled with environmentalists this week on the Clean Water Rule. Photo by Corbin Hiar.

White House officials will meet with environmental groups this week and next to hear arguments for keeping the contentious Clean Water Rule in place.

Three environmental organizations have requested meetings with the White House Office of Information and Regulatory Affairs, which is currently reviewing a proposal from U.S. EPA and Army Corps of Engineers to rescind the Obama-era regulation that clarifies the reach of the Clean Water Act over small waterways and wetlands.

The Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule, has drawn fire from farmers, land developers and energy companies who say it amounts to government overreach.

Though WOTUS has been stayed by the 6th U.S. Circuit Court of Appeals, the Trump administration has made repealing and replacing the regulation a priority.

Environmental groups, however, have celebrated the regulation as providing critical protection to smaller waterways, which in turn protects larger ones.

OIRA officials will meet with the Natural Resources Defense Council on Wednesday, followed by the Theodore Roosevelt Conservation Partnership on Thursday and the Alliance of Nurses for Healthy Environments on May 25.

"Clean water is vital to human health, it is an essential part of it and making sure the administration realizes that health care providers think this is a vital regulation is key," said Katie Huffling, executive director of the Alliance of Nurses for Healthy Environments. "These regulations have significant positive impacts on public health, and there is a cost savings from that."

Text of the proposed regulation being reviewed by OIRA has not been released.

But EPA and Army Corps officials have said they will revert back to a 1986 regulation and 2008 guidance to define "waters of the United States" covered by the Clean Water Act while the agencies work on a new definition for the Trump administration.

Huffling said she does not expect to learn any additional details during her meeting but will present the case for keeping WOTUS in place.

"We feel like this current administration hasn't been taking the health benefits of these regulations into account, and so making sure they hear our message is really important," she said.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 6/6/2017 9:51:13 PM
To: Chang, Elle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5a289ad96974b6696d42584ae8a6265-Chang, Elle]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
Attachments: 6-7-17 NTC.pdf; WOTUS2 tribal info and consultation - 6-7-2017_NTC.pptx

I added a few slides about the decisions that we already have presented on SCOTUS and did an updated to the next steps slide. Simma, if this works for you, the PDF (not the PPT) can be version that Elle sends out. Thanks!

I'll add these to Sharepoint.

Rose Kwok
U.S. Environmental Protection Agency
Wetlands Division
kwok.rose@epa.gov
202-566-0657, 202-566-1375 (fax)

From: Chang, Elle
Sent: Tuesday, June 6, 2017 5:15:51 PM
To: Kupchan, Simma; Kwok, Rose
Cc: Gude, Karen; Wehling, Carrie; Christensen, Damaris; Downing, Donna
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

That would be great – thanks, Rose!

From: Kupchan, Simma
Sent: Tuesday, June 06, 2017 5:06 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Ok, thanks, Rose!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 5:05 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

We do have some written up already from various trainings and ppt. I can send you a version when I get back to the hotel

Sent from my iPhone

On Jun 6, 2017, at 5:02 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Hi,
>
> Elle sent me the note below:
>
> 'There was a powerpoint presentation sent out as part of the WOTUS call. Would it be okay to provide these slides to the NTC or are they internal only? I'll add Simma as the first presenter to begin around 2pm tomorrow.'
>
> I assume it's ok for her to send these out? I don't think we need to add slides about the SCOTUS decisions, unless you have slides already written – I can just speak to those orally.
>
> Let me know what you think.
>
> Simma Kupchan
> Water Law Office
> US EPA Office of General Counsel
> William Jefferson Clinton Building North Room 7426Q
> (p) 202-564-3105
>
> **From:** Kwok, Rose
> **Sent:** Tuesday, June 06, 2017 4:28 PM
> **To:** Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
> **Subject:** Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
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>
>> Thanks, Karen. Yes, I'd be happy to cover this any time between 2-3. It would be great to just see the Agenda when it's finalized, though. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
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From: Gude, Karen
Sent: Tuesday, June 06, 2017 2:11 PM
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Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Carrie & Simma,

Thank you for helping to cover this request. The meeting is between 2-3 tomorrow; and AIEO can be flexible on the timing on the agenda. So, if there is a block of time between 2-3 that might work better for you, please just let me know.

Thanks again,

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831

From: Wehling, Carrie
Sent: Tuesday, June 06, 2017 2:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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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: Christensen, Damaris
Sent: Tuesday, June 06, 2017 12:12 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;

Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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Sent from my iPhone

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Thanks,
Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

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Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

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From: Chang, Elle [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5A289AD96974B6696D42584AE8A6265-CHANG, ELLE]
Sent: 6/6/2017 9:15:51 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
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Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Ok, thanks, Rose!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
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I assume it's ok for her to send these out? I don't think we need to add slides about the SCOTUS decisions, unless you have slides already written – I can just speak to those orally.

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U.S. EPA/Office of Water
Phone: (202) 564-0831

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Sent: 6/6/2017 9:04:43 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
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> Water Law Office
> US EPA Office of General Counsel
> William Jefferson Clinton Building North Room 7426Q
> (p) 202-564-3105
>
> ---
>
> **From:** Gude, Karen
> **Sent:** Tuesday, June 06, 2017 2:11 PM
> **To:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
> **Subject:** RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
>
> Carrie & Simma,
>
> Thank you for helping to cover this request. The meeting is between 2-3 tomorrow; and AIEO can be flexible on the timing on the agenda. So, if there is a block of time between 2-3 that might work better for you, please just let me know.
>
> Thanks again,
>
> Karen Gude
> Tribal Program Coordinator
> U.S. EPA/Office of Water
> Phone: (202) 564-0831

From: Wehling, Carrie
Sent: Tuesday, June 06, 2017 2:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma – as we discussed. Can you cover this? If not, let me know and I will do it.
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

From: Christensen, Damaris
Sent: Tuesday, June 06, 2017 12:12 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Hey guys –

See below for a request from the National Tribal Caucus for an update on WOTUS and a discussion of SWANCC and Rapanos. Do you think you could go and give this update? We have a conflict that is important for understanding the effects of 311. If needed we can send you the tribal powerpoint/ our runs of shows for other meetings, which talk about why it's important for tribes.

It would be great if you can let us know ASAP, they are apparently trying to finalize the agenda by 3 pm today. I'm copying Karen and Donna.

Thanks!

Damaris

From: Gude, Karen
Sent: Tuesday, June 06, 2017 12:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

From: Gude, Karen
Sent: Monday, June 05, 2017 6:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

> There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there
>
> Sent from my iPhone
>
> On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:
>
>> Donna,
>>
>> Hi. Given that Rose is on travel this week, I am reaching out to you. There is a National Tribal Caucus call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)
>>
>> Sorry for the last minute ask.
>>
>> Thanks,
>> Karen
>> (202) 564-0831
>>
>> ----------

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere,

Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
Subject: 2017 NTC Monthly Meeting - ALL
When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 6/6/2017 4:12:12 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Hey guys –

See below for a request from the National Tribal Caucus for an update on WOTUS and a discussion of SWANCC and Rapanos. Do you think you could go and give this update? We have a conflict that is important for understanding the effects of 311. If needed we can send you the tribal powerpoint/ our runs of shows for other meetings, which talk about why it's important for tribes.

It would be great if you can let us know ASAP, they are apparently trying to finalize the agenda by 3 pm today. I'm copying Karen and Donna.

Thanks!

Damaris

From: Gude, Karen
Sent: Tuesday, June 06, 2017 12:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

---

From: Gude, Karen
Sent: Monday, June 05, 2017 6:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

> There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there
>
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On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:

Donna,

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Sorry for the last minute ask.

Thanks,
Karen
(202) 564-0831

---

bject: FW: 2017 NTC Monthly Meeting - ALL
cation: OITA Fishbowl - DCRoomRRB 31207

art: Wed 6/7/2017 2:00 PM
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-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth;

Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
Subject: 2017 NTC Monthly Meeting - ALL
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Where: OITA Fishbowl - DCRoomRRB 31207

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]
From: Christensen, Damaris
Sent: Tue 6/6/2017 1:43:54 AM
Subject: Back to the future, or, FW: Compiled Ditch Questions & Next Steps for CWR Webinars
Compiled CWR Ditch Qs_090415.docx

Wanted to bring this up from the depths as I can't imagine not having to get into ditches at some point... (I was looking for something on the PGP and found this)

From: Downing, Donna
Sent: Tuesday, September 08, 2015 9:49 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: Compiled Ditch Questions & Next Steps for CWR Webinars

FYI

From: Susan Kirsch [mailto:skirsch@acwa-us.org]
Sent: Friday, September 04, 2015 1:35 PM
To: Kaiser, Russell; Goodin, John; Downing, Donna; Eisenberg, Mindy; 'Jensen, Stacey M HQ02' (Stacey.M.Jensen@usace.army.mil); Jennifer.a.moyer@usace.army.mil; Lopez-Ortiz, Myrna I HQ (Myrna.I.Lopez-Ortiz@usace.army.mil)
Cc: jeanne.christie@aswm.org; peg.bostwick@aswm.org; Julia Anastasio
Subject: Compiled Ditch Questions & Next Steps for CWR Webinars

All, Thank you again for the very productive discussion on Wednesday. ACWA and ASWM wanted to provide a compilation of questions related to ditch issues to help inform preparation for the CWR webinar on this topic. Most of these questions will look familiar as they were submitted during the June 3 and August 19 webinars for states and also collected via ACWA's August 2015 poll on implementation questions and topics. Throughout the document there are some questions that have been starred as particularly relevant for 404/wetlands managers. Please let us know if you have any questions about the compilation. We are planning to share a similar document with the forthcoming announcement to our members about the first webinar and expected bi-weekly schedule of dates for webinars this fall. We will mention in our notice to members that EPA/Corps may not address each and every question, and that some questions may be addressed in future FAQs released by the agencies.

As for next steps, here is a brief recap of the immediate plan as discussed on Wednesday:

1) **Webinar schedule/topics**
   - First webinar – Thursday, September 17, 2-3 p.m. EASTERN; Topic will be either a walk-through of available tools/databases OR Ditches
   - One – Hour Webinars will be held bi-weekly from there; Presenters and expected participants should save the 2-3 p.m. EASTERN slot for the following dates: 9/17, 10/1, 10/15, 10/29 and 11/12

2) **Coordination/Points of Contact for Agencies and Association** (include all on email communications and invites)
   - EPA: Russ Kaiser, John Goodin, Donna Downing & Mindy Eisenberg
   - Corps: Stacy Jensen, Jennifer Moyer, Myrna Lopez-Ortiz
   - ASWM: Jeanne Christie, Peg Bostwick
   - ACWA: Julia Anastasio, Susan Kirsch

3) **Webinar Audience**
   - ACWA/ASWM will extend invitation to ASHTO and NASDA to participate in the Ditch and tools walk-through webinars
   - Broader invitations beyond ACWA/ASWM members will be addressed on a topic-specific basis as topics are confirmed; The Associations will discuss appropriate invitee with Agencies before extending invites to future webinars in this series

4) **Hosting/Promotion Duties**
   - ASWM will host via its webinar platform (capacity 1000); ASWM will vet attendees to ensure they are with appropriate invited state agencies

- ASWM will provide webinar registration links; ASWM and ACWA will circulate notice the week of September 8 of the 9/17 webinar and schedule of dates/times to save for future topics TBA
- Invitees will be advised the webinars will not be used for a CWR 101 or overview of the rule

If there is anything that I have missed or needs correcting above please let me know. We look forward to continued collaboration in providing states with accurate and timely information on the implementation of the final rule.

Have a safe and happy holiday weekend.

Best,

Susan

Susan Kirsch, J.D.
Sr. Environmental Program Manager
Association of Clean Water Administrators-"The Voice of States & Interstates"
1634 EYE Street NW, Ste 750
Washington, DC 20006
202-756-0603 (T)
skirsch@acwa-us.org
www.acwa-us.org *Twitter @cleanwaterACWA*

Message

From: Wehling, Carrie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3E55F11FDC7489698BE69849B301DA6-CWEHLING]
Sent: 6/1/2017 1:37:05 PM
To: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: RE: congressional briefing.pptx
Attachments: WOTUS part 1.congressional briefing.pptx

Flag: Follow up

Feel free to simplify. I've made some changes in case you do use this language. 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

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 12:57 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: congressional briefing.pptx

All, in this morning's (Wednesday's) politicals meeting, EPA's Congressional liaison Denis Borum indicated he could use a short briefing for members of Congress, focusing on step one.

This is a first draft – I adapted the federalism powerpoint.

As we've discussed, the federalism language Deliberative Process / Ex. 5 Deliberative Process / Ex. 5? If so, I could drop some of the text and possibly another slide.

Some other possible changes –

Deliberative Process / Ex. 5

Damaris

To: Marks, Matthew[Marks.Matthew@epa.gov]; Ting, Kaytrue[Ting.Kaytrue@epa.gov]
Cc: Hogan, Stephanie[Hogan.Stephanie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Nalven, Heidi
Sent: Wed 5/31/2017 2:01:07 PM
Subject: Clay's assignment
WOTUS leg history assignment.doc

Hi Matt – WLO folks met yesterday and Simma revised the legislative history assignment to add case law, agency statements, and analysis. Clay has been working on this assignment and the 311/state survey assignment and I think the general consensus is that we anticipate that both assignments will be meaty but folks want to wait to see what he finds over the next week or two before settling on which one will be the official in-depth assignment. Hopefully that makes sense to you.

Thanks,
Heidi

Heidi Nalven
U.S. EPA Office of General Counsel
202-564-3189

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/31/2017 1:25:08 AM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
Subject: "Longer" options paper
Attachments: Options for Step 2 Rule 5-22-2017.docx

Sorry for the delay – a lot was going on today. There are actually a few additional bullets that we'd had in this version of the options paper that weren't in the table, so I've included some of them here. Feel free to edit.

Nonresponsive Internal URL/ Ex. 6

We'd need to get this up in advance of the 3 PM meeting.

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/25/2017 3:56:06 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: Latest draft of preamble comments

Hi Simma,

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:45 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Latest draft of preamble comments

Thanks, Rose. **Deliberative Process / Ex. 5**

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:35 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Latest draft of preamble comments

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:30 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Latest draft of preamble comments

Steve,

Here is the link to the latest version of the preamble, which I believe Mindy would like to send to politicals later today.

Deliberative Process / Ex. 5

Rose, can you let Steve know the extent to which any other edits will be made prior to submission to politicals? Thanks!

Nonresponsive Internal URL/ Ex. 6

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Christensen, Damaris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: 5/24/2017 6:51:53 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
Subject: FW: "Intermittent"

Just FYI to think about as we work on characterizing options

From: Shamet, Stefania
Sent: Thursday, May 18, 2017 1:05 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: "Intermittent"

These calls (and everything) must be so tough. You guys are doing a way better job than I could in your shoes. Thanks so much for soldiering on through all of this.

Deliberative Process / Ex. 5

To: OGC Immediate Office Support[OGCFrontOfficeSupportStaff@epa.gov]; OGC WLO[OGC_WLO@epa.gov]
From: Schroer, Lee
Sent: Wed 5/24/2017 6:18:54 PM
Subject: WLO/FRONT OFFICE REG REVIEW AGENDA: Thurs, 10:15
WLO Weekly Agenda 05.26.17 Final.docx

Lee C. Schroer
Office of General Counsel (Mail Code 2355A)
Room 7518C William Jefferson Clinton Bldg North
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Tel: 202-564-5476

Message

From: Nalven, Heidi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0B698043B7EE461198A73177935098D4-HNALVEN]
Sent: 5/23/2017 1:28:09 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: FW: Clerk assignment
Attachments: WOTUS leg history assignment.doc

Flag: Follow up

Thanks Simma for sending this along. Carrie had mentioned this project it to me and we were wondering if perhaps it would make sense to turn this one into the in-depth assignment if you can't think of something for the 311 issue. Carrie said that Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Adding Steve for his reaction.

From: Kupchan, Simma
Sent: Monday, May 22, 2017 5:53 PM
To: Nalven, Heidi <Nalven.Heidi@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Clerk assignment

Hi Heidi,

Still figuring out the additional analytical component for the 311 assignment; it's my top priority for tomorrow. In the meantime, I have another assignment on WOTUS-related leg history that would be super helpful. Let me know if you have questions or concerns about this.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kwok, Rose [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: 5/17/2017 1:50:26 PM
To: Muellerleile, Caryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b86f484dca634a46ba81be8009ffc290-CMueller]; Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: RE: CWR Correction Memo_final_SEC.docx

Okay, thanks for the update!

From: Muellerleile, Caryn
Sent: Wednesday, May 17, 2017 9:49 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

For now, nothing to do but wait. The Office of Federal Register is in the middle of moving offices, so responses are a little slow at the moment.

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Sent: Wednesday, May 17, 2017 9:43 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Caryn –

Just checking to see if there is any update or if we need anything additional. Thanks!

From: Muellerleile, Caryn
Sent: Monday, May 08, 2017 11:32 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

I have asked my managers – hold before anything further.

From: Kwok, Rose
Sent: Monday, May 08, 2017 11:31 AM
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<Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Caryn – do we need to actually highlight the errors in the PDF documents? If so, I'll do that now. Thanks

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From: Kupchan, Simma
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Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Thanks, Caryn.

Deliberative Process / attorney client Ex. 5

Please let me know if you need more than this. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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Sent: Monday, May 08, 2017 9:30 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Again, I know this is tedious work, but the only way for us to move ahead to get this corrected is to have these two documents ready to go with the highlighted errors:

***
So the way to resolve is that you need to review the amendatory instruction(s) within https://www.gpo.gov/fdsys/pkg/FR-2015-06-29/pdf/2015-13435.pdf, and compare to the result that is codified in https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27.pdf.

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Friday, May 05, 2017 11:08 AM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: Re: CWR Correction Memo_final_SEC.docx

Thanks, Sandy. It's my opinion that **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 If others have a different opinion, it would be great to discuss that further

Sent from my iPhone

On May 5, 2017, at 11:04 AM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

> Rose/Donna: I know that you all have too much work so this is a friendly reminder not to forget about this....
>
> Sandy
>
> ---
>
> **From:** Evalenko, Sandy
> **Sent:** Friday, April 28, 2017 8:53 AM
> **To:** Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
> **Cc:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
> **Subject:** FYI: CWR Correction Memo_final_SEC.docx
>
> Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment.
> I printed the first part below...
>
> **PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS**
>
> 15. The authority citation for part 230 is revised to read as follows:
>
> **Authority:** 33 U.S.C. 1251 *et.seq.*
>
> 16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:
>
> **§232.2 Definitions.**
>
> * * * * *
>
> *Waters of the United States* means:
>
> (1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

****

From: Kwok, Rose
Sent: Thursday, April 27, 2017 5:27 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: Weird thing with 40 CFR 232.2
Importance: High

Sandy and Caryn,

Simma noticed today that Personal Phone / Ex. 6

Personal Phone / Ex. 6

Thanks!

From: Kwok, Rose
Sent: Friday, June 19, 2015 11:39 AM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Folks,

I've attached the latest copies of the correction memo (with Ken's edits) and the attachment with the corrected FRN. I've left it with Crystal, and Ken said he would sign it when he is back from his meeting. I'll then pick it up and drop it off to Karyn.

Thanks everyone,
Rose

From: Klasen, Matthew
Sent: Thursday, June 18, 2015 2:02 PM
To: Kwok, Rose; Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi folks – this all sounds good to me, and I'll be here to facilitate signature tomorrow.

I was filling in for one of the other special assistants here when the technical correction memo was signed on the coal ash rule, so I've (fortunately or unfortunately?) seen one of these before.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Great, thanks, Caryn!

From: Muellerleile, Caryn
Sent: Thursday, June 18, 2015 1:50 PM
To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,
Rose

Message

From: Muellerleile, Caryn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B86F484DCA634A46BA81BE8009FFC290-CMUELLER]
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CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
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Subject: RE: CWR Correction Memo_final_SEC.docx

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Subject: RE: CWR Correction Memo_final_SEC.docx

Thanks, Caryn.

Deliberative Process / attorney client Ex. 5

Please let me know if you need more than this. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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Subject: RE: CWR Correction Memo_final_SEC.docx

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***
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If **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

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Subject: Re: CWR Correction Memo_final_SEC.docx

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Deliberative Process / Ex. 5 If others have a different opinion, it would be great to discuss that further

Sent from my iPhone

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Sandy

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Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FYI: CWR Correction Memo_final_SEC.docx

Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment.
I printed the first part below...

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

15. The authority citation for part 230 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et.seq.*

16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

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(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

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****

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Sent: Thursday, April 27, 2017 5:27 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Weird thing with 40 CFR 232.2
Importance: High

Sandy and Caryn,

Simma noticed today that that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

From: Kwok, Rose
Sent: Friday, June 19, 2015 11:39 AM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Folks,

I've attached the latest copies of the correction memo (with Ken's edits) and the attachment with the corrected FRN. I've left it with Crystal, and Ken said he would sign it when he is back from his meeting. I'll then pick it up and drop it off to Karyn.

Thanks everyone,
Rose

From: Klasen, Matthew
Sent: Thursday, June 18, 2015 2:02 PM
To: Kwok, Rose; Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi folks – this all sounds good to me, and I'll be here to facilitate signature tomorrow.

I was filling in for one of the other special assistants here when the technical correction memo was signed on the coal ash rule, so I've (fortunately or unfortunately?) seen one of these before.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Great, thanks, Caryn!

From: Muellerleile, Caryn
Sent: Thursday, June 18, 2015 1:50 PM
To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,
Rose

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 5/16/2017 8:08:42 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: RE: New direction on WOTUS

Thanks. Let's put on reg agenda. I will give a heads up to david in my weekly today. Apologies again about today. I guess we'll discuss more tomorrow at 10.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Kupchan, Simma
Sent: Tuesday, May 16, 2017 3:58 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: New direction on WOTUS

Attorney-client privileged; Attorney work product

Hi Steve,

Deliberative Process / attorney client/ attorney work product Ex. 5

Please let me know if you have any questions or would like to discuss further. Carrie and Karyn, chime in if you have further thoughts. Thanks for your attention.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Auerbach, Daniel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FBF9F26DEBB41C281370E36DDA6F213-AUERBACH, D]
Sent: 5/16/2017 4:08:28 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: Re: Water Law News for May 16, 2017
Flag: Follow up

Thanks for the note - Rose forwarded that article too. Fun read, obviously subsumed by Deliberative Process / attorney client Ex. 5

I assume Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

From: Kupchan, Simma
Sent: Tuesday, May 16, 2017 11:34:48 AM
To: Auerbach, Daniel
Cc: Downing, Donna; Kwok, Rose
Subject: FW: Water Law News for May 16, 2017

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: OGCLibrary
Sent: Tuesday, May 16, 2017 10:43 AM
To: Bartlett, Deane <Bartlett.Deane@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Field, Stephen <Field.Stephen@epa.gov>; Frankenthaler, Douglas <Frankenthaler.Douglas@epa.gov>; Frey, Bert <frey.bertram@epa.gov>; Gable, Kelly <Gable.Kelly@epa.gov>; Giles-AA, Cynthia <Giles-AA.Cynthia@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Morgan, Jeanette <Morgan.Jeanette@epa.gov>; Muller, Sheldon <Muller.Sheldon@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Rodrigues, Cecil <rodrigues.cecil@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Senn, John <Senn.John@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>;

Shepherdson, Melanie <Shepherdson.Melanie@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Walker, Mike <Walker.Mike@epa.gov>; Ward, W. Robert <Ward.Robert@epa.gov>; OGC WLO <OGC_WLO@epa.gov>; Conger, Nick <Conger.Nick@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Charlton, Tom <Charlton.Tom@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Kaminer, Joan <Kaminer.Joan@epa.gov>; OGC FEAT <OGC_FEAT@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Ng, Allison <ng.allison@epa.gov>; Ng, Brian <Ng.Brian@epa.gov>; Baptista, Chrisna <Baptista.Chrisna@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>; Wilson, Dane <Wilson.Dane@epa.gov>; Grisby, Erin <grisby.erin@epa.gov>; McLaren, William <mclaren.william@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Nguyen, Quoc <Nguyen.Quoc@epa.gov>
Subject: Water Law News for May 16, 2017

<!--[if !vml]--><!--[endif]-->

Water Law News for May 16, 2017

Bloomberg BNA **Daily Environment Report™**

News

Enforcement
Trump's EPA Enforcement Chief Pick Brings Long Experience
Susan Parker Bodine would be a tough and experienced new enforcement chief at the EPA, attorneys who worked with her told Bloomberg BNA.

Regulatory Policy
Senate Committee Likely to OK Six Regulatory Process Bills
Six bills that would alter in ways large and small the regulatory process are set to be marked up May 17 by the Senate Homeland Security and Governmental Affairs Committee, and all are expected to be approved.

Hill Watch

Hill Watch: Coal Mining

Hill Watch: Science Policy

Hill Watch: Water Pollution

Regulatory Agenda

TODAY'S FEDERAL REGISTER
NOTICE. Daily Environment Report's Regulatory Agenda, Comment Deadlines, and Federal

Register summaries are now published as part of EHS Federal Regulatory AlertTM
http://news.bna.com/frmn/.

TODAY'S STATE REGISTERS
NOTICE. State Register summaries are published as part of EHS State Regulatory AlertTM
http://news.bna.com/srmn/.

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

TRUMP'S EPA: Agency at a crossroads -- Complete coverage
Inside EPA's **Risk Policy Report**, 05/16/2017
https://insideepa.com/newsletters/risk-policy-report

Clean Water Act Jurisdiction Watch
http://insideepa.com/specials/clean-water-act-jurisdiction

Latest News

Environmentalists Reject EPA Defense Of Montana Nutrients Criteria Waiver
Environmentalists challenging EPA's approval of a novel waiver to Montana's numeric nutrient water quality criteria are rebutting the agency's defense of its actions by pointing to the plain language of the Clean Water Act (CWA) and a 2008 district court ruling involving similar criteria in Florida that they say undermines the waiver.

Utilities Invoke 2016 Ash Law In Call For EPA To Reconsider Disposal Rule
The utility sector is calling on EPA to reconsider its first-time rule governing coal ash disposal by saying a 2016 law that overhauled enforcement of the policy justifies reconsidering many of its technical mandates, but environmentalists counter that such changes would contradict Congress' decision to leave the rule's substantive provisions in place.

Peer Review Report Questions Perchlorate Model's Fitness For EPA Policy
The final report by a panel of experts who reviewed a federal model intended to help EPA set a drinking water standard for the rocket fuel ingredient perchlorate questions the model's ability to perform its purpose, and by its extension EPA's ability to meet court-ordered deadlines for the drinking water level.

Daily Feed

Court weighs stay on CWA jurisdiction case to await 9th Circuit ruling
A stay in the California district court case could set a marker for other suits and give the Trump administration time to finish its CWA jurisdiction rule before having to litigate pending enforcement actions.

Quoted: Comments target scores of EPA rules
Excerpts from some of the comments industry and others filed ahead of the May 15 deadline urging the agency to review existing rules for repeal, replacement or modification.

Duke Energy files suit over threatened CWA coal ash litigation
The power company is suing ahead of a deadline for environmentalists to file a Clean Water Act case over its groundwater contamination.

GREENWIRE

CLEAN WATER RULE

Will Scalia's dictionary haunt Trump's WOTUS overhaul?

Ariel Wittenberg, E&E News reporter

Published: Monday, May 15, 2017

[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second*. Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition*.

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent surface waters and wetlands connected to larger water bodies.

Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.

But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,

Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary*. That volume was the most recent edition when Congress wrote and passed the landmark water law.

It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."

The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."

But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."

Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.

Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.

Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.

"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"

Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.

"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.

An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."

And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.

He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.

mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water;* it never enters salt *waters;* also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water;* often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+] How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."

Scalia was not alone in criticizing the dictionary.

The New York Times and Associated Press both shunned the volume when it debuted in 1961.

Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.

The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.

"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."

The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes : WATERING PLACE **2** : a particular quantity or mass of water: as **a** : a portion of water to drink ⟨brought her ~ in a silver cup⟩ **b** (1) **waters** *pl* : the water occupying or flowing in a particular bed ⟨the limpid ~*s* of a mountain brook⟩ (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER; *also* : land abutting a stream : the bank of a stream **c** : a portion of water for a particular use — usu. used in pl. ⟨wash the greens in three ~*s*⟩ **d** : a quantity or depth of water adequate for

[+] "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.

Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.

That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.

Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.

"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."

In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.

"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third*.

For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.

More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.

Chief among those is the fact that the administration is breaking precedent by relying on Scalia's opinion in *Rapanos*. Justice Anthony Kennedy's stand-alone opinion in that case has long been considered the ruling one by both circuit courts and the George W. Bush and Obama administrations.

Kennedy wrote that wetlands and small waterways fall under federal jurisdiction if they have a "significant nexus" to an actual navigable waterway, meaning there must be a surface, chemical or biological connection.

Environmental groups challenging a Trump regulation are far more likely to seize upon the Trump administration's break from precedent than Scalia's dictionary choice, said Larry Liebesman, a senior adviser with Dawson & Associates, a Washington lobby shop and consulting firm that specializes in water resources.

"No court has said that the holding of the court is Scalia's opinion and Scalia alone," he said.

Harvard Law School professor Richard Lazarus agrees, saying arguing about Webster's dictionaries "is probably not a viable argument" as long as Kennedy remains on the bench.
But dictionary definitions of "waters" could once again become significant if Kennedy leaves the court during the Trump administration, Lazarus said.
The Trump administration would likely replace the court's usual swing vote with a student of Scalia's "textualism."
"The question then would be if they admire Scalia's use of dictionaries, do they use the same one he did?" Lazarus said.
It's not yet clear whether Justice Neil Gorsuch, who replaced Scalia last month, also favors *Webster's Second*.
But John Calhoun, an attorney at Choate Hall & Stewart who has written about Scalia's dictionary use for the *Yale Law Journal*, notes there is still hope for the newer volume: "Samuel Alito often uses *Webster's Third*."
"He's often considered Scalia's mini-me, but in this one instance he is not," Calhoun said.
And Sokolowski, at Merriam-Webster, notes there is just one more twist to the question of which Webster's dictionary best defines congressional intent circa 1972: The dictionary divide is often a generational one.
So, while *Webster's Third* may have been the most recent volume when Congress passed the Clean Water Act, it's possible that lawmakers would have favored *Webster's Second*.
"Congress is full of older men, so it would hardly be surprising," he said.

CLEAN WATER RULE

Greens to meet with White House on WOTUS

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

The White House Office of Information and Regulatory Affairs has meetings scheduled with environmentalists this week on the Clean Water Rule. Photo by Corbin Hiar.

White House officials will meet with environmental groups this week and next to hear arguments for keeping the contentious Clean Water Rule in place.
Three environmental organizations have requested meetings with the White House Office of Information and Regulatory Affairs, which is currently reviewing a proposal from U.S. EPA and Army Corps of Engineers to rescind the Obama-era regulation that clarifies the reach of the Clean Water Act over small waterways and wetlands.
The Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule, has drawn fire from farmers, land developers and energy companies who say it amounts to government overreach.
Though WOTUS has been stayed by the 6th U.S. Circuit Court of Appeals, the Trump administration has made repealing and replacing the regulation a priority.
Environmental groups, however, have celebrated the regulation as providing critical protection to smaller waterways, which in turn protects larger ones.
OIRA officials will meet with the Natural Resources Defense Council on Wednesday, followed by the Theodore Roosevelt Conservation Partnership on Thursday and the Alliance of Nurses for Healthy Environments on May 25.
"Clean water is vital to human health, it is an essential part of it and making sure the administration realizes that health care providers think this is a vital regulation is key," said Katie Huffling, executive director of the Alliance of Nurses for Healthy Environments. "These regulations have significant positive impacts on public health, and there is a cost savings from that."
Text of the proposed regulation being reviewed by OIRA has not been released.

But EPA and Army Corps officials have said they will revert back to a 1986 regulation and 2008 guidance to define "waters of the United States" covered by the Clean Water Act while the agencies work on a new definition for the Trump administration.
Huffling said she does not expect to learn any additional details during her meeting but will present the case for keeping WOTUS in place.
"We feel like this current administration hasn't been taking the health benefits of these regulations into account, and so making sure they hear our message is really important," she said.

COAL

Export terminal review miscalculated cancer risk — railway

Published: Monday, May 15, 2017
BNSF Railway has appealed an environmental review of a Washington state coal export terminal that it says miscalculated and overstated the cancer risk among residents.
The facility would be built by Millennium Bulk Terminals-Longview LLC along the Columbia River near the city of Longview. It would handle up to 44 million tons of coal each year.
Diesel particulate emissions would result in "an unavoidable increase" in the cancer risk rate of residents in a nearby neighborhood, the environmental study from the state Department of Ecology and Cowlitz County found.
"There is no basis to say that. So it's concerning for us to have that out there in the public domain," said BNSF spokeswoman Courtney Wallace.
The report will be used to decide on over 20 permits the coal terminal needs before it can be built.
A spokeswoman for the Department of Ecology said the study was meant to evaluate the terminal's potential impact to the local community and was not intended to be a statewide report (AP/*Billings Gazette*, May 14). **— CS**

COAL ASH

Group petitions EPA to amend dumping rule

Sean Reilly, E&E News reporter
Published: Monday, May 15, 2017
A utility industry trade group is asking U.S. EPA to administratively reconsider key elements of its coal ash disposal regulations published in 2015, a move that drew quick condemnation from environmental groups.
The Utility Solid Waste Activities Group (USWAG) believes changes proposed in a reconsideration petition filed Friday "will result in a more practical and workable, yet equally protective regulatory program" for coal ash disposal, Executive Director Jim Roewer said in an accompanying cover letter to EPA Administrator Scott Pruitt.
The organization is requesting the changes both because of the Trump administration's executive orders on regulatory reform, as well as legislation signed into law in December that gives states the authority to create their own permitting programs, the petition says. It is also seeking an extension of upcoming compliance deadlines.
The Edison Electric Institute, which represents investor-owned utilities, released both the letter and a copy of the petition.
In a news release, Earthjustice and a half-dozen environmental groups said the power industry is seeking to do away with most of the regulations' safeguards for handling the waste produced by coal-fired power plants.
"If anything, EPA needs to strengthen coal ash safeguards, not weaken them," Pete Harrison, an attorney for the Waterkeeper Alliance, said in the release.
Industry and environmental groups sued EPA in the U.S. Court of Appeals for the District of Columbia Circuit over rule provisions. Now USWAG is asking EPA to ask judges to put off the litigation pending the agency's ruling on this petition.

CLIMATEWIRE
AN E&E NEWS PUBLICATION

CLIMATEWIRE — Tue., May 16, 2017

READ FULL EDITION

1. ENERGY TRANSITIONS:

Dakota coal industry digs in as wind power sweeps the state

UNDERWOOD, N.D. — Lignite is the fuel that made North Dakota a fossil energy state long before the Bakken Shale produced its first barrel of oil. And for places like Underwood — home of the sprawling Falkirk mine and its primary customer, the 1,100-megawatt Coal Creek Station — it is the lifeblood of a regional economy centered on coal and coal-fired power. But the risk of disruptive change lies just over the horizon.

TOP STORIES

2. CALIFORNIA:
Bid to reform cap and trade rests on its shaky legal foundation

3. INFRASTRUCTURE:
China seeks broader influence through green investment

FEDERAL POLICY

4. EPA:
GOP lawmakers take aim at social cost of carbon

IMPACTS AND CONSEQUENCES

5. NASA:
April was 2nd-hottest on record

6. SPECIES:
Wash. champion pine falls to climate change

7. STATES:
Report forecasts significant climate shifts for Ohio River Basin

8. UNITED KINGDOM:
Destructive windstorms on the rise

INTERNATIONAL

9. ADVOCACY:
Battle between Greenpeace and forest products company escalates

10. SOLAR:
Supermarket giant announces plans to go green by 2030

ENERGYWIRE
AN E&E NEWS PUBLICATION

ENERGYWIRE — Tue., May 16, 2017

READ FULL EDITION

1. SOLAR:
The 'Buy America' company that sourced from abroad

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9. OIL:
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Jennifer Turley, Law Librarian
Arctic Slope Mission Services (ASMS) Contactor
U.S. Environmental Protection Agency
Office of General Counsel
202/564-3971
Turley.jennifer@epa.gov

Tell us how we're doing - rate our customer service!
http://www.surveymonkey.com/s/epalibsurvey

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kwok, Rose
Sent: Tue 5/9/2017 7:11:47 PM
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 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>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Muellerleile, Caryn [Muellerleile.Caryn@epa.gov]
Sent: 5/8/2017 3:31:58 PM
To: Kwok, Rose [Kwok.Rose@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]
CC: Downing, Donna [Downing.Donna@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: CWR Correction Memo_final_SEC.docx

I have asked my managers – hold before anything further.

From: Kwok, Rose
Sent: Monday, May 08, 2017 11:31 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Caryn – do we need to actually highlight the errors in the PDF documents? If so, I'll do that now. Thanks

---

From: Kupchan, Simma
Sent: Monday, May 08, 2017 11:29 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Thanks, Caryn.

Deliberative Process / Ex. 5

Please let me know if you need more than this. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Muellerleile, Caryn
Sent: Monday, May 08, 2017 9:30 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Again, I know this is tedious work, but the only way for us to move ahead to get this corrected is to have these two documents ready to go with the highlighted errors:

***

So the way to resolve is that you need to review the amendatory instruction(s) within https://www.gpo.gov/fdsys/pkg/FR-2015-06-29/pdf/2015-13435.pdf, and compare to the result that is codified in https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27.pdf.

If Deliberative Process / Ex. 5 Deliberative Process / Ex. 5.

From: Kwok, Rose
Sent: Friday, May 05, 2017 11:08 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: Re: CWR Correction Memo_final_SEC.docx

Thanks, Sandy. It's my opinion that Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 If others have a different opinion, it would be great to discuss that further

Sent from my iPhone

On May 5, 2017, at 11:04 AM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

> Rose/Donna: I know that you all have too much work so this is a friendly reminder not to forget about this....
>
> Sandy
>
> ---
>
> **From:** Evalenko, Sandy
> **Sent:** Friday, April 28, 2017 8:53 AM
> **To:** Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
> **Cc:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
> **Subject:** FYI: CWR Correction Memo_final_SEC.docx
>
> Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment.
> I printed the first part below...
>
> **PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS**
>
> 15. The authority citation for part 230 is revised to read as follows:
>
> **Authority:** 33 U.S.C. 1251 *et.seq.*

16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters

identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

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(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph

(1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

****

From: Kwok, Rose
Sent: Thursday, April 27, 2017 5:27 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Weird thing with 40 CFR 232.2
Importance: High

Sandy and Caryn,

Simma noticed today that that Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

From: Kwok, Rose
Sent: Friday, June 19, 2015 11:39 AM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Folks,

I've attached the latest copies of the correction memo (with Ken's edits) and the attachment with the corrected FRN. I've left it with Crystal, and Ken said he would sign it when he is back from his meeting. I'll then pick it up and drop it off to Karyn.

Thanks everyone,
Rose

From: Klasen, Matthew
Sent: Thursday, June 18, 2015 2:02 PM
To: Kwok, Rose; Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi folks -- this all sounds good to me, and I'll be here to facilitate signature tomorrow.

I was filling in for one of the other special assistants here when the technical correction memo was signed on the coal ash rule, so I've (fortunately or unfortunately?) seen one of these before.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Great, thanks, Caryn!

From: Muellerleile, Caryn
Sent: Thursday, June 18, 2015 1:50 PM
To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460

(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,
Rose

Message

From: Muellerleile, Caryn [Muellerleile.Caryn@epa.gov]
Sent: 5/8/2017 1:30:28 PM
To: Kwok, Rose [Kwok.Rose@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]
CC: Downing, Donna [Downing.Donna@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: CWR Correction Memo_final_SEC.docx

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If Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

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Sent from my iPhone

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> **Cc:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
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> Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment.
> I printed the first part below...

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

15. The authority citation for part 230 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et.seq.*

16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

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(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

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nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

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Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Weird thing with 40 CFR 232.2
Importance: High

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Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell,

Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

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Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
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To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,
Rose

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 6/7/2017 5:25:35 PM
To: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Me too. Thanks.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Wednesday, June 07, 2017 12:43 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: RE: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Looks fine. 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

From: Wendelowski, Karyn
Sent: Wednesday, June 07, 2017 12:30 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: Fw: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Looks like OFR moved quickly!

How do these draft answers look?

1. Can you provide the specific language for the definition being removed?

40 C.F.R 232.2 inadvertently contains both the prior definition of "waters of the United States" and the definition promulgated in the 2015 Clean Water Rule. It currently reads:

Waters of the United States means:
All waters which are currently used,
were used in the past, or may be susceptible
to us in interstate or foreign
commerce, including all waters which
are subject to the ebb and flow of the
tide.
All interstate waters including interstate
wetlands.
All other waters, such as intrastate
lakes, rivers, streams (including intermittent
streams), mudflats, sandflats,
wetlands, sloughs, prairie potholes, wet
meadows, playa lakes, or natural
ponds, the use, degradation, or destruction
of which would or could affect
interstate or foreign commerce including
any such waters:
Which are or could be used by interstate
or foreign travelers for recreational
or other purposes; or
From which fish or shellfish are or
could be taken and sold in interstate or
foreign commerce; or
Which are used or could be used for
industrial purposes by industries in
interstate commerce.
All impoundments of waters otherwise
defined as waters of the United
States under this definition;
Tributaries of waters identified in
paragraphs (g)(1)–(4) of this section;
The territorial sea; and
Wetlands adjacent to waters (other
than waters that are themselves wetlands)
identified in paragraphs (q)(1)–
(6) of this section.
Waste treatment systems, including
treatment ponds or lagoons designed to
meet the requirements of the Act
(other than cooling ponds as defined in
40 CFR 123.11(m) which also meet the
criteria of this definition) are not
waters of the United States.

Waters of the United States means:
(1) For purposes of the Clean Water
Act, 33 U.S.C. 1251 et seq. and its implementing
regulations, subject to the exclusions
in paragraph (2) of this definition,
the term ''waters of the United
States'' means:
(i) All waters which are currently
used, were used in the past, or may be
susceptible to use in interstate or foreign
commerce, including all waters
which are subject to the ebb and flow
of the tide;
(ii) All interstate waters, including
interstate wetlands;
(iii) The territorial seas;
(iv) All impoundments of waters otherwise
identified as waters of the
United States under this section;
(v) All tributaries, as defined in paragraph
(3)(iii) of this definition, of
waters identified in paragraphs (1)(i)
through (iii) of this definition;

(vi) All waters adjacent to a water
identified in paragraphs (1)(i) through
(v) of this definition, including wetlands,
ponds, lakes, oxbows, impoundments,
and similar waters;
(vii) All waters in paragraphs
(1)(vii)(A) through (E) of this definition
where they are determined, on a casespecific
basis, to have a significant
nexus to a water identified in paragraphs
(1)(i) through (iii) of this definition.
The waters identified in each of
paragraphs (1)(vii)(A) through (E) of
this definition are similarly situated
and shall be combined, for purposes of
a significant nexus analysis, in the watershed
that drains to the nearest
water identified in paragraphs (1)(i)
through (iii) of this definition. Waters
identified in this paragraph shall not
be combined with waters identified in
paragraph (1)(vi) of this definition
when performing a significant nexus
analysis. If waters identified in this
paragraph are also an adjacent water
under paragraph (1)(vi), they are an adjacent
water and no case-specific significant
nexus analysis is required.
(A) Prairie potholes. Prairie potholes

are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.
(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.
(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.
(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.
(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.
(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.
(2) The following are not ''waters of the United States'' even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.
(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.
(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.
(iii) The following ditches:
(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.
(iv) The following features:
(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;
(C) Artificial reflecting pools or swimming pools created in dry land;
(D) Small ornamental waters created in dry land;
(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
(F) Erosional features, including gullies,

rills, and other ephemeral features
that do not meet the definition of tributary,
non-wetland swales, and lawfully
constructed grassed waterways;
and
(G) Puddles.
(v) Groundwater, including groundwater
drained through subsurface
drainage systems.
(vi) Stormwater control features constructed
to convey, treat, or store
stormwater that are created in dry
land.
(vii) Wastewater recycling structures
constructed in dry land; detention and
retention basins built for wastewater
recycling; groundwater recharge basins;
percolation ponds built for wastewater
recycling; and water distributary
structures built for wastewater recycling.
(3) In this definition, the following
terms apply:
(i) Adjacent. The term adjacent means
bordering, contiguous, or neighboring a
water identified in paragraphs (1)(i)
through (v) of this definition, including
waters separated by constructed dikes
or barriers, natural river berms, beach
dunes, and the like. For purposes of adjacency,
an open water such as a pond
or lake includes any wetlands within or
abutting its ordinary high water mark.
Adjacency is not limited to waters located
laterally to a water identified in
paragraphs (1)(i) through (v) of this definition.
Adjacent waters also include
all waters that connect segments of a
water identified in paragraphs (1)(i)
through (v) or are located at the head
of a water identified in paragraphs
(1)(i) through (v) of this definition and
are bordering, contiguous, or neighboring
such water. Waters being used
for established normal farming, ranching,
and silviculture activities (33
U.S.C. 1344(f)) are not adjacent.
(ii) Neighboring. The term neighboring
means:
(A) All waters located within 100 feet
of the ordinary high water mark of a
water identified in paragraphs (1)(i)
through (v) of this definition. The entire
water is neighboring if a portion is
located within 100 feet of the ordinary
high water mark;
(B) All waters located within the 100-
year floodplain of a water identified in
paragraphs (1)(i) through (v) of this definition
and not more than 1,500 feet
from the ordinary high water mark of
such water. The entire water is neighboring
if a portion is located within
1,500 feet of the ordinary high water
mark and within the 100-year floodplain;
(C) All waters located within 1,500
feet of the high tide line of a water
identified in paragraphs (1)(i) or (1)(iii)
of this definition, and all waters within
1,500 feet of the ordinary high water
mark of the Great Lakes. The entire
water is neighboring if a portion is located
within 1,500 feet of the high tide
line or within 1,500 feet of the ordinary
high water mark of the Great Lakes.
(iii) Tributary and tributaries. The
terms tributary and tributaries each
mean a water that contributes flow, either
directly or through another water
(including an impoundment identified
in paragraph (1)(iv) of this definition),
to a water identified in paragraphs
(1)(i) through (iii) of this definition
that is characterized by the presence of
the physical indicators of a bed and
banks and an ordinary high water
mark. These physical indicators demonstrate
there is volume, frequency,
and duration of flow sufficient to create
a bed and banks and an ordinary
high water mark, and thus to qualify
as a tributary. A tributary can be a
natural, man-altered, or man-made
water and includes waters such as rivers,
streams, canals, and ditches not
excluded under paragraph (2) of this
definition. A water that otherwise
qualifies as a tributary under this definition
does not lose its status as a tributary
if, for any length, there are one
or more constructed breaks (such as
bridges, culverts, pipes, or dams), or
one or more natural breaks (such as
wetlands along the run of a stream, debris
piles, boulder fields, or a stream

that flows underground) so long as a
bed and banks and an ordinary high
water mark can be identified upstream
of the break. A water that otherwise
qualifies as a tributary under this definition
does not lose its status as a tributary
if it contributes flow through a
water of the United States that does
not meet the definition of tributary or
through a non-jurisdictional water to a
water identified in paragraphs (1)(i)
through (iii) of this definition.
(iv) Wetlands. The term wetlands
means those areas that are inundated
or saturated by surface or groundwater
at a frequency and duration sufficient
to support, and that under normal circumstances
do support, a prevalence of
vegetation typically adapted for life in
saturated soil conditions. Wetlands
generally include swamps, marshes,
bogs, and similar areas.
(v) Significant nexus. The term significant
nexus means that a water, including
wetlands, either alone or in combination
with other similarly situated
waters in the region, significantly affects
the chemical, physical, or biological
integrity of a water identified in
paragraphs (1)(i) through (iii) of this
definition. The term ''in the region''
means the watershed that drains to the
nearest water identified in paragraphs
(1)(i) through (iii) of this definition.
For an effect to be significant, it must
be more than speculative or insubstantial.
Waters are similarly situated
when they function alike and are sufficiently
close to function together in affecting
downstream waters. For purposes
of determining whether or not a
water has a significant nexus, the
water's effect on downstream (1)(i)
through (iii) waters shall be assessed
by evaluating the aquatic functions
identified in paragraphs (3)(v)(A)
through (I) of this definition. A water
has a significant nexus when any single
function or combination of functions
performed by the water, alone or together
with similarly situated waters
in the region, contributes significantly
to the chemical, physical, or biological
integrity of the nearest water identified
in paragraphs (1)(i) through (iii) of
this definition. Functions relevant to
the significant nexus evaluation are
the following:
(A) Sediment trapping,
(B) Nutrient recycling,
(C) Pollutant trapping, transformation,
filtering, and transport,
(D) Retention and attenuation of
flood waters,
(E) Runoff storage,
(F) Contribution of flow,
(G) Export of organic matter,
(H) Export of food resources, and
(I) Provision of life cycle dependent
aquatic habitat (such as foraging, feeding,
nesting, breeding, spawning, or use
as a nursery area) for species located in
a water identified in paragraphs (1)(i)
through (iii) of this definition.
(vi) Ordinary high water mark. The
term ordinary high water mark means
that line on the shore established by
the fluctuations of water and indicated
by physical characteristics such as a
clear, natural line impressed on the
bank, shelving, changes in the character
of soil, destruction of terrestrial
vegetation, the presence of litter and
debris, or other appropriate means that
consider the characteristics of the surrounding
areas.
(vii) High tide line. The term high tide
line means the line of intersection of
the land with the water's surface at the
maximum height reached by a rising
tide. The high tide line may be determined,
in the absence of actual data,
by a line of oil or scum along shore objects,
a more or less continuous deposit
of fine shell or debris on the foreshore
or berm, other physical markings or
characteristics, vegetation lines, tidal
gages, or other suitable means that delineate
the general height reached by a
rising tide. The line encompasses
spring high tides and other high tides
that occur with periodic frequency but
does not include storm surges in which
there is a departure from the normal or

predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

The Office of the Federal Register is simply correcting this inadvertent error and deleting the language of the prior definition which was replaced by the Clean Water Rule. This is not an action by EPA and is not part of the process the agencies are undertaking pursuant to Executive Order 13778.

From: Eisenberg, Mindy
Sent: Wednesday, June 7, 2017 12:15 PM
To: Wendelowski, Karyn
Cc: Christensen, Damaris
Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Hey Karyn,
Would you mind writing a response to explain the situation regarding the CFR mistake that they are correcting?

thanks

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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: Bravo, Antonio
Sent: Wednesday, June 07, 2017 12:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Fuld, John <Fuld.John@epa.gov>
Subject: Fwd: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Can you help?

Sent from my iPhone

Begin forwarded message:

> **From:** "Fuld, John" <Fuld.John@epa.gov>
> **Date:** June 7, 2017 at 12:01:52 PM EDT
> **To:** "Bravo, Antonio" <Bravo.Antonio@epa.gov>
> **Subject: FW: MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY**
>
> Hey just to let you know this is over there...I HAVE to have this back by 1 pm. It went over at 11:17 am
>
> ---
>
> **From:** Fuld, John
> **Sent:** Wednesday, June 07, 2017 11:17 AM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>
> **Subject:** MEDIA INQUIRY - Agri-Pulse RE: WOTUS DUE 1pm TODAY

Office of Water
Media Inquiry

John W. Fuld, Ph.D.
U.S. Media Relations Mgr.-Water
fuld.john@epa.gov

DATE: June 7, 2017

OUTLET: Agri-Pulse

REPORTER: Steve Davies

TOPIC: WOTUS

DEADLINE: 1 pm FAST TURN AROUND

OW PROGRAM OFFICE:

PERTINENT INFORMATION:

Reporter is trying to get more information on the FR notice scheduled for publication tomorrow and copied below.

QUESTION:

1. Can you provide the specific language for the definition being removed?
2. What is the purpose of this? This wouldn't happen to be the first part of the "removal and replace" process, would it?

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 232 404

Program Definitions; Exempt Activities Not Requiring 404 Permits

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 190 to 259, **revised as of July 1, 2016**, on page 319, in §232.2, the first definition of Waters of the United States is removed.

BILLING CODE 1301-00-D

[FR Doc. 2017-11894 Filed: 6/7/2017 8:45 am; Publication Date: 6/8/2017]

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

****
*

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

Web-link or source material.

****
*

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
(Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 6/7/2017 1:39:47 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Chang, Elle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5a289ad96974b6696d42584ae8a6265-Chang, Elle]
CC: Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
Attachments: 6-7-17 NTC.PDF

Thanks so much, Rose! This is great.

Elle, feel free to send out the attached pdf.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 5:51 PM
To: Chang, Elle <chang.elle@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

I added a few slides about the decisions that we already have presented on SCOTUS and did an updated to the next steps slide. Simma, if this works for you, the PDF (not the PPT) can be version that Elle sends out. Thanks!

I'll add these to Sharepoint.

Rose Kwok
U.S. Environmental Protection Agency
Wetlands Division
kwok.rose@epa.gov
202-566-0657, 202-566-1375 (fax)

From: Chang, Elle
Sent: Tuesday, June 6, 2017 5:15:51 PM
To: Kupchan, Simma; Kwok, Rose
Cc: Gude, Karen; Wehling, Carrie; Christensen, Damaris; Downing, Donna
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

That would be great – thanks, Rose!

From: Kupchan, Simma
Sent: Tuesday, June 06, 2017 5:06 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Ok, thanks, Rose!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 5:05 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

We do have some written up already from various trainings and ppt. I can send you a version when I get back to the hotel

Sent from my iPhone

On Jun 6, 2017, at 5:02 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Hi,
>
> Elle sent me the note below:
>
> 'There was a powerpoint presentation sent out as part of the WOTUS call. Would it be okay to provide these slides to the NTC or are they internal only? I'll add Simma as the first presenter to begin around 2pm tomorrow.'
>
> I assume it's ok for her to send these out? I don't think we need to add slides about the SCOTUS decisions, unless you have slides already written – I can just speak to those orally.
>
> Let me know what you think.
>
> Simma Kupchan
> Water Law Office
> US EPA Office of General Counsel
> William Jefferson Clinton Building North Room 7426Q
> (p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 4:28 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma, do you want a PowerPoint to talk from or will just speak without one? I could add slides about the Supreme Court Opinions to our standard presentation

Sent from my iPhone

On Jun 6, 2017, at 2:48 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Thanks, Karen. Yes, I'd be happy to cover this any time between 2-3. It would be great to just see the Agenda when it's finalized, though. Thanks!
>
> Simma Kupchan
> Water Law Office
> US EPA Office of General Counsel
> William Jefferson Clinton Building North Room 7426Q
> (p) 202-564-3105
>
> **From:** Gude, Karen
> **Sent:** Tuesday, June 06, 2017 2:11 PM
> **To:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
> **Subject:** RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
>
> Carrie & Simma,
>
> Thank you for helping to cover this request. The meeting is between 2-3 tomorrow; and AIEO can be flexible on the timing on the agenda. So, if there is a block of time between 2-3 that might work better for you, please just let me know.
>
> Thanks again,
>
> Karen Gude
> Tribal Program Coordinator
> U.S. EPA/Office of Water
> Phone: (202) 564-0831
>
> **From:** Wehling, Carrie
> **Sent:** Tuesday, June 06, 2017 2:08 PM
> **To:** Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> **Cc:** Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
> **Subject:** RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting
>
> Simma – as we discussed. Can you cover this? If not, let me know and I will do it.

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

From: Christensen, Damaris
Sent: Tuesday, June 06, 2017 12:12 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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Thanks!

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Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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From: Gude, Karen
Sent: Monday, June 05, 2017 6:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there

Sent from my iPhone

On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:

Donna,

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Sorry for the last minute ask.

Thanks,
Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere,

Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
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Where: OITA Fishbowl - DCRoomRRB 31207

Call-in **Nonresponsive Conference Code/ Ex. 6**

Agendas will be attached to the meeting invitation as it becomes available.

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 6/6/2017 9:05:33 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Chang, Elle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5a289ad96974b6696d42584ae8a6265-Chang, Elle]; Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Ok, thanks, Rose!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 5:05 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Chang, Elle <chang.elle@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

We do have some written up already from various trainings and ppt. I can send you a version when I get back to the hotel

Sent from my iPhone

On Jun 6, 2017, at 5:02 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Hi,
>
> Elle sent me the note below:
>
> 'There was a powerpoint presentation sent out as part of the WOTUS call. Would it be okay to provide these slides to the NTC or are they internal only? I'll add Simma as the first presenter to begin around 2pm tomorrow.'
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> I assume it's ok for her to send these out? I don't think we need to add slides about the SCOTUS decisions, unless you have slides already written – I can just speak to those orally.
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> Let me know what you think.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Tuesday, June 06, 2017 4:28 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma, do you want a PowerPoint to talk from or will just speak without one? I could add slides about the Supreme Court Opinions to our standard presentation

Sent from my iPhone

On Jun 6, 2017, at 2:48 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

> Thanks, Karen. Yes, I'd be happy to cover this any time between 2-3. It would be great to just see the Agenda when it's finalized, though. Thanks!
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> Simma Kupchan
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> US EPA Office of General Counsel
> William Jefferson Clinton Building North Room 7426Q
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> Tribal Program Coordinator
> U.S. EPA/Office of Water
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Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma – as we discussed. Can you cover this? If not, let me know and I will do it.
Thanks.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
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202-564-5492
wehling.carrie@epa.gov

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Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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Sent: Monday, June 05, 2017 6:48 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

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>> Sorry for the last minute ask.
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>> (202) 564-0831
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Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

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Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

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Call-in: **Nonresponsive Conference Code/ Ex. 6** #

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From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 6/6/2017 9:02:09 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]; Chang, Elle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5a289ad96974b6696d42584ae8a6265-Chang, Elle]
CC: Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

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Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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Sent: 6/6/2017 6:48:35 PM
To: Gude, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e6565e5dd6bd4fdfbcf069c842177e58-Gude, Karen]; Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
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William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Gude, Karen
Sent: Tuesday, June 06, 2017 2:11 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Carrie & Simma,

Thank you for helping to cover this request. The meeting is between 2-3 tomorrow; and AIEO can be flexible on the timing on the agenda. So, if there is a block of time between 2-3 that might work better for you, please just let me know.

Thanks again,

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831

From: Wehling, Carrie
Sent: Tuesday, June 06, 2017 2:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Simma – as we discussed. Can you cover this? If not, let me know and I will do it.
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

From: Christensen, Damaris
Sent: Tuesday, June 06, 2017 12:12 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Hey guys –

See below for a request from the National Tribal Caucus for an update on WOTUS and a discussion of SWANCC and Rapanos. Do you think you could go and give this update? We have a conflict that is important for understanding the effects of 311. If needed we can send you the tribal powerpoint/ our runs of shows for other meetings, which talk about why it's important for tribes.

It would be great if you can let us know ASAP, they are apparently trying to finalize the agenda by 3 pm today. I'm copying Karen and Donna.

Thanks!

Damaris

From: Gude, Karen
Sent: Tuesday, June 06, 2017 12:08 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

---

From: Gude, Karen
Sent: Monday, June 05, 2017 6:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

> There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there

Sent from my iPhone

On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:

Donna,

Hi. Given that Rose is on travel this week, I am reaching out to you. There is a National Tribal Caucus call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)

Sorry for the last minute ask.

Thanks,
Karen
(202) 564-0831

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bject: FW: 2017 NTC Monthly Meeting - ALL
cation: OITA Fishbowl - DCRoomRRB 31207

art: Wed 6/7/2017 2:00 PM
d: Wed 6/7/2017 3:00 PM

currence: Monthly
currence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

eeting Status: Accepted

ganizer: Chang, Elle
quired Attendees: Chang, Elle; EPA HICS; EPA RICS
tional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----
From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM

To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
Subject: 2017 NTC Monthly Meeting - ALL
When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: OITA Fishbowl - DCRoomRRB 31207

Call-in: **Nonresponsive Conference Code/ Ex. 6**

Agendas will be attached to the meeting invitation as it becomes available.

To: Cope, Clayton[cope.clayton@epa.gov]
Cc: Nalven, Heidi[Nalven.Heidi@epa.gov]
From: Kupchan, Simma
Sent: Tue 5/30/2017 7:19:43 PM
Subject: Revised Deliberative Process / Ex. 5 assignment
WOTUS leg history assignment.doc

Clay,

As per our earlier conversation, I have revised the Deliberative Process / Ex. 5 assignment so that it also focuses on case law, agency statements, and analysis. Please let me know if you have questions or concerns; I am happy to discuss any time.

Thanks for your work on this!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

To: Nalven, Heidi[Nalven.Heidi@epa.gov]
Cc: Carrie Wehling[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Tue 5/30/2017 7:18:16 PM
Subject: Revised Deliberative Process / Ex. 5 assignment
WOTUS leg history assignment.doc

Heidi,

Attached is the revised assignment for Clay or Deliberative Process / Ex. 5 now incorporating Carrie's and Karyn's suggestions.

Let me know if you have questions or concerns about it.
Clay was fine with waiting a week or two until we meet next to settle on one 'lead' assignment, and in the meantime will work on both. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/25/2017 4:54:44 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: RE: Latest draft of preamble comments

Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 12:14 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Latest draft of preamble comments

I'm done now. I just noticed that Damaris had made some comments, so I wanted to clean those up.

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:59 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Latest draft of preamble comments

Thanks for flagging. I propose an edit along the lines with Damaris' suggestion below.

Rose, just so I can mention to Steve, so it looks like you are still doing editing cleanup at this point?

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:56 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Latest draft of preamble comments

Hi Simma,

I want to get your thoughts on Damaris' comment on page 11-12 regarding the second sentence in the below. Comment:This sentence seems very repetitive. Can it be deleted? If need be, just add Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:45 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Latest draft of preamble comments

Thanks, Rose. And I think the Deliberative Process / attorney client Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:35 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Latest draft of preamble comments

I believe that Craig did see your comments – I've deleted all of the comments where he simply concurred with Simma or Steve's comments and Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:30 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Latest draft of preamble comments

Steve,

Here is the link to the latest version of the preamble, which I believe Mindy would like to send to politicals later today.

You'll notice that Craig Schmauder's comments (which I think were made without seeing WLO's) are Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Rose, can you let Steve know the extent to which any other edits will be made prior to submission to politicals? Thanks!

Nonresponsive Internal URL/ Ex. 6

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/25/2017 3:58:46 PM
To: Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]
Subject: RE: Latest draft of preamble comments

Thanks for flagging. I propose an edit along the lines with Damaris' suggestion below.

Rose, just so I can mention to Steve, so it looks like you are still doing editing cleanup at this point?

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:56 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Latest draft of preamble comments

Hi Simma,

I want to get your thoughts on Damaris' comment on page 11-12 regarding the second sentence in the below.

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:45 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Latest draft of preamble comments

Thanks, Rose. **Deliberative Process / Ex. 5**

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Thursday, May 25, 2017 11:35 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Latest draft of preamble comments

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:30 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Latest draft of preamble comments

Steve,

Here is the link to the latest version of the preamble, which I believe Mindy would like to send to politicals later today.

Deliberative Process / Ex. 5

Rose, can you let Steve know the extent to which any other edits will be made prior to submission to politicals? Thanks!

Nonresponsive Internal URL/ Ex. 6

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

To: Nalven, Heidi[Nalven.Heidi@epa.gov]
Cc: Carrie Wehling[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Mon 5/22/2017 9:53:03 PM
Subject: Clerk assignment
WOTUS leg history assignment.doc

Hi Heidi,

Still figuring out the additional analytical component for the 311 assignment; it's my top priority for tomorrow. In the meantime, I have another assignment on WOTUS-related leg history that would be super helpful. Let me know if you have questions or concerns about this.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/16/2017 8:14:10 PM
To: Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]
CC: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: RE: New direction on WOTUS

Great. It sounded like Mindy wasn't planning for this to be a significant part of the discussion tomorrow at 10, as she got the sense Sarah preferred to discuss this in a smaller setting. Mindy, I believe, was just going to say that "we're working on it." We might need to speak up if we think it's worth discussing further with her at this point. Otherwise, I'm sure it will be part of the 11 o'clock discussion.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Neugeboren, Steven
Sent: Tuesday, May 16, 2017 4:09 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: New direction on WOTUS

Thanks. Let's put on reg agenda. I will give a heads up to david in my weekly today. Apologies again about today. I guess we'll discuss more tomorrow at 10.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Kupchan, Simma
Sent: Tuesday, May 16, 2017 3:58 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: New direction on WOTUS

Attorney-client privileged; Attorney work product

Hi Steve,

Deliberative Process / attorney client/ attorney work product Ex. 5

Deliberative Process / attorney client/ attorney work product Ex. 5

Please let me know if you have any questions or would like to discuss further. Carrie and Karyn, chime in if you have further thoughts. Thanks for your attention.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/16/2017 7:58:13 PM
To: Steven Neugeboren [Neugeboren.Steven@epa.gov]
CC: Carrie Wehling [Wehling.Carrie@epa.gov]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: New direction on WOTUS

Attorney-client privileged; Attorney work product

Hi Steve,

Deliberative Process / attorney client/ attorney work product Ex. 5

Please let me know if you have any questions or would like to discuss further. Carrie and Karyn, chime in if you have further thoughts. Thanks for your attention.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Kupchan, Simma
Sent: Tue 5/16/2017 3:35:27 PM
Subject: RE: fyi re OMB review of WOTUS2

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Tuesday, May 16, 2017 11:33 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: fyi re OMB review of WOTUS2

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

From: Kupchan, Simma
Sent: Tuesday, May 16, 2017 11:32 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: fyi re OMB review of WOTUS2

And this one is interesting, too:

CLEAN WATER RULE
Will Scalia's dictionary haunt Trump's WOTUS overhaul?
Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second.* Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition.*

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent surface waters and wetlands connected to larger water bodies.

Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.

But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,

Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary*. That volume was the most recent edition when Congress wrote and passed the landmark water law.

It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."

The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."

But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."

Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.

Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.

Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.

"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"

Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.

"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

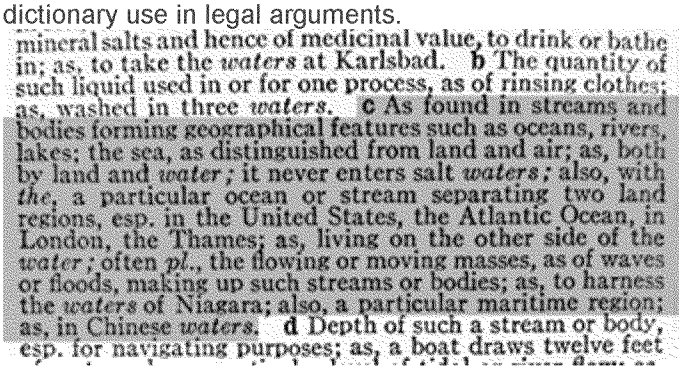
'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.

An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."

And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.

He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.



mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water;* it never enters salt *waters;* also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water;* often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+] How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."
Scalia was not alone in criticizing the dictionary.
The New York Times and Associated Press both shunned the volume when it debuted in 1961.
Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.
The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.
"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."
The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes : WATERING PLACE **2** : a particular quantity or mass of water: as **a** : a portion of water to drink ⟨brought her ~ in a silver cup⟩ **b** (1) **waters** *pl* : the water occupying or flowing in a particular bed ⟨the limpid ~*s* of a mountain brook⟩ (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER; *also* : land abutting a stream : the bank of a stream **c** : a portion of water for a particular use — usu. used in pl. ⟨wash the greens in three ~*s*⟩ **d** : a quantity or depth of water adequate for

[+] "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.
Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.
That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.
Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.
"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."
In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.
"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third.*
For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.
More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.
Chief among those is the fact that the administration is breaking precedent by relying on Scalia's opinion in *Rapanos*. Justice Anthony Kennedy's stand-alone opinion in that case has long been considered the ruling one by both circuit courts and the George W. Bush and Obama administrations.
Kennedy wrote that wetlands and small waterways fall under federal jurisdiction if they have a "significant nexus" to an actual navigable waterway, meaning there must be a surface, chemical or biological connection.
Environmental groups challenging a Trump regulation are far more likely to seize upon the Trump administration's break from precedent than Scalia's dictionary choice, said Larry Liebesman, a senior adviser with Dawson & Associates, a Washington lobby shop and consulting firm that specializes in water resources.
"No court has said that the holding of the court is Scalia's opinion and Scalia alone," he said.
Harvard Law School professor Richard Lazarus agrees, saying arguing about Webster's dictionaries "is probably not a viable argument" as long as Kennedy remains on the bench.
But dictionary definitions of "waters" could once again become significant if Kennedy leaves the court during the Trump administration, Lazarus said.
The Trump administration would likely replace the court's usual swing vote with a student of Scalia's "textualism."
"The question then would be if they admire Scalia's use of dictionaries, do they use the same one he did?" Lazarus said.
It's not yet clear whether Justice Neil Gorsuch, who replaced Scalia last month, also favors *Webster's Second.*
But John Calhoun, an attorney at Choate Hall & Stewart who has written about Scalia's dictionary use for the *Yale Law Journal*, notes there is still hope for the newer volume: "Samuel Alito often uses *Webster's Third.*"
"He's often considered Scalia's mini-me, but in this one instance he is not," Calhoun said.
And Sokolowski, at Merriam-Webster, notes there is just one more twist to the question of which Webster's dictionary best defines congressional intent circa 1972: The dictionary divide is often a generational one.
So, while *Webster's Third* may have been the most recent volume when Congress passed the Clean Water Act, it's possible that lawmakers would have favored *Webster's Second*.
"Congress is full of older men, so it would hardly be surprising," he said.

Simma Kupchan
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US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Tuesday, May 16, 2017 11:26 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: fyi re OMB review of WOTUS2

Greens to meet with White House on WOTUS

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

The White House Office of Information and Regulatory Affairs has meetings scheduled with environmentalists this week on the Clean Water Rule. Photo by Corbin Hiar.

White House officials will meet with environmental groups this week and next to hear arguments for keeping the contentious Clean Water Rule in place.

Three environmental organizations have requested meetings with the White House Office of Information and Regulatory Affairs, which is currently reviewing a proposal from U.S. EPA and Army Corps of Engineers to rescind the Obama-era regulation that clarifies the reach of the Clean Water Act over small waterways and wetlands.

The Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule, has drawn fire from farmers, land developers and energy companies who say it amounts to government overreach.

Though WOTUS has been stayed by the 6th U.S. Circuit Court of Appeals, the Trump administration has made repealing and replacing the regulation a priority.

Environmental groups, however, have celebrated the regulation as providing critical protection to smaller waterways, which in turn protects larger ones.

OIRA officials will meet with the Natural Resources Defense Council on Wednesday, followed by the Theodore Roosevelt Conservation Partnership on Thursday and the Alliance of Nurses for Healthy Environments on May 25.

"Clean water is vital to human health, it is an essential part of it and making sure the administration realizes that health care providers think this is a vital regulation is key," said Katie Huffling, executive director of the Alliance of Nurses for Healthy Environments. "These regulations have significant positive impacts on public health, and there is a cost savings from that."

Text of the proposed regulation being reviewed by OIRA has not been released.

But EPA and Army Corps officials have said they will revert back to a 1986 regulation and 2008 guidance to define "waters of the United States" covered by the Clean Water Act while the agencies work on a new definition for the Trump administration.

Huffling said she does not expect to learn any additional details during her meeting but will present the case for keeping WOTUS in place.

"We feel like this current administration hasn't been taking the health benefits of these regulations into account, and so making sure they hear our message is really important," she said.

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Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/16/2017 3:34:48 PM
To: Auerbach, Daniel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fbf9f26debb41c281370e36dda6f213-Auerbach, D]
CC: Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
Subject: FW: Water Law News for May 16, 2017

Looks like t Deliberative Process / Ex. 5

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Sent: Tuesday, May 16, 2017 10:43 AM
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Subject: Water Law News for May 16, 2017

Water Law News for May 16, 2017

Bloomberg BNA Daily Environment Report™

News

Enforcement

Trump's EPA Enforcement Chief Pick Brings Long Experience

Susan Parker Bodine would be a tough and experienced new enforcement chief at the EPA, attorneys who worked with her told Bloomberg BNA.

Regulatory Policy

Senate Committee Likely to OK Six Regulatory Process Bills

Six bills that would alter in ways large and small the regulatory process are set to be marked up May 17 by the Senate Homeland Security and Governmental Affairs Committee, and all are expected to be approved.

Hill Watch

Hill Watch: Coal Mining

Hill Watch: Science Policy

Hill Watch: Water Pollution

Regulatory Agenda

TODAY'S FEDERAL REGISTER

NOTICE. Daily Environment Report's Regulatory Agenda, Comment Deadlines, and Federal Register summaries are now published as part of EHS Federal Regulatory AlertTM http://news.bna.com/frmn/.

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TRUMP'S EPA: Agency at a crossroads -- Complete coverage

Inside EPA's **Risk Policy Report**, 05/16/2017
https://insideepa.com/newsletters/risk-policy-report

Clean Water Act Jurisdiction Watch
http://insideepa.com/specials/clean-water-act-jurisdiction

Latest News

Environmentalists Reject EPA Defense Of Montana Nutrients Criteria Waiver

Environmentalists challenging EPA's approval of a novel waiver to Montana's numeric nutrient water quality criteria are rebutting the agency's defense of its actions by pointing to the plain language of the Clean Water Act (CWA) and a 2008 district court ruling involving similar criteria in Florida that they say undermines the waiver.

Utilities Invoke 2016 Ash Law In Call For EPA To Reconsider Disposal Rule

The utility sector is calling on EPA to reconsider its first-time rule governing coal ash disposal by saying a 2016 law that overhauled enforcement of the policy justifies reconsidering many of its technical mandates, but environmentalists counter that such changes would contradict Congress' decision to leave the rule's substantive provisions in place.

Peer Review Report Questions Perchlorate Model's Fitness For EPA Policy

The final report by a panel of experts who reviewed a federal model intended to help EPA set a drinking water standard for the rocket fuel ingredient perchlorate questions the model's ability to perform its purpose, and by its extension EPA's ability to meet court-ordered deadlines for the drinking water level.

Daily Feed

Court weighs stay on CWA jurisdiction case to await 9th Circuit ruling

A stay in the California district court case could set a marker for other suits and give the Trump administration time to finish its CWA jurisdiction rule before having to litigate pending enforcement actions.

Quoted: Comments target scores of EPA rules

Excerpts from some of the comments industry and others filed ahead of the May 15 deadline urging the agency to review existing rules for repeal, replacement or modification.

Duke Energy files suit over threatened CWA coal ash litigation

The power company is suing ahead of a deadline for environmentalists to file a Clean Water Act case over its groundwater contamination.

GREENWIRE

CLEAN WATER RULE

Will Scalia's dictionary haunt Trump's WOTUS overhaul?

Ariel Wittenberg, E&E News reporter

Published: Monday, May 15, 2017

[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second*. Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition*.

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent surface waters and wetlands connected to larger water bodies.

Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.

But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,

Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary*. That volume was the most recent edition when Congress wrote and passed the landmark water law.

It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."

The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."

But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."

Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.

Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.

Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.

"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"

Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.

"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

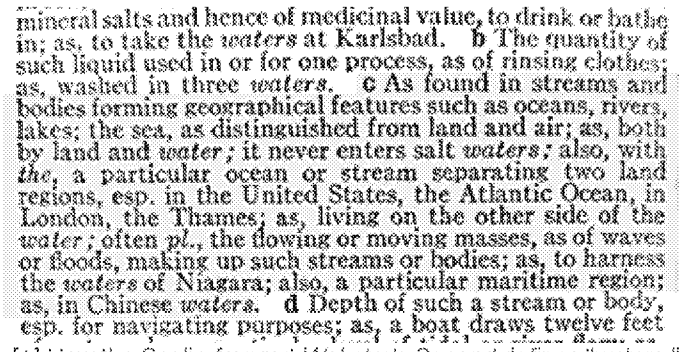
'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.

An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."

And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.

He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.


mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water*; it never enters salt *waters*; also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water*; often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+] How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."

Scalia was not alone in criticizing the dictionary.

The New York Times and Associated Press both shunned the volume when it debuted in 1961.

Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.

The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.

"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."

The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes ; WATERING PLACE 2 : a particular quantity or mass of water: as a : a portion of water to drink ⟨brought her ~ in a silver cup⟩ b (1) **waters** *pl* : the water occupying or flowing in a particular bed ⟨the limpid ~*s* of a mountain brook⟩ (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER; *also* : land abutting a stream : the bank of a stream c : a portion of water for a particular use — usu. used in pl. ⟨wash the greens in three ~*s*⟩ d : a quantity or depth of water adequate for

[+] "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.

Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.

That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.

Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.

"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."

In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.

"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third*.

For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.

More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.

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CLEAN WATER RULE

Greens to meet with White House on WOTUS

Ariel Wittenberg, E&E News reporter

Published: Monday, May 15, 2017

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Text of the proposed regulation being reviewed by OIRA has not been released.

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COAL

Export terminal review miscalculated cancer risk — railway

Published: Monday, May 15, 2017

BNSF Railway has appealed an environmental review of a Washington state coal export terminal that it says miscalculated and overstated the cancer risk among residents.

The facility would be built by Millennium Bulk Terminals-Longview LLC along the Columbia River near the city of Longview. It would handle up to 44 million tons of coal each year.

Diesel particulate emissions would result in "an unavoidable increase" in the cancer risk rate of residents in a nearby neighborhood, the environmental study from the state Department of Ecology and Cowlitz County found.

"There is no basis to say that. So it's concerning for us to have that out there in the public domain," said BNSF spokeswoman Courtney Wallace.

The report will be used to decide on over 20 permits the coal terminal needs before it can be built.

A spokeswoman for the Department of Ecology said the study was meant to evaluate the terminal's potential impact to the local community and was not intended to be a statewide report (AP/*Billings Gazette*, May 14). **— CS**

COAL ASH

Group petitions EPA to amend dumping rule

Sean Reilly, E&E News reporter

Published: Monday, May 15, 2017

A utility industry trade group is asking U.S. EPA to administratively reconsider key elements of its coal ash disposal regulations published in 2015, a move that drew quick condemnation from environmental groups.

The Utility Solid Waste Activities Group (USWAG) believes changes proposed in a reconsideration petition filed Friday "will result in a more practical and workable, yet equally protective regulatory program" for coal ash disposal, Executive Director Jim Roewer said in an accompanying cover letter to EPA Administrator Scott Pruitt.

The organization is requesting the changes both because of the Trump administration's executive orders on regulatory reform, as well as legislation signed into law in December that gives states the authority to create their own permitting programs, the petition says. It is also seeking an extension of upcoming compliance deadlines.

The Edison Electric Institute, which represents investor-owned utilities, released both the letter and a copy of the petition.

In a news release, Earthjustice and a half-dozen environmental groups said the power industry is seeking to do away with most of the regulations' safeguards for handling the waste produced by coal-fired power plants.

"If anything, EPA needs to strengthen coal ash safeguards, not weaken them," Pete Harrison, an attorney for the Waterkeeper Alliance, said in the release.

Industry and environmental groups sued EPA in the U.S. Court of Appeals for the District of Columbia Circuit over rule provisions. Now USWAG is asking EPA to ask judges to put off the litigation pending the agency's ruling on this petition.

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Tue., May 16, 2017

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Dakota coal industry digs in as wind power sweeps the state

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4. EPA:
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Report forecasts significant climate shifts for Ohio River Basin

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ENERGYWIRE — Tue., May 16, 2017

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Suniva Inc. has asked the Trump administration to slap big tariffs on foreign solar products, claiming that its own goods are 80 percent American-made. But it appears the company has done tens of millions of dollars of business with the very nations it wants to keep out.

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Both sides claw for advantage in fight over case's future

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U.S. dodges brunt of ransomware pandemic — so far

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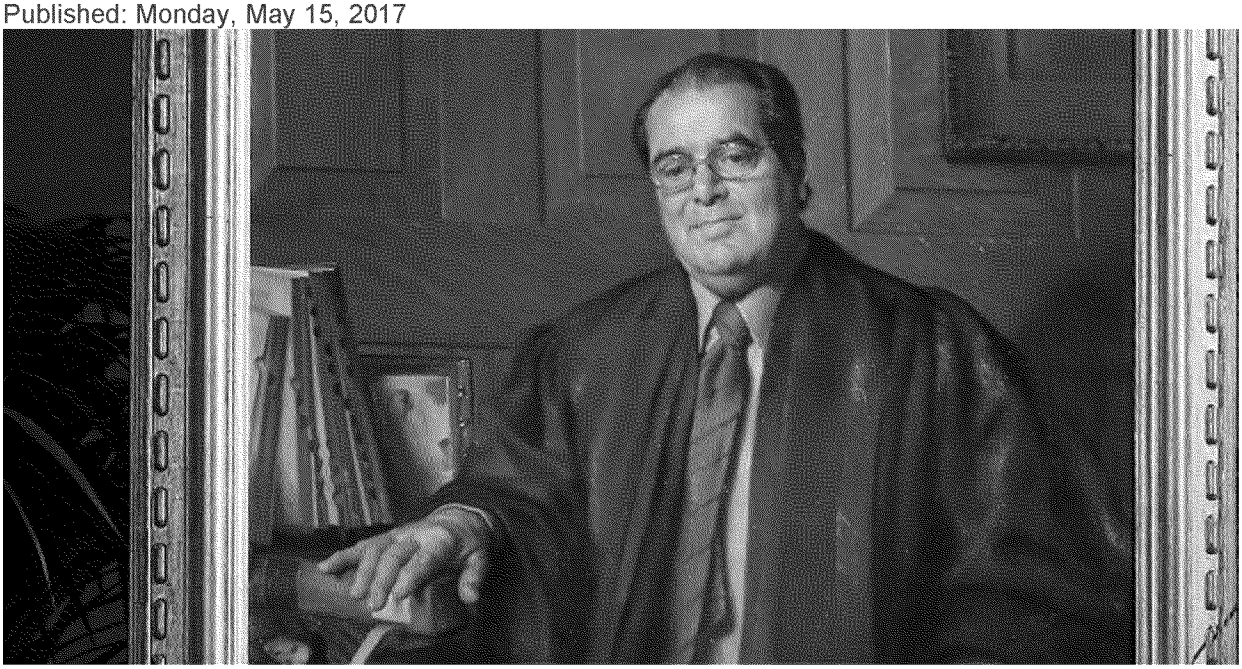
To: Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Kupchan, Simma
Sent: Tue 5/16/2017 3:31:43 PM
Subject: RE: fyi re OMB review of WOTUS2

And this one is interesting, too:

CLEAN WATER RULE
Will Scalia's dictionary haunt Trump's WOTUS overhaul?

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017



[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second.* Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition.*

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent surface waters and wetlands connected to larger water bodies.

Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.

But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,

Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary.* That volume was the most recent edition when Congress wrote and passed the landmark water law.

It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."

The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."

But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."

Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.

Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.

Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.

"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"

Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.

"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.

An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."

And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.

He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.

mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water*; it never enters salt *waters*; also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water*; often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+] How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."

Scalia was not alone in criticizing the dictionary.

The New York Times and Associated Press both shunned the volume when it debuted in 1961.

Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.

The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.

"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."

The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes : WATERING PLACE **2** : a particular quantity or mass of water: as **a** : a portion of water to drink ⟨brought her ~ in a silver cup⟩ **b** (1) **waters** *pl* : the water occupying or flowing in a particular bed ⟨the limpid ~*s* of a mountain brook⟩ (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER; *also* : land abutting a stream : the bank of a stream **c** : a portion of water for a particular use — usu. used in pl. ⟨wash the greens in three ~*s*⟩ **d** : a quantity or depth of water adequate for

[+] "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.

Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.

That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.

Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.

"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."

In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.

"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third*.

For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.

More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.

Chief among those is the fact that the administration is breaking precedent by relying on Scalia's opinion in *Rapanos*. Justice Anthony Kennedy's stand-alone opinion in that case has long been considered the ruling one by both circuit courts and the George W. Bush and Obama administrations.

Kennedy wrote that wetlands and small waterways fall under federal jurisdiction if they have a "significant nexus" to an actual navigable waterway, meaning there must be a surface, chemical or biological connection.

Environmental groups challenging a Trump regulation are far more likely to seize upon the Trump administration's break from precedent than Scalia's dictionary choice, said Larry Liebesman, a senior adviser with Dawson & Associates, a Washington lobby shop and consulting firm that specializes in water resources.

"No court has said that the holding of the court is Scalia's opinion and Scalia alone," he said.

Harvard Law School professor Richard Lazarus agrees, saying arguing about Webster's dictionaries "is probably not a viable argument" as long as Kennedy remains on the bench.
But dictionary definitions of "waters" could once again become significant if Kennedy leaves the court during the Trump administration, Lazarus said.
The Trump administration would likely replace the court's usual swing vote with a student of Scalia's "textualism."
"The question then would be if they admire Scalia's use of dictionaries, do they use the same one he did?" Lazarus said.
It's not yet clear whether Justice Neil Gorsuch, who replaced Scalia last month, also favors *Webster's Second.*
But John Calhoun, an attorney at Choate Hall & Stewart who has written about Scalia's dictionary use for the *Yale Law Journal*, notes there is still hope for the newer volume: "Samuel Alito often uses *Webster's Third.*"
"He's often considered Scalia's mini-me, but in this one instance he is not," Calhoun said.
And Sokolowski, at Merriam-Webster, notes there is just one more twist to the question of which Webster's dictionary best defines congressional intent circa 1972: The dictionary divide is often a generational one.
So, while *Webster's Third* may have been the most recent volume when Congress passed the Clean Water Act, it's possible that lawmakers would have favored *Webster's Second*.
"Congress is full of older men, so it would hardly be surprising," he said.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Wehling, Carrie
Sent: Tuesday, May 16, 2017 11:26 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: fyi re OMB review of WOTUS2

Greens to meet with White House on WOTUS

Ariel Wittenberg, E&E News reporter
Published: Monday, May 15, 2017

The White House Office of Information and Regulatory Affairs has meetings scheduled with environmentalists this week on the Clean Water Rule. Photo by Corbin Hiar.

White House officials will meet with environmental groups this week and next to hear arguments for keeping the contentious Clean Water Rule in place.
Three environmental organizations have requested meetings with the White House Office of Information and Regulatory Affairs, which is currently reviewing a proposal from U.S. EPA and Army Corps of Engineers to rescind the Obama-era regulation that clarifies the reach of the Clean Water Act over small waterways and wetlands.
The Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule, has drawn fire from farmers, land developers and energy companies who say it amounts to government overreach.
Though WOTUS has been stayed by the 6th U.S. Circuit Court of Appeals, the Trump administration has made repealing and replacing the regulation a priority.

Environmental groups, however, have celebrated the regulation as providing critical protection to smaller waterways, which in turn protects larger ones.
OIRA officials will meet with the Natural Resources Defense Council on Wednesday, followed by the Theodore Roosevelt Conservation Partnership on Thursday and the Alliance of Nurses for Healthy Environments on May 25.
"Clean water is vital to human health, it is an essential part of it and making sure the administration realizes that health care providers think this is a vital regulation is key," said Katie Huffling, executive director of the Alliance of Nurses for Healthy Environments. "These regulations have significant positive impacts on public health, and there is a cost savings from that."
Text of the proposed regulation being reviewed by OIRA has not been released.
But EPA and Army Corps officials have said they will revert back to a 1986 regulation and 2008 guidance to define "waters of the United States" covered by the Clean Water Act while the agencies work on a new definition for the Trump administration.
Huffling said she does not expect to learn any additional details during her meeting but will present the case for keeping WOTUS in place.
"We feel like this current administration hasn't been taking the health benefits of these regulations into account, and so making sure they hear our message is really important," she said.

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To: Bennett, Brittany[bennett.brittany@epa.gov]
From: Kupchan, Simma
Sent: Mon 5/15/2017 9:24:58 PM
Subject: FW: New WOTUS website is live
2017-05-15 Final WOTUS Website Release.docx

Congratulations!

Simma Kupchan
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US EPA Office of General Counsel
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From: Eisenberg, Mindy
Sent: Monday, May 15, 2017 5:06 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schnare, David <schnare.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Donald.e.jackson@usace.army.mil
Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Lamont, Douglas W SES (US) <douglas.w.lamont2.civ@mail.mil>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al <McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Kwok, Rose <Kwok.Rose@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>; 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>; EPA Wetlands Managers <EPA_Wetlands_Managers@epa.gov>; Allnutt, David <Allnutt.David@epa.gov>; Shaw, Hanh <Shaw.Hanh@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>
Subject: New WOTUS website is live

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

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Mon 5/15/2017 7:00:24 PM
Subject: Agenda for tomorrow -- RE: WOTUS weekly
5.16.17 WOTUS Meeting Agenda.docx

Attached is a summary of what we can discuss at tomorrow's WOTUS weekly.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

-----Original Appointment-----
From: Neugeboren, Steven
Sent: Friday, May 12, 2017 2:05 PM
To: Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; Wendelowski, Karyn
Subject: WOTUS weekly
When: Tuesday, May 16, 2017 2:30 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where:

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/9/2017 8:10:35 PM
To: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]

Subject: WOTUS rule record
Attachments: 17-000-6900.pdf
Location: carrie's office

Start: 5/10/2017 5:45:00 PM
End: 5/10/2017 6:00:00 PM
Show Time As: Tentative

Carrie,

We wanted to follow up with you very briefly on Deliberative Process /attorney work product Ex. 5

Deliberative Process /attorney work product Ex. 5

Thanks,
Simma

To: Kwok, Rose[Kwok.Rose@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Tue 5/9/2017 7:25:53 PM
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
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From: Kwok, Rose
Sent: Tuesday, May 09, 2017 3:12 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 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>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [mailto:milbourn.cathy@epa.gov]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

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

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/8/2017 3:28:55 PM
To: Muellerleile, Caryn [Muellerleile.Caryn@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]
CC: Downing, Donna [Downing.Donna@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: CWR Correction Memo_final_SEC.docx

Thanks, Caryn.

Deliberative Process / Ex. 5

Please let me know if you need more than this. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Muellerleile, Caryn
Sent: Monday, May 08, 2017 9:30 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Again, I know this is tedious work, but the only way for us to move ahead to get this corrected is to have these two documents ready to go with the highlighted errors:

***
So the way to resolve is that you need to review the amendatory instruction(s) within https://www.gpo.gov/fdsys/pkg/FR-2015-06-29/pdf/2015-13435.pdf, and compare to the result that is codified in https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27.pdf.

If **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Friday, May 05, 2017 11:08 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn

<wendelowski.karyn@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: Re: CWR Correction Memo_final_SEC.docx

Thanks, Sandy. It's my opinion that Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 If others have a different opinion, it would be great to discuss that further

Sent from my iPhone

On May 5, 2017, at 11:04 AM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

Rose/Donna: I know that you all have too much work so this is a friendly reminder not to forget about this....

Sandy

From: Evalenko, Sandy
Sent: Friday, April 28, 2017 8:53 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FYI: CWR Correction Memo_final_SEC.docx

Rose/Donna/Caryn: I found the CWR Corrections memo which includes the revisions we made to the final rule. The directions to revise the reg text for 232 starts on page 259 of the first attachment.
I printed the first part below...

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

15. The authority citation for part 230 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et.seq.*

16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

****

From: Kwok, Rose
Sent: Thursday, April 27, 2017 5:27 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Weird thing with 40 CFR 232.2
Importance: High

Sandy and Caryn,

Simma noticed today that that Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

From: Kwok, Rose
Sent: Friday, June 19, 2015 11:39 AM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Fields, Wanda <Fields.Wanda@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Folks,

I've attached the latest copies of the correction memo (with Ken's edits) and the attachment with the corrected FRN. I've left it with Crystal, and Ken said he would sign it when he is back from his meeting. I'll then pick it up and drop it off to Karyn.

Thanks everyone,
Rose

From: Klasen, Matthew
Sent: Thursday, June 18, 2015 2:02 PM
To: Kwok, Rose; Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi folks – this all sounds good to me, and I'll be here to facilitate signature tomorrow.

I was filling in for one of the other special assistants here when the technical correction memo was signed on the coal ash rule, so I've (fortunately or unfortunately?) seen one of these before.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Special Assistant, Office of the Administrator
WJC North 3313
202-566-0780
cell Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Thursday, June 18, 2015 1:52 PM
To: Muellerleile, Caryn; Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Great, thanks, Caryn!

From: Muellerleile, Caryn
Sent: Thursday, June 18, 2015 1:50 PM
To: Evalenko, Sandy; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: RE: CWR Correction Memo_final_SEC.docx

Bring to my desk (WJC North 3521G) after OGC signs and we will get OP's signature and after that deliver it to Matt.

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Evalenko, Sandy
Sent: Thursday, June 18, 2015 1:41 PM
To: Muellerleile, Caryn; Cooperstein, Sharon; Klasen, Matthew
Cc: Fields, Wanda; Kwok, Rose; Nelson, Tomeka; Santell, Stephanie; Lousberg, Macara; Ruf, Christine
Subject: CWR Correction Memo_final_SEC.docx
Importance: High

The package is with Crystal Penman for Ken Kopocis signature. Once he signs Rose will walk the package to Karyn W. for OGC's signature.

OP -- Who should the package go to for Joel Beauvais' signature? Then the memo needs the AO's signature. How do you all handle the AO signature? I've copied Matt Klasen since he is our SA on the AO staff.

Matt: I'm wondering if you're the best person to obtain the Administrator's signature on the memo. If so, OP will need to alter you when the package is ready.

Sandy

From: Kwok, Rose
Sent: Thursday, June 18, 2015 12:19 PM
To: Evalenko, Sandy
Cc: Lousberg, Macara; Ruf, Christine; Bethel, Heidi
Subject: RE: CWR Correction Memo_final_SEC.docx

Hi Sandy,

I have the updated correction memo attached and an updated attachment. I am happy to print and bring over. I'll give you a call.

Thanks,
Rose

Message

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/16/2017 7:58:13 PM
To: Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]
CC: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: New direction on WOTUS

Attorney-client privileged; Attorney work product

Hi Steve,

Deliberative Process / attorney client/ attorney work product Ex. 5

Please let me know if you have any questions or would like to discuss further. Carrie and Karyn, chime in if you have further thoughts. Thanks for your attention.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Sent: 5/10/2017 1:23:20 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: Re: CWR litigation - briefing for .... [somebody]
Attachments: CWR 509 Issue briefing paper.docx

Don't know if you heard any more about this but here's a draft background paper (may be Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Wehling, Carrie
Sent: Tuesday, May 9, 2017 12:00 PM
To: Neugeboren, Steven
Cc: Wendelowski, Karyn
Subject: FW: CWR litigation - briefing for .... [somebody]

This is the last I heard on this. Can you followup with David on this when you meet with him today?
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

From: Wehling, Carrie
Sent: Wednesday, May 03, 2017 3:51 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: CWR litigation - briefing for .... [somebody]

Don't know if you were at the WLO weekly – this came up at the very end. Although we don't have the SG brief, we know what the argument is/will be Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Does that sound reasonable?

Copying the rest of the team, plus MEL re 509.

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: Simma Kupchan[Kupchan.Simma@epa.gov]; Carrie Wehling[Wehling.Carrie@epa.gov]; Karyn Wendelowski[wendelowski.karyn@epa.gov]
From: Neugeboren, Steven
Sent: Thur 6/1/2017 3:49:44 PM
Subject: FW: WOTUS rewrite to align with Scalia opinion, seek feedback from Colorado; PLF uses Congressional Review Act to challenge illegally enforced wetlands guidance

FYI

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

-----Original Message-----
From: Schmauder, Craig R SES (US) [mailto:craig.r.schmauder.civ@mail.mil]
Sent: Thursday, June 01, 2017 10:29 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: WOTUS rewrite to align with Scalia opinion, seek feedback from Colorado; PLF uses Congressional Review Act to challenge illegally enforced wetlands guidance

FYI

****

https://www.coloradostatesman.com/wotus-rewrite-align-scalia-opinion-seek-feedback-colorado/
The Colorado Statesman - Denver, CO - 5/31/17

By Adam McCoy

Federal environmental regulators are seeking "input and wisdom" from Colorado as they begin the process of rewriting a Barack Obama-era water protection rule known as WOTUS, which the White House says it now wants aligned with a Supreme Court opinion on water rights from the late Justice Antonin Scalia.

The U.S. Environmental Protection Agency under Scott Pruitt and the Army Corps of Engineers wrote a letter earlier this month to Colorado asking for written feedback on the state's "experiences and expertise" as the agencies work to redefine the Waters of the U.S. Rule (WOTUS).

WOTUS, also known as the Clean Water Rule, defines the jurisdiction of the EPA over waterways and wetlands "to restore and maintain the chemical, physical, and biological integrity of waters of the United States."

The rule is the EPA's interpretation, under the Obama administration, of the the Clean Water Act of 1972, which aimed to curtail pollutants in water. Under WOTUS, the EPA expanded what falls into the category of a federally regulated body of water. The rule previously stated only waterways that could be navigable by ships for interstate commerce were to be federally regulated, according to a Congressional Research Service analysis.

Environmentalists have praised the rule, but it has also come under fire by farmers and ranchers who label the rule federal overreach. Colorado joined a lawsuit in 2015 that called WOTUS "unreasonable federal overreach." A total of 16 states sought legal action against the rule.

A Feb. 28 executive order signed by President Donald Trump directed the EPA and Army Corps to

review the rule and ensure it prioritizes 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 States under the Constitution."

Now, after years of remaining in judicial limbo with court-ordered delays, the Trump administration looks to revise WOTUS.

State preparing comment

The governor's office said in a statement to The Colorado Statesman, it is in the process of developing comments in reply to the EPA.

"It is important to Colorado that a revised rule provide clarity so that projects are able to proceed efficiently, and that the rule be legally defensible," spokesperson Jacque Montgomery said. "It is also important that the rule protect the headwaters of Colorado and retain the agricultural exemptions."

U.S. Rep. Scott Tipton, R-CO3, has voiced support for the WOTUS redefining effort, urging Hickenlooper and Colorado Attorney General Cynthia Coffman to weigh in with feedback.

"We all want access to clean and reliable water supplies. This is why the Clean Water Act was signed into law in 1948 and expanded in 1972," Tipton said in a statement. "What we don't want is for unelected bureaucrats to legislate through rulemaking. This is what the EPA did with WOTUS, and Colorado responded by joining several other Western States in a lawsuit against the rule."

Coffman's office said it has not received any correspondence from the EPA or the Army Corps of Engineers.

The Scalia opinion

The letter to state officials across the country said the order will be enacted in two steps including re-codifying the Clean Water Act before WOTUS, and writing a replacement act that aligns with an opinion written by Justice Scalia in a legal challenge.

That refers to an opinion coming out of a dispute between a Michigan farmer and the EPA over development on a wetland. It was heard by the U.S. Supreme Court in 2006 and the case questioned whether the EPA has jurisdiction over bodies "that do not even have a navigable water," according to the Congressional Research Service.

In a plurality opinion written by Scalia, the justice argued the word "waters" in "waters of the United States" refers to "relatively permanent, standing or continuously flowing bodies of water." Scalia was pointing to streams, rivers and lakes and wetlands that have a "continuous surface connection," the research service wrote.

The nation's highest court was expected to provide clarity on the EPA's jurisdiction, but instead couldn't come to a consensus on a standard.

Impact in Colorado

The Army Corps of Engineers and EPA face the challenge of how to combine the best watershed science into an effort to define federal jurisdiction that provides clarity to regulators and those facing regulations, said Reagan Waskom, director of the Colorado Water Institute.

"As scientists, we see that everything in the watershed is connected at some level, so the challenge is defining what is 'significant' in the significant nexus," he said, referring to a different Supreme Court opinion from Justice Anthony Kennedy that argued the Army Corps should judge on a case-by-case basis whether a body of water has "significant nexus," or significant impact, on a navigable water.

"We also view the landscape as highly heterogeneous and see case-by-case evaluation as the most likely approach to get it right (from a scientific point of view)," Waskom said.

He said the Scalia approach overlooks the science and "may have trouble withstanding court challenges from citizen-initiated lawsuits."

Waskom said farmers and developers deserve regulatory certainty, and know the rules when it comes to managing their land and development projects, but there won't be much impact on Colorado agriculture.

"Here in Colorado, I think agriculture would generally have been in the same position as before with the Clean Water Rule as promulgated as we do not have any of the five categories of 'isolated waters' called out for expanded jurisdiction," he said.

Government overreach versus water conservation

Farmers and ranchers have been vocal opponents of WOTUS, arguing the rule is ambiguous and its broad reach is unlawful.

Colorado Farm Bureau Executive Vice President Chad Vorthmann said his organization's members will again ask the EPA to "ditch the rule" in favor of clear, objective rule defining where the federal authority begins and ends for bodies of water.

"We hope a new rule will provide specific limits on federal jurisdiction, especially to features that are ordinarily dry like many in Colorado now regulated by EPA," Vorthmann said. "By working more cooperatively with state authorities, EPA can provide regulatory certainty to farmers and other stakeholders while allowing the flexibility necessary to achieve the goals of the Clean Water Act."

But Garrett Garner-Wells, director of state conservationist group Environment Colorado, has little faith in the EPA and Trump administration in rewriting the rule. He said to see water protections undone would be devastating.

"For more than two-thirds of Coloradans, the Clean Water Rule is a vital drinking water protection and a bulwark against pollution," Garner-Wells said. "The Clean Water rule protects more than 73,000 miles of our rivers and streams, and repealing the rule is an assault on Colorado's residents, environment, and commonsense values."

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https://blog.pacificlegal.org/plf-uses-congressional-review-act-challenge-illegally-enforced-wetlands-guidance/

By Tony Francois

Last Friday, we filed a motion in federal court in the Duarte Nursery case, asking the judge to exclude evidence based on the 2008 Post-Rapanos Guidance because it was never submitted to Congress for review under the Congressional Review Act and is therefore, under that Act, not in effect and unenforceable.

Followers of PLF's Red Tape Rollback project will be familiar with the basic concept. Under the Congressional Review Act, federal agencies are required to submit each of their rules, along with a report, to each House of Congress and the Comptroller General. Rules cannot take effect before they have been so submitted. Once a rule is submitted, Congress has a period of time in which it can use expedited procedures to disapprove the rule. If the president signs a joint resolution of disapproval, then the rule can not take effect and the agency is permanently barred from adopting a substantially similar one absent statutory approval.

In the Duarte Nursery case, the government is claiming that a series of small and isolated vernal pools and swales on the company's property are federally protected wetlands. But they are not navigable in any sense, nor do they meet the only test that the Supreme Court has approved for federal regulation of non-navigable wetlands (i.e. they are not directly abutting navigable waters in a way that you cannot tell where one ends and the other begins).

So how can the United States claim that small, isolated, and seasonal pools are really federal navigable waters? Enter the Army Corps' 2008 Rapanos Guidance. In 2006, the Supreme Court, in a case litigated by PLF, ruled against the EPA's assertion of jurisdiction over wetlands on John Rapanos' property, because they were too tenuously connected to any actually navigable waters. The EPA and Army Corps of Engineers then issued a guidance document in 2008 that purports to interpret and implement the Supreme Court's decision in Rapanos, although it stretches that decision beyond the breaking point to continue the agencies expansive view of how much of your land they can call their water.

This is the guidance document under which the United States claims that damp spots on Duarte Nursery's land are the federal navigable waters. But here's the rub: because the Rapanos Guidance was never submitted to Congress under the Review Act, it is not legally in effect.

As my PLF colleague Jonathan Wood explains in this Daily Caller op ed, the Rapanos Guidance is not only an invalid effort to expand federal authority beyond limits set by the Supreme Court. It is also a rule that the Congressional Review Act required the agencies to submit to Congress before it can take effect. And since it was not submitted, it is not in effect and cannot be relied on for enforcement or court proceedings.

****

Respectfully -- Craig
Craig R. Schmauder, SES
Deputy General Counsel
Installations, Environment & Civil Works
(703) 695-2253
NOTICE: This message may contain information protected by the attorney-client, attorney work-product, deliberative-process, or other privilege. Do not disseminate without the approval of the Office of the General Counsel, Department of the Army. If you have received this message in error, please notify the sender immediately by email or telephone and delete this message.

Appointment

From: Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
Sent: 5/31/2017 2:51:56 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [Hurld.Kathy@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [cindy.s.barger.civ@mail.mil]
CC: Reid, Darren [Reid.Darren@epa.gov]; Klos, Caroline [Klos.caroline@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Nitsch, Chad [Nitsch.Chad@epa.gov]; Wesson, Dolores [Wesson.Dolores@epa.gov]

Subject: WOTUS2: Federalism webinar w/NASADA
Attachments: federalism NASDA ppt 5-31-17.pdf; state federalism outreach invite NASDA.PDF
Location: WJCW 7129; webinar Nonresponsive Conference Code/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6 nference ID Nonresponsive Conference Code/ Ex. 6 below:

Start: 5/31/2017 8:00:00 PM
End: 5/31/2017 9:00:00 PM
Show Time As: Busy

Note: Agenda added below and Room change

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 all in **Nonresponsive Conference Code/ Ex. 6**

Agenda

Introductions

Welcome – Association chair
- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]
Sent: 6/5/2017 7:30:06 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Barbery, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e219352056ea405a97c93fd9756ceb2b-ABarbery]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Ward Scott [wscott@westgov.org]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; David.F.Dale@usace.army.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=323c0ae43d59410ebcf97e2218200a14-David.F.Dale@usace.army.mil]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]

Subject: WOTUS - WGA federalism call
Attachments: federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF; federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF
Location: DCRoomWest7114M/DC-CCW-OWOW

Start: 6/8/2017 5:00:00 PM
End: 6/8/2017 6:00:00 PM
Show Time As: Busy

Call in Nonresponsive Conference Code/ Ex. 6 this is for the agencies to use, the WGA members have the number on the PPT)

Conference Nonresponsive Conference Code/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

If you will be speaking or responding to questions at this meeting you should use the Leader number.
Conference ID: Nonresponsive Conference Code/ Ex. 6
Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6
Participant Toll Free Dial-In Number:

Webinar:
URL: **Nonresponsive Internal URL/ Ex. 6**

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 6/8/2017 2:57:40 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: FW: REMINDER! TOMORROW! Wed., June 7th, 4:30-5:30 ET- LGAC Protecting America's Waters Workgroup-Call in: Nonresponsive Conference Code/ Ex. 6 Agenda and Meeting Materials
Attachments: LGAC-WOTUS-Charge-05-17-17-.pdf; WOTUSFedSlides4.19.17.pdf; WaterWG-AGENDA-June7-2017.docx; NOTES-HANN-LGAC WaterWG-May18-2017 (2).docx; WaterWG-ChargeIssues-June5-17.docx; LGAC-ChargeQs-06-05-17.docx

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From: Eargle, Frances
Sent: Tuesday, June 6, 2017 6:53 PM
To: Susan Hann <Hann.Susan@brevardschools.org>; Elizabeth B. Kautz <Elizabeth.Kautz@burnsvillemn.gov>; Bob Bozien <bobziend@reno.gov>; Brad Pierce <bpierce@auroragov.org>; Cynthia Koehler <ckoehler@marinwater.org>; Hector F. Gonzalez <hgonzalez@ci.laredo.tx.us>; Personal Email / Ex. 6 >; jwitte@nmda.nmsu.edu; norm.archibald@abilenetx.com; Jill Duson < Personal Email / Ex. 6 >; Kevin Shafer <kshafer@mmsd.com>; Kim Driscoll <kdriscoll@salem.com>; Mark Stodola <mstodola@littlerock.gov>; Miro Weinberger <mayor@burlingtonvt.gov>; Shawn Yanity <syanity@stillaguamish.com>; Terri Goomann <tgoodman@cityofdubuque.org>; victoria.reinhardt@co.ramsey.mn.us; Stephanie Chang <SChang@house.mi.gov>; Sal Panto <spanto@easton-pa.gov>; Robert Cope < Personal Email / Ex. 6 >; Rodney Bartlett <rbartlett@peterboroughnh.gov>
Cc: mayor <mayor@greensburgks.org>; Lyons, Troy <lyons.troy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Matthews, Demond <matthews.demond@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Andy Beerman <andy@parkcity.org>; Dawn Zimmer <dzimmer@hobokennj.gov>; Elizabeth B. Kautz <elizabeth.kautz@ci.burnsville.mn.us>; Hardie Davis <mayordavis@augustaga.gov>; Jacqueline Goodall < Personal Email / Ex. 6 >; Johnny DuPree <mayor@hattiesburgms.com>; Karen Freeman-Wilson <kfreemanwilson@ci.gary.in.us>; Kitty Barnes (kbarnes@catawbacountync.gov) <kbarnes@catawbacountync.gov>; mannajo@clearwater.org; Maria Salas <msalas@chulavistaca.gov>; Merceria Ludgood <mludgood@mobile-county.net>; Ryan Sundberg <rsundberg@co.humboldt.ca.us>; Samara Swanston < Personal Email / Ex. 6 >; scott.bouchie@mesaaz.gov; Steve Williams <swilliams@cityofhuntington.com>; Sue Hann < Personal Email / Ex. 6 >; Susan Anderson <Susan.Anderson@portlandoregon.gov>; Tom Sloan <tom.sloan@house.ks.gov>; Angie Bracey <braceya@cityofhuntington.com>; Anna Kettlewell <akettlewell@mmsd.com>; Debbie Orth <Debbie.orth@co.ramsey.mn.us>; Deborah Delk <ddelk@cityofgary.onmicrosoft.com>; donna.difrancesco@mesaaz.gov; Ellen Heinitz <eheinitz@house.mi.gov>; Erika Martinez <emartinez8@ci.laredo.tx.us>; Jamie Hartranft <jhartranft@easton-pa.gov>; Jen Wessell <JWessell@Salem.com>; Joanne Buonarota <jbuonarota@hobokennj.gov>; Joi Whiteside <jwhiteside@ci.gary.in.us>; Jordan <jordan@burlingtonvt.gov>; Kathy Hayes <Khayes@co.humboldt.ca.us.>; Kim O'Farrell <O'Farrell>; Kim <Kim.O'Farrell@leg.wa.gov>; Lalosa Burns <ldburns@ci.gary.in.us>; Lindsay Rogers (ler@waternow.org) <ler@waternow.org>; Macheal Brooks <macheal.brooks@ci.burnsville.mn.us>; Nellie Flores <nflores@chulavistaca.gov>; Seichner <seichner@marinwater.org>; Stephanie Valentine <Svalenti@cityofdubuque.org>
Subject: REMINDER! TOMORROW! Wed., June 7th, 4:30-5:30 ET- LGAC Protecting America's Waters Workgroup-Call in: Nonresponsive Conference Code/ Ex. 6 -Agenda and Meeting Materials

REMINDER! TOMORROW! LGAC Water Workgroup Teleconference, Wed., June 7th, 4:30-5:30 ET. The call in number is: Nonresponsive Conference Code/ Ex. 6

ATTACHMENTS ADDED: Revised WOTUS Issue Paper and Charge Response

From: Eargle, Frances
Sent: Monday, June 5, 2017 8:11 PM
To: Susan Hann <Hann.Susan@brevardschools.org>; 'Elizabeth B. Kautz' <Elizabeth.Kautz@burnsvillemn.gov>; Bob Bozien <bobziend@reno.gov>; Brad Pierce <bpierce@auroragov.org>; Cynthia Koehler <ckoehler@marinwater.org>; 'Hector F. Gonzalez' <hgonzalez@ci.laredo.tx.us>; Jeff Witte <jwitte@nmda.nmsu.edu>; 'norm.archibald@abilenetx.com' <norm.archibald@abilenetx.com>; Jill Duson <Nonresponsive Conference Code/ Ex. 6>; Kevin Shafer <kshafer@mmsd.com>; Kim Driscoll <kdriscoll@salem.com>; Mark Stodola <mstodola@littlerock.gov>; Miro Weinberger <mayor@burlingtonvt.gov>; 'Sundberg, Ryan' <RSundberg@co.humboldt.ca.us>; 'Scott Bouchie' <scott.bouchie@mesaaz.gov>; Terri Goomann <tgoodman@cityofdubuque.org>; 'Stephanie Chang' <SChang@house.mi.gov>; 'victoria.reinhardt@co.ramsey.mn.us' <victoria.reinhardt@co.ramsey.mn.us>; Sal Panto <spanto@easton-pa.gov>; Robert Cope <Nonresponsive Conference Code/ Ex. 6>; Rodney Bartlett <rbartlett@peterboroughnh.gov>
Cc: mayor <mayor@greensburgks.org>; Johnny DuPree <mayor@hattiesburgms.com>; Karen Freeman-Wilson <kfreemanwilson@ci.gary.in.us>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Matthews, Demond <matthews.demond@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Andy Beerman <andy@parkcity.org>; Dawn Zimmer <dzimmer@hobokennj.gov>; Elizabeth B. Kautz <elizabeth.kautz@ci.burnsville.mn.us>; Hardie Davis <mayordavis@augustaga.gov>; Jacqueline Goodall <Nonresponsive Conference Code/ Ex. 6>; Kitty Barnes (kbarnes@catawbacountync.gov) <kbarnes@catawbacountync.gov>; Manna Jo Greene <mannajo@clearwater.org>; Maria Salas <msalas@chulavistaca.gov>; Merceria Ludgood <mludgood@mobile-county.net>; Samara Swanston <Nonresponsive Conference Code/ Ex. 6>; Shawn Yanity <syanity@stillaguamish.com>; Steve Williams <swilliams@cityofhuntington.com>; Sue Hann <Nonresponsive Conference Code/ Ex. 6>; Susan Anderson <Susan.Anderson@portlandoregon.gov>; Tom Sloan <tom.sloan@house.ks.gov>; Angie Bracey <braceya@cityofhuntington.com>; Anna Kettlewell <akettlewell@mmsd.com>; Debbie Orth <Debbie.orth@co.ramsey.mn.us>; Deborah Delk <ddelk@cityofgary.onmicrosoft.com>; Donna DiFrancesco <Donna.DiFrancesco@MesaAZ.gov>; Ellen Heinitz <eheinitz@house.mi.gov>; Erika Martinez <emartinez8@ci.laredo.tx.us>; Jamie Hartranft <jhartranft@easton-pa.gov>; Jen Wessell <JWessell@Salem.com>; Joanne Buonarota <jbuonarota@hobokennj.gov>; Joi Whiteside <jwhiteside@ci.gary.in.us>; Jordan <jordan@burlingtonvt.gov>; Kathy Hayes <Khayes@co.humboldt.ca.us.>; Kim O'Farrell <O'Farrell,Kim<Kim.O'Farrell@leg.wa.gov>>; Lalosa Burns <ldburns@ci.gary.in.us>; Lindsay Rogers (ler@waternow.org) <ler@waternow.org>; Macheal Brooks <macheal.brooks@ci.burnsville.mn.us>; Nellie Flores <nflores@chulavistaca.gov>; Seichner <seichner@marinwater.org>; Stephanie Valentine <Svalenti@cityofdubuque.org>
Subject: LGAC Protecting America's Waters Workgroup-Wed, June 7, 4:30-5:30 ET-Call in: Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6 Agenda and Meeting Materials

Hi, LGAC Protecting America's Waters Workgroup (*And LGAC & SCAS Members*):

The ***LGAC Protecting America's Waters Workgroup*** **will meet Wednesday, June 7th, 4:30-5:30 ET. The call in number is:** Nonresponsive Conference Code/ Ex. 6

The Workgroup will continue the discussion on the Waters of the U.S. Charge (WOTUS) and specific areas where the LGAC's input is needed (see Meeting Agenda). LGAC and SCAS Members are also invited to take part (*pending any quorum issues*).

The purpose of this meeting will be to review and discuss the LGAC WOTUS General Issues and the Charge response. Thanks to Workgroup and LGAC Members who have provided written responses!!

The LGAC is on a tight schedule by the end of June to respond to the Charge. Your discussions have been very helpful and will contribute greatly to the Final Report!

There is an additional meeting of the Water Workgroup planned for **Thursday, June 22nd, 4:30-5:30 ET** to review the final draft of the LGAC WOTUS Report. So please mark this date on your calendar so that we can clear this action for the Full Committee.

Please also make sure that the **LGAC Full Committee Teleconference** is on your calendar for **Thursday, June 29th, 2:00-3:00 ET** to take action on the LGAC Draft WOTUS Report.

Your photos are needed! Please consider sending in any photos of 'Waters' you would like to include in the Report (jpeg). Please provide information on the photo and photo source. We would like to include as many of LGAC photographs as possible in the Final Report.

For your reference, LGAC 2014 Waters of the U.S. Report:
https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14_w.o.t.u.s._report.pdf

Thanks so much for all your great work!

Fran Eargle
202-564-3115

Attachments:
-Agenda June 7th Water Workgroup
-LGAC WOTUS Charge
-Draft LGAC WOTUS Issues Paper
-Notes-May 18th Water Workgroup
-WOTUS PowerPoint (*for reference*)

To: Borum, Denis[Borum.Denis@epa.gov]
From: Christensen, Damaris
Sent: Thur 6/1/2017 4:25:14 PM
Subject: congressional briefing
WOTUS part 1.congressional briefing.pptx

Denis – this has NOT seen upper management review, though most of the pieces were blessed by dint of being used for the federalism consultation. That said, it's complicated and a little redundant. I can simplify as needed, or just leave as is – thought I'd get a read on the need before circulating to my management for review. Let me know.

thanks

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/31/2017 4:27:14 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]; Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
CC: Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Dale, David F Jr SES CELRD CELRD (US) [David.F.Dale@usace.army.mil]; Schaefer-Gomez, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5f0868369304bef91d8aece8386fc8c-Schaefer-Go]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]
BCC: DCRoomWest7129/DC-CCW-OWOW [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user9494729e]

Subject: WOTUS2: Federalism webinar w/NWRA and ASHTO
Attachments: federalism NWRA ASHTO ppt 6-12-17 (002).pdf; ASHTO NWRA state federalism outreach invite (002).pdf
Location: DCRoomWest7129/DC-CCW-OWOW

Start: 6/12/2017 7:00:00 PM
End: 6/12/2017 8:00:00 PM
Show Time As: Busy

Topic: WOTUS Briefing with ASHTO and NWRA

Conference ID: Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

WEBINAR URL: **Nonresponsive Internal URL/ Ex. 6**

Meeting Location: US EPA, WJCW, 1301 Constitution Ave., NW, Room 7129 West, Washington, DC 20004

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/30/2017 3:36:27 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; cindy.s.barger.civ@mail.mil; Kathy Hurld (Hurld.Kathy@epa.gov) [Hurld.Kathy@epa.gov]; stacey.m.jensen@usace.army.mil; Swackhammer, J-Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=920dab7d8ef047f8ba91cbb7d7b0c2bb-TSWACKHA]; Smalley, Bryant [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30f620d6fe746fe8647c918d053daa8-Smalley, Bryant]
CC: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Kenney, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ce6ff86939e44da49d88840b2353f022-Kenney, James]; Peterson, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1a897adcf3ae4e98880f850ac261471c-CPeter04]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]
BCC: DCRoomWest6300D/DC-CCW-OW-WEST [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2ca6030d]

Subject: WOTUS-2: Federalism Webinar with ASFM & IOGCC
Attachments: WOTUSIOGCCandASFMinvite.docx; WOTUSIOGCCandASFPMPPT.PPTX
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below

Start: 6/7/2017 6:00:00 PM
End: 6/7/2017 7:00:00 PM
Show Time As: Busy

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in number: **Nonresponsive Conference Code/ Ex. 6**

The leader line is Nonresponsive Conference Code/ Ex. 6 You must call into the leader line to have speaking privileges (if you call into the participant line, tell the operator when you speak to her that you should have speaking privileges).

Agenda

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From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/26/2017 3:44:30 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; cindy.s.barger.civ@mail.mil; Stacey.M.Jensen@usace.army.mil; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]
CC: Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Dale, David F Jr SES CELRD CELRD (US) [David.F.Dale@usace.army.mil]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Wagner, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=048236ab99bc4d5ea16c139b1b67719c-Wagner, Ken]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]

Subject: WOTUS2: Federalism webinar with ASWM
Attachments: federalism ASWM ppt 6-6-17 (002).pdf; ASWM state federalism outreach invite.pdf; federalism ASWM ppt 6-6-17 (002).pdf
Location: DCRoomWest6300D/DC-CCW-OW-WEST

Start: 6/6/2017 6:00:00 PM
End: 6/6/2017 7:00:00 PM
Show Time As: Busy

Be sure to register a day or two prior to the webinar to get a unique call in number.

Here is the link to register: **Nonresponsive Internal URL/ Ex. 6**

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From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/26/2017 3:43:06 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Kathy Hurld (Hurld.Kathy@epa.gov) [Hurld.Kathy@epa.gov]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; cindy.s.barger.civ@mail.mil; Stacey.M.Jensen@usace.army.mil; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]
CC: Bennett, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d7b265c202c467791ca4d4ac6b8db8b-Bennett, Br]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Schaefer-Gomez, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5f0868369304bef91d8aece8386fc8c-Schaefer-Go]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]

Subject: WOTUS2: Federalism webinar with WSWC
Attachments: federalism WSWC ppt 6-2-17final.pdf; state federalism outreach invite WSWCfinal.pdf
Location: WJCW 7129; webinar: http://epawebconferencing.acms.com/woutus2_WSWC/ call in:

Start: 6/2/2017 6:00:00 PM
End: 6/2/2017 7:00:00 PM
Show Time As: Busy

Webinar Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**
Call in to be added.

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Reid, Darren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C753ECFF4A1427BA8C6B32E08947B23-DREID02]
Sent: 5/26/2017 3:40:34 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; Cindy Barger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user3faffd36]
CC: Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Nitsch, Chad [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d1d117eb89ff410fb6ccd21643b34447-CNitsch]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]

Subject: WOTUS2: Federalism webinar w/NASADA
Attachments: federalism NASDA ppt 5-31-17.pdf; state federalism outreach invite NASDA.PDF
Location: WJCW 7129; webinar http://epawebconferencing.acms.com/nasda_wotus/ call in Nonresponsive Conference Code/ Ex. 6 Nonresponsive Conference Code/ Ex. 6 below:

Start: 5/31/2017 8:00:00 PM
End: 5/31/2017 9:00:00 PM
Show Time As: Busy

Note: Agenda added below and Room change

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 all in Nonresponsive Conference Code/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

Appointment

From: Nandi, Romell [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=07F5F4A9453A42DA82D3B0FD083B5EE0-RNANDI]
Sent: 5/22/2017 8:48:57 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Hurld, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f3b04131f1145fcb4ccf5b0a64c1ac4-KHurld]; Gorke, Roger [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a59ce070da94a4194ecbc2c19756b98-RGorke]; Barger, Cindy S CIV USARMY HQDA ASA CW (US) [cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Barbery, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e219352056ea405a97c93fd9756ceb2b-ABarbery]
CC: Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Cook-Shyovitz, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=324db863c4b540d29852c65d352c8b57-Cook-Shyovitz, Becky]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Ward Scott [wscott@westgov.org]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; David.F.Dale@usace.army.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=323c0ae43d59410ebcf97e2218200a14-David.F.Dale@usace.army.mil]; Wesson, Dolores [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500270d34ba046f48c5d8ff54746cb81-Wesson, Dol]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; CWAwotus [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1dc2d9cc17e84b49ae0daec76bd5a659-CWAwotus]
BCC: DCRoomWest7114M/DC-CCW-OWOW [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user8e36dd7d]

Subject: WOTUS - WGA federalism call
Attachments: federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF; federalism WGA ppt 6-8-17.pdf; state federalism outreach invite WGA.PDF
Location: DCRoomWest7114M/DC-CCW-OWOW

Start: 6/8/2017 5:00:00 PM
End: 6/8/2017 6:00:00 PM
Show Time As: Busy

Call in Nonresponsive Conference Code/ Ex. 6 (this is for the agencies to use, the WGA members have the number on the PPT)

Conference ID Nonresponsive Conference Code/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

If you will be speaking or responding to questions at this meeting you should use the Leader number.

Conference ID: Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

Participant Toll Free Dial-In Number:

Webinar:

URL: Nonresponsive Internal URL/ Ex. 6

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/31/2017 1:41:46 AM
To: Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]
CC: Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]
Subject: Fwd: WOTUS options discussion
Attachments: WOTUS2_options May 31.docx; ATT00001.htm

Welcome back, Darren.
Please print a couple copies of this attachment before 2p tomorrow. I will be back in time for this 3p briefing.
Thanks
John

Sent from my iPhone

Begin forwarded message:

> **From:** "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
> **Date:** May 30, 2017 at 2:36:16 PM EDT
> **To:** "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Fotouhi, David" <fotouhi.david@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "craig.r.schmauder.civ@mail.mil" <craig.r.schmauder.civ@mail.mil>, "'jennifer.a.moyer@usace.army.mil" <'jennifer.a.moyer@usace.army.mil>, "stacey.m.jensen@usace.army.mil" <stacey.m.jensen@usace.army.mil>, "Lamont, Douglas W SES (US)" <douglas.w.lamont2.civ@mail.mil>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, Cindy Barger <cindy.s.barger.civ@mail.mil>, "David.F.Dale@usace.army.mil" <David.F.Dale@usace.army.mil>
> **Cc:** "Penman, Crystal" <Penman.Crystal@epa.gov>, "Edwards, Crystal" <Edwards.Crystal@epa.gov>, "Klos, Caroline" <Klos.caroline@epa.gov>
> **Subject: RE: WOTUS options discussion**
>
> All,
> Attached is the options table that we will walk through at tomorrow's 3:00 meeting.
>
> Thanks,
> Mindy
>
> Mindy Eisenberg
> Acting Director, Oceans, Wetlands and Communities 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:** Thursday, May 18, 2017 12:21 PM

To: Shapiro, Mike; Greenwalt, Sarah; Neugeboren, Steven; Wehling, Carrie; Fotouhi, David; Schwab, Justin; Goodin, John; Eisenberg, Mindy; Downing, Donna; Peck, Gregory; craig.r.schmauder.civ@mail.mil; 'jennifer.a.moyer@usace.army.mil; stacey.m.jensen@ussace.army.mi; stacey.m.jensen@usace.army.mil
Cc: Best-Wong, Benita; Kupchan, Simma; Cindy Barger; David.F.Dale@usace.army.mil; Lamont, Douglas W SES (US)
Subject: WOTUS options discussion
When: Wednesday, May 31, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6

Appointment

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/30/2017 3:14:49 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Kathy Hurld (Hurld.Kathy@epa.gov) [Hurld.Kathy@epa.gov]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Stacey.M.Jensen@usace.army.mil; cindy.s.barger.civ@mail.mil
CC: Reid, Darren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c753ecff4a1427ba8c6b32e08947b23-DReid02]; Klos, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee1938845f7449dfbeb1a41493051068-Klos, Caroline]; McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]; Downing, Donna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d853e50d3a2b489daf2cc498c052e3d6-DDowning]; Nitsch, Chad [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d1d117eb89ff410fb6ccd21643b34447-CNitsch]

Subject: WOTUS2: Federalism webinar w/NASADA
Attachments: federalism NASDA ppt 5-31-17.pdf; state federalism outreach invite NASDA.PDF
Location: WJCW 7301; webinar Nonresponsive Conference Code/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6 Conference ID Nonresponsive Conference Code/ Ex. 6 below:

Start: 5/31/2017 8:00:00 PM
End: 5/31/2017 9:00:00 PM
Show Time As: Tentative

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 call in Nonresponsive Conference Code/ Ex. 6

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/26/2017 1:50:42 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Fwd: responding to OMB's comments on draft proposed rule

Morning!
I think you could take Deliberative Process / attorney client Ex. 5
Deliberative Process / attorney client Ex. 5 Would recommend the broader distribution list (Wednesday meeting group) when you get the go ahead.
Thanks!!
John

Sent from my iPhone

Begin forwarded message:

From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: May 25, 2017 at 6:03:12 PM PDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Cc: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Since we have had prior deliberations on Deliberative Process / attorney client Ex. 5
Deliberative Process / attorney client Ex. 5 how about in the rationale for number 2 we simply add after the first sentence something like: Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

In other words, just tee up for the decision-makers that Deliberative Process / attorney client Ex. 5
Deliberative Process / attorney client Ex. 5 Of course, if OW thinks that option should be Deliberative Process / attorney client Ex. 5
but I think Deliberative Process / attorney client Ex. 5

Note that Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

This gets a little complicated because the corps is really describing Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

So it's multi-layered. My best advice is to Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Thursday, May 25, 2017 6:08 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Thanks Mike. Since the third floor didn't seem to want to want to Deliberative Process / Ex. 5 Deliberative Process / Ex. 5? We could re-write the rationale to shorten or under the recommendation offer to have further conversations about Deliberative Process / Ex. 5

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

From: Shapiro, Mike
Sent: Thursday, May 25, 2017 5:50 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Mindy,

I generally agree with the responses, although #2 gives me pause. I understand that what OMB is asking for is for us to Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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: Thursday, May 25, 2017 4:49 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: responding to OMB's comments on draft proposed rule

Mike,

EPA/Corps/Army staff have reviewed the interagency comments and have addressed most of those comments (see attached which shows comments and track-changes; Julie H has a few additional edits underway). There are four key issues that we are raising for your attention and for feedback before sharing with senior leadership. We've summarized each outstanding issue, plus our recommended approach to addressing each issue. Please let me know how you would like to proceed in sharing with Sarah and others.

Thanks

Issue #1:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Issue #2:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Issue #3:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Issue #4:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

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

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/9/2017 8:08:36 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Re: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

Sent from my iPhone

On May 9, 2017, at 4:02 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

I sent a note to Liz and Sarah noting **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: Goodin, John
Sent: Tuesday, May 09, 2017 4:02 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Fwd: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Sent from my iPhone

Begin forwarded message:

From: "Bravo, Antonio" <Bravo.Antonio@epa.gov>
Date: May 9, 2017 at 3:06:37 PM EDT
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>
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

Deliberative Process / Ex. 5

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

<!--[if !vml]--><image002.png><!--[endif]--> **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: Personal Phone / Ex. 6
Fuld.john@epa.gov

Message

From: Best-Wong, Benita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6EE79B3D0FC0429B99F2C05481B0B957-BBESTWON]
Sent: 5/15/2017 9:36:43 PM
To: Lousberg, Macara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e589fdabe6374c5987d0184b43fb5c57-MLousber]; Ruf, Christine [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a6d66733e5c5493087ee7f067675bc99-CRuf]
CC: Shapiro, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c70af880ba747b5a8b6baa45a040125-MShapiro]
Subject: FW: Evaluation of Existing Regulations - Lakeland Electric Comment Letter
Attachments: Lakeland Electric Regulatory Reform Comments to EPA.pdf

FYI

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: McGinnis, Sean [mailto:Sean.McGinnis@lakelandgov.net]
Sent: Monday, May 15, 2017 10:47 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Beckham, Michael <Michael.Beckham@lakelandgov.net>; Bahtic, Nedin <Nedin.Bahtic@lakelandgov.net>; Dunham, Sarah <Dunham.Sarah@epa.gov>; shapiro@epa.gov; brenn.barry@epa.gov; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: Evaluation of Existing Regulations - Lakeland Electric Comment Letter

Hi Mandy,

Lakeland Electric submitted our official comments today to the docket on the regulations.gov website regarding the evaluation of existing regulations. I didn't want our comments to get lost in the shuffle with the already 55,000+ comments, so I am attaching our comment letter. We really appreciate your consideration of our comments. If you have any questions or would like to discuss in further detail, please don't hesitate to call.

Warm regards,
Sean

Sean P. McGinnis, CHMM
Environmental Coordinator

LAKELAND ELECTRIC
POWERED FOR LIFE

501 E. Lemon St. ◆ Lakeland, FL 33801
Ph: 863-834-6169 ◆ Cell: Personal Phone / Ex. 6

sean.mcginnis@lakelandelectric.com

PUBLIC RECORDS NOTICE:

All e-mail sent to and received from the City of Lakeland, Florida, including e-mail addresses and content, are subject to the provisions of the Florida Public Records Law, Florida Statute Chapter 119, and may be subject to disclosure.

To: Dravis, Samantha[dravis.samantha@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Benita Best-Wong[Best-Wong.Benita@epa.gov]; Macara Lousberg[Lousberg.Macara@epa.gov]; Ann Campbell[Campbell.Ann@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]
From: Shapiro, Mike
Sent: Mon 5/15/2017 10:09:24 PM
Subject: OW's EO 13777 Initial Report
OW response May 15 EO 13777.docx
OW email to stakeholders on May 2 session.docx
EPA-HQ-OW-5-2-2017UPDATED_for_docket_May_15.docx

I am pleased to provide the Office of Water's initial report on the work we undertook to solicit public comment on potential regulations to rescind, replace or revise as directed by the Administrator in his March 24th memo on E.O. 13777: Enforcing the Regulatory Reform Agenda. In addition to the attached report, I have included the comments we received at our May 2nd public listening session, which are being uploaded to the docket, and the information we shared with our stakeholder groups and on the agency web page to advertise our listening session. If you have any questions please let me know.

Mike

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

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Wehling, Carrie
Sent: Thur 6/8/2017 5:48:10 PM
Subject: FW: draft EA and revised preamble were transmitted to OMB at 9 today
WOTUS Draft Proposed Rule incorporating OMB comments and econ_6-8-2017 clean.docx
Economic Analysis of Proposed WOTUS Step 1.OMB review draft.20170608.docx

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, June 08, 2017 11:05 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Lamont, Douglas W SES (US) <douglas.w.lamont2.civ@mail.mil>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>; Cindy Barger <cindy.s.barger.civ@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>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; David.F.Dale@usace.army.mil
Cc: McGartland, Al <McGartland.Al@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>
Subject: draft EA and revised preamble were transmitted to OMB at 9 today

Hi All,
Letting you know that the draft econ analysis and revised preamble with conforming changes were sent to OMB. I will let you know when we hear any comments and questions.

thanks

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities 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

Message

From: Wehling, Carrie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3E55F11FDC7489698BE69849B301DA6-CWEHLING]
Sent: 5/30/2017 6:42:55 PM
To: Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]
Subject: FW: WOTUS options discussion
Attachments: WOTUS2_options May 31.docx

fyi

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: Tuesday, May 30, 2017 2:36 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; craig.r.schmauder.civ@mail.mil; 'jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; Lamont, Douglas W SES (US) <douglas.w.lamont2.civ@mail.mil>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; David.F.Dale@usace.army.mil
Cc: Penman, Crystal <Penman.Crystal@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>; Klos, Caroline <Klos.caroline@epa.gov>
Subject: RE: WOTUS options discussion

All,
Attached is the options table that we will walk through at tomorrow's 3:00 meeting.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Oceans, Wetlands and Communities 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: Thursday, May 18, 2017 12:21 PM
To: Shapiro, Mike; Greenwalt, Sarah; Neugeboren, Steven; Wehling, Carrie; Fotouhi, David; Schwab, Justin; Goodin, John; Eisenberg, Mindy; Downing, Donna; Peck, Gregory; craig.r.schmauder.civ@mail.mil; 'jennifer.a.moyer@usace.army.mil; stacey.m.jensen@ussace.army.mi; stacey.m.jensen@usace.army.mil

Cc: Best-Wong, Benita; Kupchan, Simma; Cindy Barger; David.F.Dale@usace.army.mil; Lamont, Douglas W SES (US)
Subject: WOTUS options discussion
When: Wednesday, May 31, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3233 WJCE Call in **Nonresponsive Conference Code/ Ex. 6**

Message

From: Wehling, Carrie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3E55F11FDC7489698BE69849B301DA6-CWEHLING]
Sent: 5/9/2017 6:45:24 PM
To: Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: FW: CWR Supreme Court litigation - incoming briefs
Attachments: 16-299 ts NAM.PDF; 16-299bs.pdf; 16-299 bs Ohio et al supporting petitioner.pdf; 16-299 Respondents' Brief in Support of Petitioner.pdf

Question to you from Justina. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 but would like to be sure.

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

From: Wendelowski, Karyn
Sent: Thursday, April 27, 2017 2:01 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: CWR Supreme Court litigation - incoming briefs

Attached please find the incoming briefs from the National Association of Manufacturers and supporters, including a group of States, arguing that challenges to a rule defining the "waters of the United States" do not belong in one Court of Appeals within 120 days of promulgation under Section 509 of the CWA, but rather belong in the district courts where challenges can be brought for 6 years from the date of promulgation.

The U.S. brief in response is currently due May 31st but my understanding is that the Office of Solicitor General is likely to request a two week extension. We should be receiving a first draft of a response from the Appellate Section at DOJ within a few weeks (they will send us a schedule in the next day or two). After revision, that brief is sent to OSG which will base their brief on that draft and we will also get a chance to review.

Please let me know if you have any questions.

Karyn

Karyn Wendelowski
Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Wehling, Carrie
Sent: Fri 5/5/2017 7:42:28 PM
Subject: RE: letter
Earthjustice_AX-17-000-6900.cw.docx

Just a few comments. Thanks.

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: Friday, May 05, 2017 3:15 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: letter

Here is a draft response and the original incoming. I think Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

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

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/30/2017 3:27:13 PM
To: Thomas, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e34a0e6f34345968aa130c4eb8438e2-EThoma03]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nurse, Leanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=826243fb40f64a3ba99b0f98498ea4fe-Nurse, Leanne]; Nelson, Tomeka [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31c257115c0c400dbb712c19b5ee82fb-TNelso02]

Subject: Canceled: Fed Reg Prep for WOTUS
Attachments: FRL-9962-34-OW Elizabeth Thomas.docx; 2014 40 CFR 122.docx
Location: Call in Nonresponsive Conference Code/ Ex. 6

Start: 5/30/2017 6:30:00 PM
End: 5/30/2017 7:00:00 PM
Show Time As: Free

Importance: High

Personal Matters / Ex. 6 so deleting the room (as it would have been a trek for you anyway.)

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/16/2017 9:04:08 PM
To: Kupchan, Simma [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=784e0aea94a7485fa0435cc0cf5a62a5-SASHER]; Thomas, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e34a0e6f34345968aa130c4eb8438e2-EThoma03]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nurse, Leanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=826243fb40f64a3ba99b0f98498ea4fe-Nurse, Leanne]; Nelson, Tomeka [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31c257115c0c400dbb712c19b5ee82fb-TNelso02]

Subject: Canceled: Fed Reg Prep for WOTUS
Attachments: FRL-9962-34-OW Elizabeth Thomas.docx; 2014 40 CFR 122.docx
Location: Call in Nonresponsive Conference Code/ Ex. 6

Start: 5/30/2017 6:30:00 PM
End: 5/30/2017 7:00:00 PM
Show Time As: Free

Importance: High

Personal Matters / Ex. 6 so deleting the room (as it would have been a trek for you anyway.)

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/25/2017 3:48:45 PM
To: Thomas, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e34a0e6f34345968aa130c4eb8438e2-EThoma03]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nurse, Leanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=826243fb40f64a3ba99b0f98498ea4fe-Nurse, Leanne]; Nelson, Tomeka [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31c257115c0c400dbb712c19b5ee82fb-TNelso02]

Subject: Fed Reg Prep for WOTUS
Attachments: FRL-9962-34-OW Elizabeth Thomas.docx; 2014 40 CFR 122.docx
Location: Call in Nonresponsive Conference Code/ Ex. 6
Start: 5/30/2017 6:30:00 PM
End: 5/30/2017 7:00:00 PM
Show Time As: Tentative

Nonresponsive Discussion of Personal Matters / Ex. 6 so deleting the room (as it would have been a trek for you anyway.)

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/24/2017 8:26:26 PM
To: Thomas, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e34a0e6f34345968aa130c4eb8438e2-EThoma03]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nurse, Leanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=826243fb40f64a3ba99b0f98498ea4fe-Nurse, Leanne]; Nelson, Tomeka [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31c257115c0c400dbb712c19b5ee82fb-TNelso02]

Subject: Fed Reg Prep for WOTUS
Attachments: FRL-9962-34-OW Elizabeth Thomas.docx; 2014 40 CFR 122.docx
Location: Call in Nonresponsive Conference Code/ Ex. 6

Start: 5/25/2017 5:30:00 PM
End: 5/25/2017 6:00:00 PM
Show Time As: Tentative

Nonresponsive Discussion of Personal Matters / Ex. 6 so deleting the room (as it would have been a trek for you anyway.)

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/22/2017 6:28:09 PM
To: Thomas, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e34a0e6f34345968aa130c4eb8438e2-EThoma03]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nurse, Leanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=826243fb40f64a3ba99b0f98498ea4fe-Nurse, Leanne]; Nelson, Tomeka [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31c257115c0c400dbb712c19b5ee82fb-TNelso02]

Subject: Fed Reg Prep for WOTUS
Attachments: FRL-9962-34-OW Elizabeth Thomas.docx; 2014 40 CFR 122.docx
Location: DCRoomARN7346/DC-Ariel-Rios-OGC; Call in **Nonresponsive Conference Code/ Ex. 6**
Start: 5/25/2017 5:30:00 PM
End: 5/25/2017 6:00:00 PM
Show Time As: Tentative

Adding call in number and the 2014 version of a CFR definition, for reference. Thanks.

Appointment

From: Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]
Sent: 5/22/2017 5:44:43 PM
To: Thomas, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e34a0e6f34345968aa130c4eb8438e2-EThoma03]; Evalenko, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd595e1baa9640a296313941e77ebdf0-SEvalenk]; Kwok, Rose [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3d2987ba8f246a5a9e37773201fd180-Kwok, Rose]
CC: Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Wendelowski, Karyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d913e7d7397466a803149761a0bdf18-KWENDELO]; Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Nurse, Leanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=826243fb40f64a3ba99b0f98498ea4fe-Nurse, Leanne]; Nelson, Tomeka [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31c257115c0c400dbb712c19b5ee82fb-TNelso02]

Subject: Fed Reg Prep for WOTUS
Attachments: FRL-9962-34-OW Elizabeth Thomas.docx; 2014 40 CFR 122.docx
Location: DCRoomARN7346/DC-Ariel-Rios-OGC; Call in **Nonresponsive Conference Code/ Ex. 6**
Start: 5/22/2017 6:00:00 PM
End: 5/22/2017 7:00:00 PM
Show Time As: Tentative

Adding call in number and the 2014 version of a CFR definition, for reference. Thanks.

From: Kupchan, Simma
Location: DCRoomARN7346/DC-Ariel-Rios-OGC
Importance: Normal
Subject: Fed Reg Prep for WOTUS
Start Time: Mon 5/22/2017 6:00:00 PM
End Time: Mon 5/22/2017 7:00:00 PM
Required Attendees: Thomas, Elizabeth; Evalenko, Sandy; Kwok, Rose
Optional Attendees: Owens, Nicole; Wendelowski, Karyn; Eisenberg, Mindy

FRL-9962-34-OW Elizabeth Thomas.docx

To: Nalven, Heidi[Nalven.Heidi@epa.gov]
Cc: Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Tue 5/30/2017 7:18:15 PM
Subject: Revised Deliberative Process / Ex. 5 ssignment
WOTUS leg history assignment.doc

Heidi,

Attached is the revised assignment for Clay on Deliberative Process / Ex. 5 now incorporating Carrie's and Karyn's suggestions.

Let me know if you have questions or concerns about it.
Clay was fine with waiting a week or two until we meet next to settle on one 'lead' assignment, and in the meantime will work on both. Thanks!

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

To: Nalven, Heidi[Nalven.Heidi@epa.gov]
Cc: Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Kupchan, Simma
Sent: Mon 5/22/2017 9:53:02 PM
Subject: Clerk assignment
WOTUS leg history assignment.doc

Hi Heidi,

Still figuring out the additional analytical component for the 311 assignment; it's my top priority for tomorrow. In the meantime, I have another assignment on WOTUS-related leg history that would be super helpful. Let me know if you have questions or concerns about this.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Wendelowski, Karyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1D913E7D7397466A803149761A0BDF18-KWENDELO]
Sent: 6/1/2017 4:17:49 PM
To: Wehling, Carrie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3e55f11fdc7489698be69849b301da6-CWEHLING]
Subject: Re: fed agency coordination

Deliberative Process / Attorney Client Ex. 5

From: Wehling, Carrie
Sent: Thursday, June 1, 2017 9:12 AM
To: Wendelowski, Karyn
Subject: FW: fed agency coordination

Would you have some thoughts on this? Lots of historical perspective….
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

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 12:05 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: fed agency coordination

Here's a – not option paper, but recommendations paper, plus some background. Happy to incorporate thoughts.

Deliberative Process / Ex. 5

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

To: Doyle, Andrew (ENRD)[Andrew.Doyle@usdoj.gov]
From: Wendelowski, Karyn
Sent: Fri 5/26/2017 2:33:53 PM
Subject: draft CWR S.Ct.brief
CLEAN_WATER_RULE____(proof_format)_ENRD_draft_Brief_for_Respondent_(re-started_late_May_15)EPA.docm

Hi Andy – The draft looks great – here are a few thoughts from us.

Thanks – and have a great long weekend!

Karyn

Karyn Wendelowski
Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Wendelowski, Karyn
Sent: Thur 5/25/2017 5:12:56 PM
Subject: Sct brief edits
CLEAN_WATER_RULE____(proof_format)_ENRD_draft_Brief_for_Respondent_(re-started_late_May_15)EPA.docm

Karyn Wendelowski
Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

Message

From: Wendelowski, Karyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1D913E7D7397466A803149761A0BDF18-KWENDELO]
Sent: 5/25/2017 4:44:29 PM
To: Messier, Dawn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a13a4cd15ec94fe181aa84e34ac0561a-DMESSIER]
Subject: sentence in draft S.Ct brief

Can you look at the last sentence – do we ever say we Deliberative Process / attorney work product Ex. 5

Deliberative Process / attorney work product Ex. 5

Deliberative Process / attorney work product Ex. 5

Thanks!

Karyn Wendelowski
Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Wendelowski, Karyn
Sent: Tue 5/9/2017 6:55:20 PM
Subject: 509 briefing paper
CWR 509 Issue briefing paper.docx

Karyn Wendelowski
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