
From: Thomas, Amanda
Sent: Tuesday, May 05, 2015 6:59 PM
To: Dorjets, Vlad
Cc: Laity, Jim
Subject: RE: Clean Water Rule (WOTUS) Economic Analysis
Attachments: Draft Final Clean Water Rule Economic Analysis (2).docx

Vlad, please find attached my comments on the economic analysis. Most are minor comments, but I'm not sure I would agree with EPA's approach to benefit transfer of benefits. The studies examine wetlands in specific areas of the country; the regions are: Iowa, Western Kentucky, South Carolina, South Dakota, California, Wisconsin, Nebraska, and Minnesota. Trying to extrapolate the regional/state specific results to nationally might be a stretch (since I wrote that part of the Circular A4, I should know).

Going forward, we can try:

- 1) Hear EPA out and see if we come to a conclusion that what they did is reasonable (if we have time); and
- 2) Ask EPA to move the wetlands mitigation benefits to a sensitivity case or elevate to Howard about make this section of benefits analysis a sensitivity case or remove the quantified estimates. I suspect that EPA will push back since this benefit category is the bulk of the benefits.

I think I can live with the rest of the analysis.

Thanks,
Amanda

From: Dorjets, Vlad
Sent: Tuesday, May 05, 2015 5:44 PM
To: Renshaw, Katie; Fong, Tera L.; Wong, Jacqueline; Vahlsing, Candace; Rodan, Bruce; Nickerson, Cynthia; Heinzelman, Kate; Thomas, Amanda; Burke, Erin
Subject: RE: Clean Water Rule (WOTUS) Economic Analysis
Importance: High

Colleagues – The pressure is getting kicked up on this rule and I have been asked to do whatever I can to get comments on the RIA back to EPA by the end of the week. If there is any way you can get me your comments on the RIA by noon on Friday I would really appreciate it. Sorry for the inconvenience.

From: Dorjets, Vlad
Sent: Monday, April 27, 2015 6:20 PM
To: Renshaw, Katie; Fong, Tera L.; Wong, Jacqueline; Vahlsing, Candace; Rodan, Bruce; Nickerson, Cynthia; Kate Heinzelman; Thomas, Amanda; Erin Burk [REDACTED]
Subject: Clean Water Rule (WOTUS) Economic Analysis

Colleagues,

Attached for your review is the Economic Analysis (EA) related to the draft final Clean Water Rule / WOTUS. Please send me comments by **Monday, May 11th**.

As a reminder, the attached materials are deliberative and pre -decisional and may not be shared or discussed with anyone outside of the Executive Branch. Also, please impress upon those who receive the rule the importance of avoiding leaks. Please let me know who will be the lead reviewer for your agency. If you are not sure who in your agency previously provided comments to OMB on the proposed version of the rule, please let me know and I will get back to you right away.

If you have questions or would like to discuss any aspect of the rule, please feel free to contact me.

Vlad

From: McConville, Drew
Sent: Wednesday, May 13, 2015 7:21 PM
To: Dorjets, Vlad; Johnson, Katie B.; Tarquinio, Ellen; Renshaw, Katie
Cc: Mallory, Brenda
Subject: RE: quick implementation flag RE clean waters

Vlad, can you give me a quick call to discuss? I understand the need for guidance on implementation early, but wondering a little more specifically about the 60 -day window Ali's talking about.

From: Dorjets, Vlad
Sent: Wednesday, May 13, 2015 11:42 AM
To: McConville, Drew; Johnson, Katie B.; Tarquinio, Ellen; Renshaw, Katie
Cc: Mallory, Brenda
Subject: RE: quick implementation flag RE clean waters

The rule estimates a minimal increase in jurisdictional determinations. However, a number of stakeholders have expressed concern that the impacts are underestimated. OMB shares the concern and included questions about that very issue in comments we submitted to the Agencies. I also included questions/comments relating to the grandfathering of existing permits and the treatment of permits currently under review. My plan was to wait until I saw passback (which should be provided today or tomorrow) and decide at that point how to proceed.

To Ali's point though, I think that proper guidance will be critical to proper rollout and implementation as we have heard a number of implementation-related concerns from stakeholders. EPA has informed me that they hope to have the guidance ready a month or two after the rule is issued. They will need to submit a significance determination at that time (or prior to then if they so choose) and, unless they make a very compelling case to the contrary, I am inclined to bring it in for formal review so that OMB can solicit comment from interagency reviewers and stakeholders.

As an aside, we have heard complaints from cities and states about a lack of consultation prior to the proposed rule being issued and a lack of coordination and outreach since then. In fact, the National League of Cities went so far as to say that they do not trust EPA and the Corps on this rulemaking and have requested that the rule be withdrawn so that they can have an opportunity to review it and provide comment. This sentiment was echoed by the US Conference of Mayors and the National Association of Counties. I realize that this may just be political posturing but, but the agencies may be able to use the guidance document as an opportunity for additional outreach.

Katie and Ellen have participated in the stakeholder meetings also so may have some insight into this.

From: McConville, Drew
Sent: Wednesday, May 13, 2015 10:56 AM
To: Johnson, Katie B.; Tarquinio, Ellen; Renshaw, Katie
Cc: Mallory, Brenda; Dorjets, Vlad
Subject: RE: quick implementation flag RE clean waters

Thanks. Would be great to learn a little more about it soon since it's gotten bumped up so high. Vlad, is there anything you can share over email or worth someone on our team connecting with you by phone?

+ Ellen and Katie

From: Johnson, Katie B.
Sent: Tuesday, May 12, 2015 8:18 PM
To: McConville, Drew
Cc: Mallory, Brenda; Dorjets, Vlad
Subject: RE: quick implementation flag RE clean waters

I am adding Vlad who knew this was an issue but didn't think it was worth elevating as part of the review process.

From: McConville, Drew
Sent: Tuesday, May 12, 2015 1:37 PM
To: Johnson, Katie B.
Cc: Mallory, Brenda
Subject: RE: quick implementation flag RE clean waters

Thanks Katie. Odd the way this is being elevated... Has this come up in the interagency review process? Does your team have a view on it?

From: Johnson, Katie B.
Sent: Tuesday, May 12, 2015 9:51 AM
To: Mallory, Brenda; McConville, Drew
Subject: FW: quick implementation flag RE clean waters

Wanted to make sure that Ali had raised this with you all as well on the WOTUS issue.

From: Orris, Allison
Sent: Monday, May 11, 2015 11:57 PM
To: Johnson, Katie B.
Subject: FW: quick implementation flag RE clean waters

From: Zaidi, Ali
Sent: Monday, May 11, 2015 11:55 PM
To: Donovan, Shaun
Cc: Aviel, Sara; Aron-Dine, Aviva; Kefalas, Ioanna; Shelanski, Howard; Colyar, Kelly T.; Hickey, Mike; Mancini, Dominic J.; Orris, Allison; DL-OMB-NRP Senior Staff
Subject: quick implementation flag RE clean waters

Shaun,

I wanted to flag a potential Clean Waters implementation issue that the Water and Power Branch is tracking/trying to address but that you should be aware of.

As we get more resolution, we will keep you posted. **For now, FYSA only.** [Note, we're also flagging for CE REDACTED.]

Thanks.

--

"60-day land rush" after the rule is finalized

Issue: The Army Corps has expressed some concern about a flurry of activity before the final Clean Water Rule is published and during the 60 days between when the rule is published and when it takes effect. This follows from the potential that more waters will be jurisdictional under the final rule than under current practice and guidance. Folks in areas that are currently not jurisdictional but would become jurisdictional could precipitate a mad dash of applications for jurisdictional determinations, permit applications, and unpermitted fill activities. This could create a backlog of applications and cause delays in the jurisdictional determination/ permitting process.

Status: OMB has raised this issue with Jo-Ellen and team, and they have indicated they will provide an update early this week regarding the status of plans for implementing the rule, issuing guidance to the field, and preparation for an increase in applications received. Army and the Corps have had little time to work on rollout and implementation planning due to considerable work revising and finalizing the rule to meet the planned publication date. A large influx of applications may slow down the process, but not result in complete failures. OMB has been developing a list of questions regarding grandfathering scenarios that should be answered in implementation guidance, and OIRA has requested to review the Corps implementation guidance before it is issued.

From: Laity, Jim
Sent: Monday, December 01, 2014 11:50 AM
To: Dorjets, Vlad
Subject: RE: FYSA: Comment Info on WoUS Rule (UNCLASSIFIED)

According to Chip's latest e-mail, it's now scheduled to come in April 15. But I would not be surprised if it slips further.

-----Original Message-----

From: Dorjets, Vlad
Sent: Monday, December 01, 2014 11:36 AM
To: Laity, Jim
Subject: RE: FYSA: Comment Info on WoUS Rule (UNCLASSIFIED)

Jim - If I'm here until the summer, and the rule really does come in next month, I may have enough time to review it.

-----Original Message-----

From: Laity, Jim
Sent: Monday, December 01, 2014 10:30 AM
To: Levenbach, Stuart; Dorjets, Vlad
Subject: RE: FYSA: Comment Info on WoUS Rule (UNCLASSIFIED)

Vlad, Looks like this may not come in in time for you to work on it, but feel free to keep an eye on it anyway as your time permits.

-----Original Message-----

From: Levenbach, Stuart
Sent: Monday, December 01, 2014 10:24 AM
To: Dorjets, Vlad
Cc: Laity, Jim
Subject: FW: FYSA: Comment Info on WoUS Rule (UNCLASSIFIED)

FYI

-----Original Message-----

From: Smith, Charles R CIV (US) [REDACTED]
Sent: Monday, December 01, 2014 10:23 AM
To: Laity, Jim; Levenbach, Stuart
Subject: FW: FYSA: Comment Info on WoUS Rule (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

This morning I was informed that our Principals have moved the date for submitting the final WoUS Rule to OMB from January 15th to April 15th.

Chip

-----Original Message-----

From: Smith, Charles R CIV (US)

Sent: Monday, December 01, 2014 9:20 AM

To: Laity, Jim; Levenbach, Stuart

Subject: FYSA: Comment Info on WoUS Rule (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Confidentially and informally, I briefed Ms Darcy last week that as of 24 Nov 2014:

- * ~750,000 to 1 million (EPA still processing) comments anticipated; by far, more comments have been submitted on this proposed rule than any action in the history of OASA(CW) and USACE
- * ~700,000 comments processed into electronic docket so far
- * ~15,000 unique comment letters thus far; we predict over 25,000 once all are processed (some letters are dozens to 100 pages long)
- * As an example, it took the Corps ~8 months to work through a total of 25,000 comments on the Nationwide Permits for 2012 (1,200 unique)
- * 71 recent letters (522 individuals) from Congress (members and committees) out of the 700,000 letters recorded (not read) thus far, State officials, and key organizations reveal the following:

Reasons for Opposition (letters are long, complex, legal/science/technical, meaty)

- * 21 letters from Congress oppose the rule a/o ask that it be withdrawn
 - * 9 letters from Congress request rewriting, additional clarity, more time
 - * 8 letters from States oppose the rule a/o ask that it be withdrawn
 - * 8 letters from States request rewriting, additional clarity, more time
- 5 letters from key organizations oppose the rule a/o ask that it be withdrawn
- 14 letters from key organizations request additional clarity, more time

Sample of Reasons cited for opposition:

- * Expansion of jurisdiction
- * Legal questions related to constitution, CWA and SWANCC & Rapanos decisions
- * Federalism, infringement on the roles and responsibilities of States
- * Adverse impacts to economic development and use of private property
- * Adverse & significant impacts on small businesses
- * Adverse & significant impacts on agriculture
- * Inadequate, inaccurate Economic Analysis
- * Concerns about MS4s and jurisdiction, perceived to be tremendous scope and cost change
- * Lack of clarity, vague new terms
- * Lack of consultation with States, Tribes, and the Public BEFORE the rule was drafted

Reasons for Support (very short & general):

- * 3 letters from States support the rule (clean water, recreation)
- * 1 organization (Dame Juliana League) supports the rule
- * Desire for clean Water
- * Hunting, fishing, & recreation

Schedule - EPA is still pressing to submit the final rule to OMB by 15 January 2015 (with holiday leave periods accounted for, ~24 working days from today). If you have questions about the schedule and its urgency I can explain in a call.

chip

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

From: Greenawalt, Andrei
Sent: Thursday, September 12, 2013 4:33 PM
To: Laity, Jim; Mancini, Dominic J.
Subject: Fw: WOUS Science Report final docs
Attachments: WOUS Science Report final docs.docx; wotus one pager FINAL EPA USDA and USACE.docx; CWA rollout EPA and USDA and USACE.docx

Latest docs. Jim this won't be until early next week at the earliest (hope to have better sense tonight) so I've intentionally held off on passing along comments yet (so your previous edits won't be reflected yet).

From: Ganesan, Arvin [REDACTED]
Sent: Thursday, September 12, 2013 03:59 PM
To: Boots, Michael J.; Bonnie, Robert - OSEC <[REDACTED]>; DOMINGUEZ, MARIE THERESE (Marie Therese Dominguez) SES USARMY (US) <[REDACTED]>; Greenawalt, Andrei
Cc: Reynolds, Thomas <[REDACTED]>; Kopocis, Ken <[REDACTED]>
Subject: WOUS Science Report final docs

Hi all,
Attached are all the docs on WOTUS that are now agreed to with the three relevant Agencies.

Thanks.

Rollout of EPA Connectivity Study and Uploading of CWA rule to OMB

*This document describes the rollout timeline for these policy actions and works to a release at noon on
Thursday, September 12th*

Weds, Sept 11th (evening)

EPA Administrator to call:

- Margie Alt – Environment America
- Sen. Debbie Stabenow
- Rep. Nick Rahall
- Rep. John Dingell
- President of National Farmers Union

EPA Deputy Administrator to call:

- Sen. Ben Cardin

Thurs, Sept 12th (am)

EPA Administrator to do conference call with:

- Select Green Group CEO's (Environment America, EDF, NRDC, NWF)

USDA (Vilsack or Senior Political) to call:

- Presidents of: National Association of State Departments of Agriculture, National Corn Growers Association, National Soybean Association, and National Wheat Association.

EPA Deputy Administrator to call:

- Select outdoor/sportsmen groups (Audubon, Trout Unlimited, Ducks Unlimited)
- Environmental Council of States (asked for a rule over guidance)

EPA Senior Staff to call:

- American Farm Bureau (to inform the group that EPA has done what they have asked for – issue a rule, as opposed to guidance)

- WAC (Waters Advocacy Coalition – a group of most of the opponents of the guidance, who have also asked for rulemaking over a guidance)
- National Association of Clean Water Agencies (will be supportive)
- National Governors Association (asked for a rule over guidance)
- National Association of Counties (asked for a rule over guidance)
- National League of Cities (asked for a rule over guidance)
- U.S. Conference of Mayors (asked for a rule over guidance)
- Western Governors Association (asked for a rule over guidance)
- League of Conservation Voters

USDA:

- USDA will issue a short statement from Secretary Vilsack and may provide proactively to Jerry Hagstrom of the Hagstrom Report, Philip Brasher of CQ, and Keith Good of Farm Policy.

Thurs, Sept 12th (pm)

- EPA Stakeholder outreach staff to blast one pager to various stakeholder lists.
- Secretary Vilsack will record an interview with USDA radio. Audio will be provided to ag radio through the USDA Newslane. Consider proactively sending to National Association of Farm Broadcasters, AgriTalk, and Brownfield.

FULL CONGRESSIONAL OUTREACH PLAN

Administrator Calls (night before)

- Nick Rahall
- Debbie Stabenow
- John Dingell

Deputy Administrator Calls (night before)

- Ben Cardin

Congressional Affairs Outreach (night before)

- Harry Reid

- Jack Reed
- Nancy Pelosi
- Steny Hoyer
- Dick Durbin
- Chuck Schumer
- Tom Carper
- Henry Waxman
- Eddie Bernice Johnson
- Frank Pallone
- Mark Pryor
- Barbara Boxer
- Sheldon Whitehouse
- Kay Hagan

Congressional Affairs Outreach (day of)

- Amy Klobuchar
- Louise Slaughter
- Tim Bishop
- James Moran
- James Langevin
- Steve Isreal
- Gerry Connelly
- Paul Tanko
- Jared Polis
- Rush Holt
- Doris Matsui
- Chellie Pingree

Congressional Affairs Outreach (concurrently with announcement)

- Colin Peterson
- David Vitter
- James Inhofe
- John Barrasso
- Mike Crapo
- Jeff Sessions
- Mike Enzi
- John Boozman
- Fred Upton

- Andy Harris
- Bob Gibbs
- John Mica

From: Mancini, Dominic J.
Sent: Friday, September 13, 2013 3:29 PM
To: Laity, Jim; Schwab, Margo
Subject: RE: WOUS Science Report final docs

[REDACTED]

From: Laity, Jim
Sent: Friday, September 13, 2013 3:00 PM
To: Schwab, Margo; Mancini, Dominic J.
Subject: RE: WOUS Science Report final docs

[REDACTED]

From: Schwab, Margo
Sent: Thursday, September 12, 2013 6:48 PM
To: Laity, Jim; Mancini, Dominic J.
Subject: Re: WOUS Science Report final docs

EPA's stmt on peer review is correct - this is the same interpretation of the peer review bulletin on which we are backing CPSC. One question though - is EPA seeking public comment the use of this document before it sets any policy based on it? This is what we are recommending to CPSC. I will be in the office at 8 :30am tomorrow.

From: Laity, Jim
Sent: Thursday, September 12, 2013 04:54 PM
To: Greenawalt, Andrei; Mancini, Dominic J.
Cc: Schwab, Margo
Subject: RE: WOUS Science Report final docs

Andrei, Here are my comments on the new document (from USDA) that I hadnot seen yet. There is one marginal comment with a question for you.

Margo, there is also a marginal comment with a question for you. The text characterizes IQG requirements. Please confirm that it is accurate. Jim

From: Greenawalt, Andrei
Sent: Thursday, September 12, 2013 4:33 PM
To: Laity, Jim; Mancini, Dominic J.
Subject: Fw: WOUS Science Report final docs

From: Laity, Jim
Sent: Monday, September 16, 2013 5:24 PM
To: Schwab, Margo
Subject: RE: WOTUS

Actually when I read your edits I kicked myself for not making similar edits earlier. Good catch.

From: Schwab, Margo
Sent: Monday, September 16, 2013 5:17 PM
To: Laity, Jim
Subject: Re: WOTUS

Good! I really wanted to run the edits by you first, but time was short.

From: Laity, Jim
Sent: Monday, September 16, 2013 05:13 PM
To: Schwab, Margo; Greenawalt, Andrei; Mancini, Dominic J.
Subject: RE: WOTUS

Just seeing this now. My earlier comments are addressed in this version. I fully support Margo's comments, which help to address the issue of the draft rule getting ahead of the science.

From: Schwab, Margo
Sent: Monday, September 16, 2013 3:52 PM
To: Greenawalt, Andrei; Mancini, Dominic J. ; Laity, Jim
Subject: RE: WOTUS

I have inserted the same comments in both.

From: Greenawalt, Andrei
Sent: Monday, September 16, 2013 3:13 PM
To: Mancini, Dominic J.; Laity, Jim; Schwab, Margo
Subject: FW: WOTUS

Actually would plug into the attached since these docs are now the very latest

From: Ganesan, Arvin [REDACTED]
Sent: Monday, September 16, 2013 2:56 PM
To: Bittleman, Sarah; Boots, Michael J.; Greenawalt, Andrei; DOMINGUEZ, MARIE THERESE (Marie Therese Dominguez) SES USARMY (US); Bonnie, Robert - OSEC
Cc: Kopocis, Ken; Peck, Gregory; Frithsen, Jeff; Reynolds, Thomas; Johnson, Alisha; Tuss, Taryn L.
Subject: RE: WOTUS

Hopefully this will be helpful. I've attached all of the final documents.

1. At noon, EPA will put out on the website the document called "WOTUS Final Public." We will push this out to select reporters, who cover this.
2. I assume at noon, USDA will be ready to respond with a statement to any press that asks? The Secretary's statement is attached.
3. Attached is an internal TP and Q&A piece that shouldn't go out.

I think we should – on an embargoed basis - give the WOTUS final public doc to select groups who will say positive things.

From: Bittleman, Sarah

Sent: Monday, September 16, 2013 1:27 PM

To: Boots, Michael J.; Ganesan, Arvin; Greenawalt, Andrei; DOMINGUEZ, MARIE THERESE (Marie Therese Dominguez) SES USARMY (US); Bonnie, Robert - OSEC

Cc: Kopocis, Ken; Peck, Gregory; Frithsen, Jeff; Reynolds, Thomas; Johnson, Alisha; Tuss, Taryn L.

Subject: Re: WOTUS

Can all our comms folks send around FINAL comms materials (statements and or press releases) WHEN they are final with a clear indication as to WHEN they can be forwarded - I anticipate folks wanting them so they can prepare supportive press releases and statements of their own. Thx! Sb

From: Boots, Michael J. [REDACTED]

Sent: Monday, September 16, 2013 1:16:01 PM

To: Ganesan, Arvin; Greenawalt, Andrei; DOMINGUEZ, MARIE THERESE (Marie Therese Dominguez) SES USARMY (US); Bonnie, Robert - OSEC

Cc: Kopocis, Ken; Bittleman, Sarah; Peck, Gregory; Frithsen, Jeff; Reynolds, Thomas; Johnson, Alisha; Tuss, Taryn L.

Subject: RE: WOTUS

Plus Taryn

From: Ganesan, Arvin [REDACTED]

Sent: Monday, September 16, 2013 1:09 PM

To: Greenawalt, Andrei; Boots, Michael J.; DOMINGUEZ, MARIE THERESE (Marie Therese Dominguez) SES USARMY (US); Bonnie, Robert - OSEC

Cc: Kopocis, Ken; Bittleman, Sarah; Peck, Gregory; Frithsen, Jeff; Reynolds, Thomas; Johnson, Alisha

Subject: Re: WOTUS

Hi all,
Let's plan on making the connectivity report public at noon tomorrow. So, we should prepare to do our press done then too.

From: Ganesan, Arvin

Sent: Friday, September 13, 2013 5:55:03 PM

To: Greenawalt, Andrei; Boots, Michael J.; DOMINGUEZ, MARIE THERESE (Marie Therese Dominguez) SES USARMY (US); Bonnie, Robert - OSEC

Cc: Kopocis, Ken; Bittleman, Sarah

Subject: WOTUS

Hi all, Just to close the loop. I am confirming that the plan is to release the connectivity report and upload the rule to OMB on Tues, with the specific time TBD.

Furthermore, on Tues, the Agencies will withdraw the guidance.

We still need final sign off from WH Comms on the materials, but that is forthcoming.

Thanks a lot for everything during this process.

Arvin

Arvin R. Ganesan

Deputy Chief of Staff for Policy

U.S. Environmental Protection Agency

Office of the Administrator
[REDACTED]
[REDACTED]

From: Laity, Jim
Sent: Sunday, April 26, 2015 10:19 AM
To: Dorjets, Vlad
Subject: RE: WOTUS memo

We can talk more Tuesday. Your first draft was a great start. EPA should not be scheduling elevation meetings w DOT even w us invited. Katie and Howard may well want to make this part of a larger package deal. Greg is trying to use a divide and conquer strategy here. Talk to Katie abt this. If she wants to go ahead w DOT call OK. But tell Greg he should not be scheduling any more side meetings w agencies. That's our job. Call if u want to discuss [REDACTED]

And yes Howard and Katie need to know abt SBA concern. Remind them that SBA sent a public letter complaining abt this during the comment period which in turn was the basis of a hostile congressional inquiry to us.

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-----Original Message-----

From: Dorjets, Vlad
Sent: Friday, April 24, 2015 12:43 PM Eastern Standard Time
To: Laity, Jim
Subject: RE: WOTUS memo

I really like the changes you made to the memo and think they made it MUCH stronger. Thank you. Sorry again for not giving you a better product to work with.

Some WOTUS updates:

- [REDACTED]
- DOT told me that they have scheduled a call with EPA to discuss the issue at a policy level and got us invited (Katie and I will call in);
- The American Forest & Paper Association came in today together with some other manufacturers and made a very compelling argument for the need for an exclusion for isolated waters used for commercial purposes and those that discharge to a water of the US through an NPDES -permitted point source. I believe the rule already excludes these but I need to make sure that it is unambiguous given the concerns I heard today; and
- Since SBA Advocacy still believes that EPA needed to conduct a traditional SBREFA panel and collaborative report and does not agree with the Agency's characterization of costs for small business, I assume that they will write an opposition letter once the rule is released. Do we need to tell Howard anything about that or does he already assume that such a letter will get issued?

Vlad

From: Laity, Jim
Sent: Thursday, April 23, 2015 7:53 PM
To: Dorjets, Vlad
Subject: WOTUS memo

Vlad, This was a very good first effort. However, based on my experience with the long history of the rule, I have reworked a fair amount. Attached are both a redline and a clean version. I am including the redline so you can see specifically how I changed your draft. However, I encourage you to focus on the clean version and see if you are comfortable with it. Feel free to make any tweaks you think appropriate, and send to Howard asap.

Great work on this. Our chances of getting a significant improvement have doubled (to 2%) as a result of your good work. ☺ Jim

From: Laity, Jim
Sent: Monday, May 18, 2015 2:15 PM
To: Dorjets, Vlad
Cc: Johnson, Katie B.; Mancini, Dominic J.
Subject: FW: Clean Water Rule Follow Up
Attachments: BLOG What to Know About the CWR.docx; FACT SHEET Agriculture CWR 5.12.15.docx; PRESS RELEASE Clean Water Rule 5.10.15.docx; KEY MESSAGES Clean Water Rule 5.11.15.docx

Vlad: Please look over these materials carefully and make sure you agree that they are accurate. Provide any edits to Katie. Thx.

From: Dorjets, Vlad
Sent: Monday, May 18, 2015 12:57 PM
To: Johnson, Katie B.
Cc: Mancini, Dominic J.; Laity, Jim
Subject: Fw: Clean Water Rule Follow Up

Very surprised - and disappointed - we're not being included.

From: Tarquinio, Ellen
Sent: Monday, May 18, 2015 12:42 PM
To: Dorjets, Vlad
Subject: FW: Clean Water Rule Follow Up

-----Original Message-----

From: Purchia, Liz [REDACTED]
Sent: Wednesday, May 13, 2015 04:55 PM Eastern Standard Time
To: Tuss, Taryn L.; Goldfuss, Christina; Costa, Kristina; Patel, Rohan; Barranco, Angela; Bauserman, Trent; Zaidi, Ali; Jensen, Jay; Mallory, Brenda; Benenati, Frank; Rowe, Courtney; Crook, Lowry; Elson, Tom; Todd Batta, USDA [REDACTED] Billingsley, Tara; Anderson, Amanda D.; Matthew Herrick; Cullen Schwarz; Tarquinio, Ellen
Cc: Rupp, Mark; Reynolds, Thomas; Bond, Brian; Lee, Monica; Loop, Travis; Kelley, Moira L CIV (US); Ragland, Micah; Vaught, Laura; Davis, Jay
Subject: Clean Water Rule Follow Up

Hi All,

Thanks for joining yesterday so we could provide an update on our plans for the Clean Water Rule. As promised, we're following up with some of our draft materials, tick tock and our WH/Agency asks. Please see attached and below.

If you have specific edits, please send back to me in tracked changes.

Thanks,
Liz

WH/AGENCY ASKS

FEDERAL FAMILY

- White House
 - Communications
 - Inclusion in Weekly Address video
 - Cabinet Comms Agency email with draft content for posting
 - Post our announcement video to WH social networks
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - Crosspost of one of the blog posts, or post the full -length infographic to WH blog with 1-2 paragraphs about the rule above it
 - Post/retweet/share other graphics and materials as willing
 - OPE
 - Outreach to Johnny Morris (BassPro) and other influential outdoor industry influencers (REI)
 - Help with identifying Homebuilder and other industry validators
 - Help with identifying Farm/Ag related validators
 - [REDACTED]
 - [REDACTED]
 - OCIR
 - Mayor Kevin Johnson, Sacramento, CA, President, USCM
 - County Council Member Riki Hokama, Maui County, HI, President, NACO
 - State Senator Debbie Smith, Nevada, President, NCSL
- USDA
 - Cross-posting blog clarifying the impact on agriculture with the Clean Water Rule
 - Cross-posting blog on What to Know about the Clean Water Rule
 - Statement by Secretary Vilsack: We listened and are adding clarity to the rule
 - EPA interview for USDA agriculture radio network
 - Email to politicals and FSA/NRCS staff about the rule that will include the agriculture fact sheet, agriculture blog, top Q&As, What to Know blog, and the "What the Rule is vs. Is Not" fact sheet
- DOT
 - Statement by Secretary Foxx
- Fish & Wildlife Service
 - Email to staff about rule, including other blog on "Other Waters", What to Know blog, and the "What the Rule is vs. Is Not" fact sheet
 - Stakeholder outreach
 - Digital amplification (post on Instagram and repost EPA videos)

CLEAN WATER RULE ROLL OUT PLAN

PRE-ANNOUNCEMENT/MAY 20

- In-person briefing with EPA senior officials and:
 - Clean Water Action
 - Environment America

- NRDC
- NWF
- TRCP
- Trout Unlimited
- Administrator McCarthy makes a series of pre -notification calls to:
 - Roger Johnson, President: National Farmers Union
 - Doug Peterson, President: Minnesota Farmers Union
 - Kent Peppler, President: Rocky Mountain Farmers Union
 - Dale Hall, President: Ducks Unlimited
 - Margie Alt, Executive Director: Environment America
- Select Hill, IGA, and state calls
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 - Post individual panels of the larger infographic
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 - Old vs. New side by side comparison
- Blogs:
 - What You Should Know
 - Agriculture
 - We listened
 - Other Waters (prairie potholes, vernal pools...etc)

DIGITAL MATERIALS

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REGIONS

- ID local papers, ed boards and radio stations who have covered the rule and schedule sit -down interviews with your RAs
- Template op-ed for you to modify and pitch to local papers from your RA
- OPE/OPA events on the importance of clean water
- Social media amplification

Liz Purchia

Deputy Associate Administrator, Public Affairs

U.S. Environmental Protection Agency

From: Laity, Jim
Sent: Monday, May 18, 2015 2:15 PM
To: Dorjets, Vlad
Cc: Johnson, Katie B.; Mancini, Dominic J.
Subject: FW: Clean Water Rule Follow Up
Attachments: BLOG What to Know About the CWR.docx; FACT SHEET Agriculture CWR 5.12.15.docx; PRESS RELEASE Clean Water Rule 5.10.15.docx; KEY MESSAGES Clean Water Rule 5.11.15.docx

Vlad: Please look over these materials carefully and make sure you agree that they are accurate. Provide any edits to Katie. Thx.

From: Dorjets, Vlad
Sent: Monday, May 18, 2015 12:57 PM
To: Johnson, Katie B.
Cc: Mancini, Dominic J.; Laity, Jim
Subject: Fw: Clean Water Rule Follow Up

Very surprised - and disappointed - we're not being included.

From: Tarquinio, Ellen
Sent: Monday, May 18, 2015 12:42 PM
To: Dorjets, Vlad
Subject: FW: Clean Water Rule Follow Up

-----Original Message-----

From: Purchia, Liz [REDACTED]
Sent: Wednesday, May 13, 2015 04:55 PM Eastern Standard Time
To: Tuss, Taryn L.; Goldfuss, Christina; Costa, Kristina; Patel, Rohan; Barranco, Angela; Bauserman, Trent; Zaidi, Ali; Jensen, Jay; Mallory, Brenda; Benenati, Frank; Rowe, Courtney; Crook, Lowry; Elson, Tom; Todd Batta, USDA [REDACTED]; Billingsley, Tara; Anderson, Amanda D.; Matthew Herrick; Cullen Schwarz; Tarquinio, Ellen
Cc: Rupp, Mark; Reynolds, Thomas; Bond, Brian; Lee, Monica; Loop, Travis; Kelley, Moira L CIV (US); Ragland, Micah; Vaught, Laura; Davis, Jay
Subject: Clean Water Rule Follow Up

Hi All,

Thanks for joining yesterday so we could provide an update on our plans for the Clean Water Rule. As promised, we're following up with some of our draft materials, tick tock and our WH/Agency asks. Please see attached and below.

If you have specific edits, please send back to me in tracked changes.

Thanks,
Liz

WH/AGENCY ASKS

FEDERAL FAMILY

- White House
 - Communications
 - Inclusion in Weekly Address video
 - Cabinet Comms Agency email with draft content for posting
 - Post our announcement video to WH social networks
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - Crosspost of one of the blog posts, or post the full -length infographic to WH blog with 1-2 paragraphs about the rule above it
 - Post/retweet/share other graphics and materials as willing
 - OPE
 - Outreach to Johnny Morris (BassPro) and other influential outdoor industry influencers (REI)
 - Help with identifying Homebuilder and other industry validators
 - Help with identifying Farm/Ag related validators
 - [REDACTED]
 - [REDACTED]
 - OCIR
 - Mayor Kevin Johnson, Sacramento, CA, President, USCM
 - County Council Member Riki Hokama, Maui County, HI, President, NACO
 - State Senator Debbie Smith, Nevada, President, NCSL
- USDA
 - Cross-posting blog clarifying the impact on agriculture with the Clean Water Rule
 - Cross-posting blog on What to Know about the Clean Water Rule
 - Statement by Secretary Vilsack: We listened and are adding clarity to the rule
 - EPA interview for USDA agriculture radio network
 - Email to politicals and FSA/NRCS staff about the rule that will include the agriculture fact sheet, agriculture blog, top Q&As, What to Know blog, and the "What the Rule is vs. Is Not" fact sheet
- DOT
 - Statement by Secretary Foxx
- Fish & Wildlife Service
 - Email to staff about rule, including other blog on "Other Waters", What to Know blog, and the "What the Rule is vs. Is Not" fact sheet
 - Stakeholder outreach
 - Digital amplification (post on Instagram and repost EPA videos)

CLEAN WATER RULE ROLL OUT PLAN

PRE-ANNOUNCEMENT/MAY 20

- In-person briefing with EPA senior officials and:
 - Clean Water Action
 - Environment America

- NRDC
- NWF
- TRCP
- Trout Unlimited
- Administrator McCarthy makes a series of pre -notification calls to:
 - Roger Johnson, President: National Farmers Union
 - Doug Peterson, President: Minnesota Farmers Union
 - Kent Peppler, President: Rocky Mountain Farmers Union
 - Dale Hall, President: Ducks Unlimited
 - Margie Alt, Executive Director: Environment America
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Liz Purchia

Deputy Associate Administrator, Public Affairs

U.S. Environmental Protection Agency

Clear Protection for Clean Water

By EPA Administrator Gina McCarthy and Assistant Secretary of the Army (Civil Works) Jo -Ellen Darcy

As millions of Americans enjoy a local waterway with family and friends this summer, they can know that river, lake, or beach is better protected because of our Clean Water Rule. The U.S. Environmental Protection Agency and Army Corps of Engineers have finalized the rule to protect the streams and wetlands that form the foundation of our nation's water resources. Here are the key points about the rule that provides clear protection for clean water:

Clean water is vital to our health, communities, and economy. People depend on clean water for their health: About 117 million Americans, one in three people, get their drinking water from streams that were vulnerable before the Clean Water Rule. Our cherished way of life depends on clean water: healthy ecosystems provide wildlife habitat and places to fish, paddle, surf, and swim. Our economy depends on clean water: manufacturing, farming, tourism, recreation, energy production and other major economic sectors need clean water to function and flourish.

We need clean water upstream to have healthy communities downstream. The health of rivers, lakes, bays, and coastal waters depend on the streams and wetlands where they begin. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife.

Science shows us the most important waters to protect. In developing the Clean Water Rule, the Agencies utilized the latest science, including a report summarizing more than 1,200 peer-reviewed, published scientific studies which showed that small streams and wetlands play an important role in the health of larger downstream waterways like rivers and lakes.

We listened closely and carefully to public input. For over a decade, EPA and the Army Corps of Engineers have received requests for a rulemaking to provide clarity on protections under the Clean Water Act from members of Congress, state and local officials, industry, agriculture, environmental groups, scientists, and the public. In developing the rule, the Agencies held hundreds of meetings with stakeholders across the country, reviewed over one million public comments, and listened carefully to perspectives from all sides. All of this input shaped and improved the Clean Water Rule.

The Rule is... protecting vulnerable streams and wetlands. Protection for about 60 percent of the nation's streams and millions of acres of wetlands has been confusing and complex as the result of Supreme Court decisions in 2001 and 2006. EPA and the U.S. Army Corps of Engineers are ensuring that waters protected under the Clean Water Act are more precisely defined, easier for businesses and industry to understand, more predictably determined, and consistent with the law and the latest science.

The Rule is Not... protecting any new types of waters that have not historically been covered under the Clean Water Act. It does not regulate new types of ditches, does not apply to groundwater, and does not create any new permitting requirements for agriculture. The Clean Water Rule deals with the pollution and destruction of waterways—not land use or private property rights.

The rule protects clean water without getting in the way of farming, ranching, and forestry. Farms across America depend on clean and reliable water for livestock, crops, and irrigation. The final rule specifically recognizes the vital role that agriculture serves in providing food, fuel, and fiber for the U.S. and the world. Activities like planting, harvesting, and moving livestock have long been exempt from

Clean Water Act regulation, and the Clean Water Rule doesn't change that. The Clean Water Rule provides greater clarity and certainty to farmers and does not add economic burden on agriculture.

Climate change makes protection of water resources even more essential. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife. Impacts from climate change like drought, sea level rise, stronger storms, and warmer temperatures threaten the quantity and quality of America's water. Protecting streams and wetlands will enable us to better adapt to climate change.

For more information visit www.epa.gov/cleanwaterrule



The Clean Water Rule protects streams and wetlands that form the foundation of our nation's water resources. One in 3 Americans currently get their drinking water from sources lacking clear protection from pollution, so this rule protects waters scientifically shown to have the greatest impact on downstream water quality.

EPA and the U.S. Army Corps of Engineers (Army Corps) are making the process for identifying waters protected under the Clean Water Act easier to understand, more predictable, and consistent with the latest science. The Clean Water Rule will provide greater clarity and certainty to farmers, will not create any new permitting requirements, and will not add economic burden on agriculture.

WE ALL DEPEND ON CLEAN WATER

Farms across America depend on clean, reliable water for livestock, crops, and irrigation. This rule protects water sources without getting in the way of farming, ranching, and forestry.

Normal farming and ranching—including planting, harvesting, and moving livestock—have long been exempt from Clean Water Act regulation, and the Clean Water Rule doesn't change that. The final rule specifically recognizes the vital role that agriculture serves in providing food, fuel, and fiber for the United States and the world.

*The Clean Water Act
only applies if a
protected water
body is going to be
polluted or
destroyed.*

OUTREACH AND INPUT

Agriculture groups raised important questions about what it means for waters to be "covered" or "jurisdictional" under the Clean Water Act. The Act requires a permit if an activity could discharge a pollutant into a covered waterbody, however, **agricultural activities like planting, harvesting, and moving livestock across a stream have long been excluded from permitting, and that won't change under the rule.**

In other words, *farmers and ranchers won't need a permit for normal agricultural activities* that happen in and around those waters.

In developing the rule, EPA and the Army Corps listened carefully to input from the agriculture community, the U.S. Department of Agriculture, and state Departments of Agriculture.

After releasing the proposed rule last year, the agencies held more than 400 meetings with stakeholders across the country to provide information, hear concerns, and answer questions. EPA officials visited farms in Arizona, Colorado, Maryland, Mississippi, Missouri, New York, Pennsylvania, Texas, and Vermont. The 207-day public comment period on the proposed rule resulted in more than a million comments. All of this public input helped to shape the final Clean Water Rule.

Feedback from the agricultural community led to several improvements in the final Clean Water Rule.

- **Defining tributaries more clearly.** The rule is precise about the streams being protected so that it could not be interpreted to pick up erosion in a farmer's field.
- **Providing certainty in how far safeguards extend to nearby waters.** The rule sets limits on covering nearby waters that for the first time are physical and measurable.
- **Focusing on streams, not ditches.** The rule limits protection to ditches that are constructed out of streams or that function like streams and can carry pollution downstream. Constructed ditches that flow only when it rains are not covered.

THE RULE DOES:

Preserve agricultural exemptions from permitting, including:

- Normal farming, silviculture, and ranching practices. Those activities include plowing, seeding, cultivating, minor drainage, and harvesting for production of food, fiber, and forest products.
- Soil and water conservation practices in dry land.
- Agricultural stormwater discharges.
- Return flows from irrigated agriculture.
- Construction and maintenance of farm or stock ponds or irrigation ditches on dry land.
- Maintenance of drainage ditches.
- Construction or maintenance of farm, forest, and temporary mining roads.

THE RULE ALSO DOES:

Preserve and expand common sense exclusions from jurisdiction, including:

- Artificially irrigated areas that are otherwise dry land.
- Artificial lakes or ponds created by excavating and/or diking dry land and used for purposes like rice growing, stock watering or irrigation.
- Artificial ornamental waters created for primarily aesthetic reasons.
- Water-filled depressions created as a result of construction activity.
- Pits excavated in dry land for fill, sand, or gravel.
- Prior converted cropland.
- Waste treatment systems (including treatment ponds or lagoons).
- Grass swales.

THE RULE DOES NOT:

- Protect any types of waters that have not historically been covered by the Clean Water Act.
- Interfere with or change private property rights.
- Regulate new types of ditches.
- Apply to groundwater.
- Cover tile drains.
- Regulate irrigation or water transfers.

MORE INFORMATION: WWW.EPA.GOV/CLEANWATERRULE

KEY MESSAGES – CLEAN WATER RULE

“Clear protection for clean water”

The Clean Water Rule protects streams and wetlands that form the foundation of our nation’s water resources. They feed the rivers, lakes, bays, and coastal waters that our health and economy depend on.

We need clean water upstream to have healthy communities downstream. Protecting streams and wetlands is part of adapting to climate change impacts like drought, sea level rise, stronger storms, and warmer temperatures.

Today, 1 in 3 Americans get their drinking water from sources lacking clear protection from pollution. Protection under the Clean Water Act, established by Congress, became confusing and complex after Supreme Court decisions were made on which waters were protected.

So after reviewing over a million comments, holding hundreds of meetings with stakeholders, and listening carefully to public input from all sides, EPA and the Army Corps of Engineers are ensuring that waters protected under the Clean Water Act are precisely defined, easier for businesses and industry to understand, more predictable, and consistent with the law and the latest science.

The Clean Water Act only applies if a waterbody is going to be polluted or destroyed.

The rule protects clean water without getting in the way of farming, ranching, and forestry. Activities like planting, harvesting, and moving livestock have long been exempt from Clean Water Act regulation, and the Clean Water Rule doesn’t change that.

The purpose of this rule boils down to three facts:

- People depend on clean water for their health: About 117 million Americans get drinking water from streams protected by this rule.
- Our economy depends on clean water: manufacturing, farming, tourism, recreation, energy production and other major economic sectors need clean water to function and flourish.
- Our cherished way of life depends on clean water: healthy ecosystems provide wildlife habitat and places to fish, paddle, and swim.

CONTACT:

Robert Daquillard
[REDACTED]

Moir Kelley
[REDACTED]

FOR IMMEDIATE RELEASE

May XX, 2015

Clean Water Rule Protects Streams and Wetlands Critical to Public Health, Communities, and Economy

Washington – In a historic step for the protection of clean water that Americans depend on for their health, communities, and businesses, the U.S. Environmental Protection Agency and U.S. Department of the Army finalized the Clean Water Rule today to clearly protect the streams and wetlands that form the foundation of the nation's water resources. The rule ensures that waters protected under the Clean Water Act are more precisely defined and predictably determined, making it easier and faster for businesses and industry. The rule is based on law and the latest science, and is shaped by public input. The rule – and the Clean Water Act – only applies if a protected water body is going to be polluted or destroyed.

People need clean water for their health: About 117 million Americans – one in three people – get drinking water from streams protected by the Clean Water Rule. America's cherished way of life depends on clean water, as healthy ecosystems provide wildlife habitat and places to fish, paddle, surf, and swim. Clean and reliable water is an economic driver, including for manufacturing, farming, tourism, recreation, and energy production. The health of rivers, lakes, bays, and coastal waters is impacted by the streams and wetlands where they begin.

Climate change makes protection of water resources even more essential. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife. Impacts from climate change like drought, sea level rise, stronger storms, and warmer temperatures threaten the quantity and quality of America's water. Protecting streams and wetlands will enable us to better adapt to climate change.

QUOTE ADMINISTRATOR: "We need clean water upstream to have healthy communities downstream ..."

QUOTE ASSISTANT SECRETARY

Specifically, the Clean Water Rule:

- **Defines tributaries more clearly.** The Clean Water Act protects navigable waterways and their tributaries. The rule says a tributary show physical features of flowing water.
- **Protects tributaries that impact the health of downstream waters.** Science shows how streams and wetlands can have a significant connection to downstream rivers, lakes, and bays. The rule provides protection for these headwaters that have been vulnerable.
- **Provides certainty in how far safeguards extend to nearby waters.** The rule protects wetlands that are next to rivers and lakes because science shows that they impact downstream waters. The protection extends within the 100-year floodplain but does not exceed 4,000 feet.
- **Protects the nation's regional water treasures.** Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands affect downstream waters and are important resources for local communities.
- **Focuses on streams, not ditches.** The rule limits protection to ditches that are constructed out of streams or function like streams and can carry pollution downstream.
- **Maintains the status of waters within Municipal Separate Storm Sewer Systems.** The rule does not change how those waters are treated and encourages the use of green infrastructure.

The Clean Water Rule does not protect any types of waters that have not historically been covered under the Clean Water Act. It does not regulate new types of ditches, does not apply to groundwater, and does not create any new permitting requirements for agriculture. The Clean Water Rule addresses the pollution and destruction of waterways – not land use or private property rights.

Protection for many of the nation's streams and wetlands has been confusing , complex, and time-consuming as the result of Supreme Court decisions in 2001 and 2006. For over a decade, EPA and the Army Corps of Engineers have received requests from members of Congress, state and local officials, industry, agriculture, environmental groups, scientists, and the public for a rulemaking to provide clarity on protections under the Clean Water Act.

In developing the rule, the Agencies held hundreds of meetings with stakeholders across the country, reviewed over one million public comments, and listened carefully to perspectives from all sides. EPA and the Army Corps of Engineers also utilized the latest science, including a report summarizing more than 1,200 peer-reviewed, published scientific studies which showed that small streams and wetlands play an integral role in the health of larger downstream water bodies.

The rule protects clean water without disrupting farming, ranching, and forestry. Farms across America depend on clean and reliable water for livestock, crops, and irrigation. The final rule specifically recognizes the vital role that U.S. agriculture serves in providing food, fuel, and fiber at home and around the world. Activities like planting, harvesting, and moving livestock have long been exempt from Clean Water Act regulation, and the Clean Water Rule doesn't change that. The Clean Water Rule provides greater clarity and certainty to farmers and does not add economic burden on agriculture.

The Clean Water Rule will be effective 60 days after publication in the Federal Register.

More information: www.epa.gov/cleanwaterrule

From: Laity, Jim
Sent: Tuesday, February 24, 2015 12:06 PM
To: Seehra, Jasmeet; Orris, Allison; Aguilar, Brenda; Johnson, Katie B.; Mancini, Dominic J.; Hunt, Alex; Young, Carl
Cc: Levenbach, Stuart; Brammer, Josh
Subject: RE: Initial materials In Preparation for the meeting on 2/26 with DOD on reg priorities
Attachments: DOD 2015 Priorities Rundown with Jasmeet edits on 2 24 2015 jl.docx

Hi Allison, sorry for the delay. Jasmeet has the lead here. I made one minor cosmetic change to the WOTUS item. DOD is a bit touchy about saying "EPA has the lead" (even though it's effectively true) so I reworded slightly. I know they won't see this, but we should avoid using that phrase in the meeting. Jim

-----Original Message-----

From: Seehra, Jasmeet
Sent: Tuesday, February 24, 2015 10:32 AM
To: Orris, Allison; Laity, Jim; Aguilar, Brenda; Johnson, Katie B.; Mancini, Dominic J.; Hunt, Alex; Young, Carl
Cc: Levenbach, Stuart; Brammer, Josh
Subject: RE: Initial materials In Preparation for the meeting on 2/26 with DOD on reg priorities

Attaching the answers to your questions. Please let me know if you need anything else.

-----Original Message-----

From: Orris, Allison
Sent: Monday, February 23, 2015 9:07 AM
To: Laity, Jim; Seehra, Jasmeet; Aguilar, Brenda; Johnson, Katie B.; Mancini, Dominic J.; Hunt, Alex; Young, Carl
Cc: Levenbach, Stuart
Subject: RE: Initial materials In Preparation for the meeting on 2/26 with DOD on reg priorities

Thanks all. Here is an updated DOD priorities document - I had forgotten how much they prioritized (as in , just 10 rules) so added a Q to get a sense of the rest of the universe (I also dumped the top 10 into this doc since it didn't take up much space).

Jasmeet - I have a couple quick Qs in the document. Can you take a look and get back to me and Carl by COB Tuesday so we can finalize and get this to Howard before our meeting Thursday. I see you are out today, tomorrow is absolutely fine.

I also added a general point abt the Clean Water Rule, mostly so they know it's on our radar. If anything else to note re: COE, even if not top 10, we can add it.

Thanks again.

-----Original Message-----

From: Laity, Jim
Sent: Thursday, February 19, 2015 2:27 PM
To: Seehra, Jasmeet; Orris, Allison; Aguilar, Brenda; Johnson, Katie B.; Mancini, Dominic J.; Hunt, Alex; Young, Carl
Cc: Levenbach, Stuart

Subject: FW: Initial materials In Preparation for the meeting on 2/26 with DOD on reg priorities

+Stu who covers the Corps of Engineers (COE).

COE doesn't have much regulatory action (nothing listed on DOD top ten). Only rule of note at the moment is Clean Water Rule jointly with EPA, but EPA is taking the lead on that. Please keep Stu in the loop on DOD priorities meeting materials.

-----Original Message-----

From: Young, Carl

Sent: Thursday, February 19, 2015 1:36 PM

To: Seehra, Jasmeet; Orris, Allison

Cc: Brammer, Josh; Aguilar, Brenda; Johnson, Katie B.; Mancini, Dominic J.; Hunt, Alex; Laity, Jim

Subject: RE: Initial materials In Preparation for the meeting on 2/26 with DOD on reg priorities

Updated Rundown doc Attached

-----Original Message-----

From: Seehra, Jasmeet

Sent: Thursday, February 19, 2015 1:11 PM

To: Orris, Allison

Cc: Brammer, Josh; Aguilar, Brenda; Johnson, Katie B.; Young, Carl; Mancini, Dominic J.; Hunt, Alex; Laity, Jim; Seehra, Jasmeet

Subject: Initial materials In Preparation for the meeting on 2/26 with DOD on reg priorities

Please see the attached DOD reg issues file for your review and editing.

These materials were shared with the RMO and the other OIRA DOD desk officers. The two big rules of interest to the RMO are the payday lending rule and the transition assistance program rule (items 1 and 2 on the spreadsheet).

In terms of other EOP folks to invite I would suggest Mike Daniels in NSC since his folks would be interested in both of the DARS rules (items 3 and 4 -- supply chain risk and network penetration testing). Anne Rung or a member of her staff may want to attend as well as FYI. I don't think I have seen a FAR Council priorities list from OFPP but they do comment on the DOD acquisition rules.

Unrelated

Please me know if you have questions.

2015-2016 Priority Meeting

Agency	DOD
Date & Location	2/26/2015 3PM EEOB 238
EOP Attendees	Howard Shelanski, Dominic Mancini, Allison Orris, Katie Johnson, Alex Hunt, Brenda Aguilar, Jasmeet Seehra, Josh Brammer [OMB/OIRA] Jonathan Lachman, Mark Sandy, John Saldivar, Barry King, Andrew Hire [OMB] Anne Rung (tbd) [OMB/OFFP] Dave Vorhaus [COS] Amy Pope, Mike Daniels [NSC] John Galloway [NEC]
Agency Attendees	David Tillotson, Michael Rhodes, Patricia Toppings

Agency-Specific Questions or other Talking Points

- We appreciate the effort to provide a clean list of top priorities, but curious about what other rulemaking DOD has underway – **how extensive is the rulemaking agenda** beyond these top priority items?
- The top two WH priorities are on the list – payday lending and transition assistance.
 - Timing for the payday lending rule is shown as March.
 - The timing for transition assistance is not shown at all. We have had several discussions at a staff level with DOD on transition assistance so it would be **helpful to get a submission date for transition assistance**.
 - Both rules should have some sort of retro component – at least a sunset date on certain provisions.
- On retrospective review more generally, we would encourage DOD to follow the DOL example and **ping both internally to the agency and externally for retro ideas**. Jasmeet note: DOD will not be interested in doing this. The reg shop at DOD is separate from DOD's GC folks and is basically three people. Plus, I think from their perspective if they get the top ten list done they are doing well.
- We would note the **majority of DOD's priority rules are interim final rules** – not our favorite.
- What is the **status of DOMA/Windsor implementation rules**?
 - Service Academies and Domestic Abuse Involving DoD Military and Certain Affiliated Personnel.
- Both of the **DARS rules listed** -- supply chain risk and network penetration testing **need to come in sooner than the suggested timeline of this summer**. But both are complicated issues and in terms of the supply chain interim rule there were many public comments. Is it possible to accelerate timing?
- We have been coordinating with EPA on the timing for the **DOD/EPA Clean Water Rule joint rule**. Any updates on progress from DOD perspective?

General Questions to Raise

1. What are the 10 most important regulatory actions you intend to take this year? ***Discussed in the attached excel spreadsheet.***

Rule Name	Status (Under OMB Review; Under Agency Review; Under Development)
Limitations on Terms of Consumer Credit Extended to Service Members and Dependents	Final rule under development
Transition Assistance for Military Personnel	Interim Final rule under development
Requirements Relating to Supply Chain Risk (DFARS Case 2012 -D050)	Final rule under development
Network Penetration Reporting and Contracting for Cloud Services (DFARS Case 2013 -D018)	Interim Final rule under development
Sexual Assault Prevention and Response (SAPR) Program	Interim Final rule under development
Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals	Interim Final rule under development
Defense Materiel Disposition	Final rule under development
TRICARE: Long Term Care Hospital	Proposed rule out for public comment
Army National Cemeteries	NPRM under development
Guidelines for Permitting Archaeological Investigations and Other Activities Directed at Sunken Military Craft and Terrestrial Military Craft under the Jurisdiction of the Department of the Navy	Final rule under agency review

2. What rules does your agency need to issue to implement Administration priorities (for example, the ACA, immigration, or the Climate Action Plan)?
- We would note there a few other DOMA/Windsor implementation related rules we would expect to see on this list – Service Academies and Domestic Abuse Involving DoD Military and Certain Affiliated Personnel. Both were withdrawn – twice since the beginning of the Administration and their ETA is unknown.***
3. What rules is your agency bound to issue due to judicial or statutory deadlines? ***Answered as not applicable.***
4. What rules does your agency plan to issue to meet other agency commitments/priorities? ***Answered by DOD as not applicable.***

5. What rules does your agency plan to issue, or revise, to respond to the President's call for retrospective review of regulations? How is the public engagement plan around retrospective review going? Have you had any successes using that process to identify regulations for retrospective review?
 - ***DOD punts and says we will get a list on February 24th. Again, we would encourage them to follow the Department of Labor model by pinging both inside DOD as well as outside the Department.***
6. What is the workload associated with rules that your agency issues in the normal course of business (annual payment updates, etc.)? ***Discussed but no new information really.***
7. Are there rules currently on the Regulatory Agenda that are of lesser importance and that we should discuss abandoning or placing at the back of the line? ***Not really addressed.***
8. What rules have a longer implementation timeline such that they should potentially move higher on the priority list?
 - ***Both of the DARS rules listed -- supply chain risk and network penetration testing need to come in sooner than the suggested timeline of this summer. But both are complicated issues and in terms of the supply chain interim rule there were many public comments.***
9. Is there any pending legislation that is likely to increase the regulatory burden on your agency?
 - ***The most current National Defense Authorization Act (NDAA) always has a bunch of items which require either new rulemaking or modifications to existing rules . I would categorize these as second tier items.***

Background

Administration Priorities	Transition Assistance Program Payday Lending
OMB Priorities (additive)	Several rules implementing the Windsor decision are not provided in the document – primarily the service academies rule.
Retrospective Review Ideas	Not really discussed. DOD could at least take the Labor examples for notes internal to the building and the FRN and use those.
International Regulatory Cooperation Points	N/A

Next Steps

Agency Deliverables/Questions	[Update after the meeting]
OIRA Deliverables/Questions	[Update after the meeting]

Other	[Update after the meeting]

From: Shelanski, Howard
Sent: Wednesday, March 25, 2015 5:19 PM
To: Levenbach, Stuart; Laity, Jim; Johnson, Katie B.; Mancini, Dominic J.
Cc: Dorjets, Vlad
Subject: RE: Timing for Stream Protection & WOTUS

Thanks Stu.

From: Levenbach, Stuart
Sent: Wednesday, March 25, 2015 5:16 PM
To: Laity, Jim; Johnson, Katie B.; Mancini, Dominic J.; Shelanski, Howard
Cc: Dorjets, Vlad
Subject: RE: Timing for Stream Protection & WOTUS

The Stream Protection Rule is over 1,100 pages, and the RIA has 9 chapters and 7 appendices. I gave reviewers until April 17 to review, and I intend to bring the document with me while traveling so that I can also meet the deadline. It is very speculative, not knowing how USACE, EPA, and others will view the rule, but an ambitious yet attainable deadline might be the end of May.

From: Laity, Jim
Sent: Wednesday, March 25, 2015 5:00 PM
To: Johnson, Katie B.; Mancini, Dominic J.; Shelanski, Howard
Cc: Dorjets, Vlad; Levenbach, Stuart
Subject: RE: Timing for Stream Protection & WOTUS

We can meet a schedule of 60 days on WOTUS if necessary, but it may compromise the thoroughness of our review. For the record, there is no external deadline here, and EPA is over a month late in getting this to us (originally promised for the end of February). I understand why it has taken them longer than expected to prepare this complex final rule package; these are the same reasons why we would also like a full 90 -day review. It is unfortunate that EPA's late submission, which we don't control, should cut into our review time.

Now that I've vented, we will meet a 60 -day schedule if EOP leadership deems that necessary.

Stu can respond about status and timing for the Stream Protection Rule. Jim

From: Johnson, Katie B.
Sent: Wednesday, March 25, 2015 3:49 PM
To: Mancini, Dominic J.; Laity, Jim; Shelanski, Howard
Subject: Timing for Stream Protection & WOTUS

Good afternoon –

Talked to CEQ and they met with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

Stream Protection Rule – Do we have a sense of how long the review on this one is going to take? I know that it came in a week or two ago – didn't know if we were in a place where we had a sense of how long the review would take. I think there are CRA concerns with this one so the driving force is that Brian/WW want to try and get the NPRM published ASAP.

Howard – just flagging this for you in case you get any incoming on this.

Katie B. Johnson

Office of Information and Regulatory Affairs

Office [REDACTED]

Cell [REDACTED]

E-Mail [REDACTED]

From: Laity, Jim
Sent: Tuesday, November 26, 2013 5:49 PM
To: Higgins, Cortney
Subject: RE: headed home

Sorry you're not feeling well. We missed you at the meeting. I only got 15 minutes of Howard's time, here's a quick download.

Howard agrees that Services position on ESA seems problematic, but thinks we need someone with more "weight" than Jonathan to weigh in. He suggested WH counsel. I would encourage you to raise it at staff tomorrow and work with him on an elevation process. I leave it to your judgment on how to proceed.

We did not get a chance to dive into WOTUS in any detail but he had read the memo. We all agreed the treatment of isolated waters is the key issue. OW staff told me that Gina has insisted that policy issues go straight to her, without trying to work them at a lower level first. Howard immediately said this is unworkable (I agree). He and Andrei will discuss next steps, but I think he will call Gina and suggest that the career staffs work together to tee up some crystalized options for policy level folks to consider (ie, the normal process).

Shannon was not on the call this morning, but I spoke with Alex B. He asked if there were any outstanding issues on wood heaters beyond employment effects language. I said I didn't know, but that you had indicated that issues were being worked out and I didn't anticipate the need for elevation, but that you might need another week or two to finish up. I will give him an update next week, but I don't think any other follow up is needed, unless there is a big issue that still needs resolution.

They are ready to provide a pre-submission briefing on a Data Requirements rule for the 2010 SO2 NAAQS (for attainment determinations). I suggested he work with Nathan to set up.

We had a discussion of the Stormwater TMDL and Municipal Permitting memo, which has been under review for several years. I can bring you up to speed on this later.

I am hoping that you can still be acting branch chief tomorrow and Friday, assuming you are feeling better. If you see this tonight, please send me an e-mail confirming. Have a great Thanksgiving. See you next week. Jim

From: Higgins, Cortney
Sent: Tuesday, November 26, 2013 4:37 PM
To: Laity, Jim; Mancini, Dominic J.
Subject: headed home

Hi,
I'm not feeling well and am going to head home --- I'll miss the 4:45 with Howard. Jim, if you want to, feel free to feel him on the call with the Services. Otherwise, I can raise it at staff tomorrow and get the ball rolling on elevating the legal issues.

Regards,
Cortney

From: Laity, Jim
Sent: Wednesday, December 18, 2013 1:59 PM
To: Shelanski, Howard
Cc: Mancini, Dominic J.; Greenawalt, Andrei; Higgins, Cortney; Whiteman, Chad
Subject: Call with Bob
Attachments: Waters of the US comments.docx

Howard: Here is a short summary of the issues from staff this morning that you were going to raise in your call with Bob.

- 1) EPA rule withdrawals: There are two that we think EPA should move ahead with sooner rather than later, CAFO Guidance and TRI Mining. It may be helpful to get EPA to commit to a date certain, even if it is somewhat in the future. We agreed with EPA to hold off on withdrawing R ACT/RACM because of legal concerns.
- 2) RFS Economic Analysis: As you know, we believe as a factual matter that this rule meets the EO definition of "economically significant." This is ultimately OIRA's determination to make. The EO requires quantitative cost-benefit analysis for economically significant rules. In this case, there are three options under consideration that could have significantly different costs and benefits. Having this analysis available should be one important input into the final decision among them, as envisioned in the EO. We need a decision soon so that EPA can prepare any required cost-benefit analysis as part of the final rule package.
- 3) Waters of the United States: We provided written comments to senior career staff at EPA and the Corps on Friday, December 6 (attached). We have not heard anything back, although we have tried to reach out to agency staff. Because several other Federal agencies (USDA, DOI, DOE, SBA) and EOP offices (CEQ, DPC) have significant equities here, we will need some time once a basic understanding is reached between OIRA and the Corps and EPA to work out the details and shop this with the other agencies. We do believe that if EPA and the Corps accept OIRA's recommendations it would largely address the other agencies' concerns, but we will need some time to work this through with them, and we can't begin this process until we hear back. At this point it will already be very challenging to finish up by the first week in January as we had been targeting.

Please call if you have questions. Jim

Interagency Working Comments on Draft Language under E012866 and 13563 Interagency Review. Subject to Further Policy Review.

WOTUS NPRM: Suggested Revisions

The draft proposed rule as submitted takes a huge step forward in resolving regulatory uncertainty relative to the status quo. The agencies are to be commended for their progress to date in this respect. However, there would be substantial benefit to all stakeholders in clarifying further which waters are jurisdictional and which are not. With this consideration in mind, OIRA staff offer the following suggestions.

Isolated Waters: The proposed rule would continue to require a case-by-case demonstration of a significant nexus to navigable or interstate waters to assert jurisdiction over isolated waters. Unlike either the 2008 or 2011 guidance, the proposed rule would also allow some grouping of isolated waters for determining significance, and offers general criteria for such grouping. However, there would still be substantial regulatory uncertainty regarding which isolated waters are jurisdictional and which are not.

OIRA staff recommends that the agencies identify specific categories of isolated waters, based on the science outlined in the Connectivity Report, that are categorically jurisdictional, and then state in regulatory text that the remaining isolated, non-navigable, intrastate waters are not jurisdictional. The goal would be to eliminate case-by-case determinations from the rule. Based on our reading of the report, Prairie Potholes and Carolina Bays are two categories for which strong scientific evidence exists of a categorical significant nexus to navigable and interstate waters. We would be open to discussing with agency staff additional categories that should also be deemed categorically jurisdictional, based on the peer-reviewed science summarized in the Connectivity Report. We would also support a robust request for comment in the preamble on 1) whether it is appropriate to completely eliminate case-by-case determinations as proposed, and 2) whether there are other well-defined categories of isolated waters that should also be deemed categorically jurisdictional.

Ditches: The proposed rule categorically excludes manmade ditches that are excavated wholly in uplands, provided they only have ephemeral flow. In practice, however, it is often difficult to distinguish between ephemeral and intermittent flow in manmade ditches excavated wholly in uplands. The resulting uncertainty is a source of significant concern to some stakeholder, particularly state and local transportation departments that must construct and maintain roadside drainage ditches.

OIRA staff recommends that the draft rule exclude ditches excavated wholly in uplands provided they have only ephemeral or intermittent flow. This would address substantial stakeholder concerns and increase clarity and ease of implementation. We believe it would have minimal adverse impacts on protection of high-value aquatic resources.

Definition of Adjacency: The rule proposes a revised definition of adjacency that is more precise and science-based than the existing regulatory definition. However, the proposed definition retains significant ambiguity, which will make it difficult for field staff to implement and possibly invite legal challenge. In particular, the term adjacent now includes waters with a surface or shallow sub-surface connection to a jurisdictional water, and waters that are in the riparian zone or floodplain of a

Interagency Working Comments on Draft Language under E012866 and 13563 Interagency Review. Subject to Further Policy Review.

jurisdictional water. However, the draft rule does not specify what frequency of flood would be used to determine the floodplain.

OIRA staff recommends that a particular flood frequency be identified in the rule text to determine the floodplain. A primary consideration in choosing the appropriate frequency should be the existence of comprehensive maps delineating floodplains for the frequency chosen. In addition, this provision could serve as a workable proxy for delimiting waters that serve an important floodwater retention function during more frequent precipitation events, and thus demonstrate a significant nexus to downstream navigable and interstate waters. Based on both of these considerations, we recommend that the rule specify the 100-year floodplain, but we are open to suggestion of an alternate interval if it better reflects these considerations.

Regulatory Flexibility Act Compliance: The preamble states that the proposed rule will not have a significant impact on a substantial number of small entities (SISNOE) because it does not “directly” regulate any small entity (or anybody else). Rather it simply clarifies the extent of Clean Water Act jurisdiction. SBA does not agree. They believe the rule expands jurisdiction relative to the status quo and that small entities discharging into newly jurisdictional waters will experience a “direct” regulatory impact that at least requires substantive analysis under the RFA to determine if it is significant.

OIRA staff notes that EPA has already convened a “SBREFA -like” outreach meeting to small entity representatives to solicit input on ways to minimize adverse impacts to small entities as well as on the other rule-related questions identified in the Regulatory Flexibility Act. We recommend that EPA provide a draft report of this outreach effort, including recommendations to the Administrator, to OIRA and SBA for comment as part of the interagency review process. The goal would be to produce a consensus version of the report to be included in the administrative record for the proposed rule. The proposed rule would also make clear that this is a “voluntary” outreach effort on the part of EPA which is not judicially reviewable under SBREFA, and would be accompanied by a formal certification of no SISNOE.

Permitting Exemptions: The proposed rule emphasizes in the preamble that existing activity -specific permitting exemptions will remain unchanged by the rule. In practice, these exemptions address many of the concerns raised by various regulated entities by providing that certain activities (eg, return flows from irrigated agriculture and routine maintenance of roadside drainage ditches) do not require a CWA permit, even if the water in question is jurisdictional. However, USDA has suggested that EPA craft a broader exemption for “normal farming, silvicultural, and ranching activities” and include it as part of this rule.

OIRA staff recommends that the agencies work with USDA and OIRA to craft a parallel proposed rule or guidance document that clarifies the application of the existing permitting exemption for normal farming, silvicultural, and ranching activities. This parallel document would be released concurrently with the proposed rule. OIRA staff stand ready to facilitate expedited review of such a rule or guidance document. We are willing to consider waiving formal interagency review if warranted.

From: Shelanski, Howard
Sent: Tuesday, September 10, 2013 12:19 PM
To: Sutley, Nancy H.
Subject: Re: WOTUS Follow Up

Ok. Thx.

From: Sutley, Nancy H.
Sent: Tuesday, September 10, 2013 12:12 PM
To: Shelanski, Howard
Subject: RE: WOTUS Follow Up

Great. I will see yo [REDACTED] at 4:30 unless things change again. I talked to Gina – she just wanted to make sure we had what we needed on the timing. I told her yes. [REDACTED]
[REDACTED]
[REDACTED]

From: Shelanski, Howard
Sent: Tuesday, September 10, 2013 11:01 AM
To: Sutley, Nancy H.
Subject: RE: WOTUS Follow Up

Nancy [REDACTED]
[REDACTED] I'll keep you posted in case things change a gain. Thanks.

From: Sutley, Nancy H.
Sent: Tuesday, September 10, 2013 9:11 AM
To: Shelanski, Howard
Subject: Re: WOTUS Follow Up

Thanks.

From: Shelanski, Howard
Sent: Tuesday, September 10, 2013 08:07 AM
To: Bob Perciasepe, EPA [REDACTED]
Cc: Sutley, Nancy H.
Subject: Re: WOTUS Follow Up

Thanks. Very helpful. Will get back to you once I know more on our end.

From: Deputy Administrator [REDACTED] Bob Perciasepe, EPA
Sent: Tuesday, September 10, 2013 06:35 AM
To: Shelanski, Howard
Subject: Fw: WOTUS Follow Up

Howard
More on coms coming today

Bob
Deputy Administrator

From: [REDACTED] McCarthy, Gina
Sent: Monday, September 9, 2013 11:15 PM
To: [REDACTED]
Cc: Ganesan, Arvin; Deputy Administrator
Subject: WOTUS Follow Up

Thanks for a productive meeting on WOTUS this afternoon. I have taken another look at the timing constraints we are under to move forward with the SAB review of the Connectivity Report which is driving the rule review timeline. While it is preferable to release it for public comment this week and begin the interagency review of the WOTUS Rule, the Agency could release it as late as early next week. The challenge for us is to manage the SAB who has the report already and penciled in a meeting of the 27 academics that sit on the review panel for December during semester break. To allow proper review and comment we have to get the report out and the meetings noticed. The SAB clearly wants to move ahead and we clearly want to catch this window in December to ensure we have the peer review process complete in a time frame that would allow us to take the final SAB peer review into consideration as we craft the final WOTUS Rule.

Hopefully the extra few days will help. The rollout is going to Robert Bonnie tonight so USDA can make relevant additions tomorrow, and we can finalize it and get to everyone by mid-day.

Again, thanks. If possible, can you share this email with Howard. I can't seem to find his email address and I wanted him to have this before any meeting tomorrow.

From: Peck, Gregory <[REDACTED]>
Sent: Tuesday, April 07, 2015 3:25 PM
To: Dorjets, Vlad
Cc: Schmauder, Craig R SES (US); Srinivasan, Gautam
Subject: Re: WOTUS Distribution

Vlad - we are working quickly to complete an economic analysis (not an impact analysis since the cost threshold is not triggered) and a Response to Comments Document. We should have the economic analysis to you shortly but perhaps not before the 20th? I'll keep you apprised of that work. We were anticipating working with Army to provide OMB with the response to comments but did not anticipate that document would be reviewed by other agencies - is that your expectation?

Several agencies have asked us to meet in order to respond to rule questions - should we defer to OMB to schedule those meetings? DOT, DOJ, and USDA staff would like to meet before the comment period closes. We're glad to take the lead to schedule these discussions if that helps you?

Thanks!

Greg

From: Dorjets, Vla [REDACTED]
Sent: Tuesday, April 7, 2015 2:05 PM
To: Peck, Gregory
Subject: FW: WOTUS Distribution

Greg - I just distributed the rule to the agencies and people set out below. Unsurprisingly, they are already starting to ask about when the economic analysis (RIA?) will be made available and whether EPA will be submitting a response to public comment document. Can you please let me know what I should tell them? Thanks.

From: Owens, Nicole [REDACTED]
Sent: Tuesday, April 07, 2015 1:47 PM
To: Laity, Jim; Barron, Alex
Cc: Dorjets, Vlad; Peck, Gregory; Levenbach, Stuart
Subject: RE: WOTUS Distribution

Thanks Jim.

Nicole

From: Laity, Ji [REDACTED]
Sent: Tuesday, April 07, 2015 1:21 PM
To: Owens, Nicole; Barron, Alex
Cc: Dorjets, Vlad; Peck, Gregory; Levenbach, Stuart
Subject: WOTUS Distribution

Nicole, As a courtesy I am sending you the list of agency contacts to whom we are sending the WOTUS rule and the cover e-mail that we are including with it. It will go out this afternoon.

As you can see, we are taking our responsibility to minimize the probability of a leak very seriously. We will also distribute to our usual list of folks within the EOP (CEQ, DPC, OSTP, CEA, USTR). Vlad is the lead desk officer. Stu Levenbach, who covers the Corps, will assist. Call if you have questions. Jim

Distribution List:

Energy:	Jonathan Levy, Deputy Chief of Staff ([REDACTED])
Justice:	Eric Gormsen, Senior Counsel ([REDACTED])
Interior:	Liz Klein, Counselor to the Deputy Secretary ([REDACTED])
Agriculture:	Dan Christenson, Deputy Chief of Staff ([REDACTED])
Transportation:	Katie Thompson, General Counsel ([REDACTED])
Commerce:	Kelly Walsh, General Counsel ([REDACTED])
TVA:	Justin Maierhofer, VP for Government Relations ([REDACTED])
SBA Advocacy:	Claudia Rodgers, Acting Chief Counsel for Advocacy ([REDACTED])
DOD:	Patricia Toppings, Office of the Secty of Defense ([REDACTED])

Message:

Agency Reviewers:

Attached for your review is the joint EPA/Army Corps final Clean Water Rule concerning the definition of the "Waters of the United States" (the related economic analysis will be provided at a later time). As you may know, a version of the proposed rule was leaked to the public and external stakeholders shortly after it was circulated for interagency review. Whenever this happens it undermines the integrity of the interagency review process. To avoid a repeat of this, we are only circulating the final rule to a single official within each agency. Please limit distribution within your agency to personnel who are essential to the review process.

As a reminder, the attached materials are deliberative and pre-decisional and may not be shared or discussed with anyone outside of the Executive Branch. Also, please impress upon those who receive the rule the importance of avoiding leaks. Please let me know who will be the lead reviewer for your agency. If you are not sure who in your agency previously provided comments to OMB on the proposed version of the rule, please let me know and I will get back to you right away.

Please send me comments by **COB Monday, April 20th**.

If you have questions or would like to discuss any aspect of the rule, please feel free to contact me.

From: Owens, Nicole [REDACTED]
Sent: Monday, April 27, 2015 6:00 PM
To: Laity, Jim; Dorjets, Vlad
Cc: Nickerson, William; Muellerleile, Caryn; Eisenberg, Mindy
Subject: Clean Water Rule Economic Analysis
Attachments: Draft Final Rule Econ Analysis 27APRIL2015.docx

Hello –

Attached is EPA's formal submission of economic analysis for the Clean Water Rule (RIN 2040 -AF30). I am having trouble with ROICS. Caryn or I will touch base tomorrow to make sure this gets uploaded in ROCIS. In the meantime, again, our submission is attached.

Let me know if you have any questions,
Nicole

From: WENNERBERG, LINDA S. (HQ-LD020) [REDACTED]
Sent: Wednesday, April 29, 2015 1:10 PM
To: Dorjets, Vlad
Cc: Leatherwood, James (HQ-LD020); Mcneill, Mike A (HQ-LD020); Kumor, Kenneth M. (HQ-LD020); Laity, Jim
Subject: RE: NASA request, current interagency review of draft WOTUS Definition Final Rule

Vlad:

I understand your schedule and NASA will do its best to meet the deadline. Ken Kumor is working this issue now.

Please do keep our concerns in mind with the tight timeline. If possible, some schedule extensions would be much appreciated and support a more in -depth review.

Thanks.

Linda

Linda S. Wennerberg, Ph.D.
Environmental Management Division
NASA Headquarters
MS-2T89
300 E Street SW
Washington, DC 20546-0001

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Dorjets, Vla [REDACTED]
Sent: Wednesday, April 29, 2015 11:43 AM
To: WENNERBERG, LINDA S. (HQ-LD020)
Cc: Leatherwood, James (HQ-LD020); Mcneill, Mike A (HQ-LD020); Kumor, Kenneth M. (HQ-LD020); Laity, Jim
Subject: RE: NASA request, current interagency review of draft WOTUS Definition Final Rule

Linda,

I know that the review window is quite short – especially, for such an important rulemaking – but, unfortunately, we are on a very tight schedule and I cannot be sure that we will be able to consider any comments received after the two week window. Please do your best to submit comments by the original deadline . If the schedule slips at all and I am able to provide some more time for review, I will let you and all other reviewers know right away.

Thanks for understanding.

Vlad

Vlad Dorjets
Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
White House Office of Management and Budget
[REDACTED] [REDACTED]

From: WENNERBERG, LINDA S. (HQ-LD020) [REDACTED]
Sent: Tuesday, April 28, 2015 3:41 PM
To: Dorjets, Vlad
Cc: Leatherwood, James (HQ-LD020); McNeill, Mike A (HQ-LD020); Kumor, Kenneth M. (HQ-LD020); Laity, Jim
Subject: NASA request, current interagency review of draft WOTUS Definition Final Rule

Vlad:

NASA thanks OMB and EPA for the opportunity to review the draft WOTUS Definition Final Rule. Due to the very short time period provided for our interagency review, we had no ability to include our critical field Centers in our comment review process. Our primary, but not only, interests focus on impacts to our launch and mission execution and any related impacts on the continued maturation of co-located commercial space flight operations. We plan to review the newly released Economic Assessment as the basis of our next set of comments which we plan to include field Center input.

NASA requests an extension of the comment period on the Economic Assessment until Friday, May 15th to facilitate review by our Center staffs. We request this additional time to ensure the Center teams are up to date on the draft WOTUS Final Rule and allows for enough time to provide a clear consistent set of issues and comments for consideration.

Kenneth Kumor is the HQ lead for Natural Resources and will be the designated contact for this review. Please work with him on this.

Thank you again for the opportunity for interagency review and consideration of a short extension for our comments.

Linda

Linda S. Wennerberg, Ph.D.
Environmental Management Division
NASA Headquarters
MS-2T89
300 E Street SW
Washington, DC 20546-0001

[REDACTED]
[REDACTED]
[REDACTED]

From: Mancini, Dominic J.
Sent: Friday, February 14, 2014 10:46 AM
To: Greenawalt, Andrei; Laity, Jim
Subject: FW: HVP Memo for Waters of the US Rule
Attachments: waters of US.2.12.pptx

I think this looks great. The one item I had a thought on was on the "expected reaction". Since no waters are categorically excluded by EPA's proposal, it will be difficult to refute the inevitable statements such as "this rule significantly expands jurisdiction." The hope is that EPA will move to a final rule that provides greater clarity in other waters, either in or out. I tried to noodle with this below (but not in the attached) to add a couple of points but I don't feel strongly about any of this, and specifically Jim please feel free to modify as you have the expertise.

From: Greenawalt, Andrei
Sent: Friday, February 14, 2014 10:17 AM
To: Mancini, Dominic J.; Laity, Jim
Subject: RE: HVP Memo for Waters of the US Rule

How does this look to you guys? (both attached and pasted below if you are on berry):

- **Background/Reason for Rule:** Two Supreme Court decisions over the past decade have caused significant confusion over which waters in the United States are protected by the Clean Water Act. The issue is a controversial one. Environmental and sportsmen groups strongly support a broad interpretation of the Act's jurisdiction, while farmers, developers, and industry support a narrower interpretation. States and municipalities are split.
 - *2011 Draft Guidance:* In April 2011, EPA and the Army Corps released draft guidance (which was never finalized for a variety of reasons) to clarify protection of waters and stated they would finalize the guidance while working on a rulemaking. That guidance would have expanded jurisdiction beyond the Bush Administration interpretation, but not beyond where it stood before the Supreme Court rulings.
- **Current Proposed Rule:** EPA is now ready to issue a proposed rule that would be similar in scope to the guidance, but provide more clarity, primarily on agricultural exemptions and artificial waters. We have worked with EPA and with other agencies, including USDA, closely on this rule and are ready to conclude. CEQ supports moving forward.
 - The rule would state that navigable and interstate waters, their tributaries, and all waters (including wetlands) that are adjacent to these would be waters of the United States by rule and thus jurisdictional without the need for further analysis. Even though these waters are currently evaluated on a case-by-case basis, they are almost always found jurisdictional.

- “Other waters” (sometimes referred to as “isolated waters”) would be evaluated on a case-by-case basis to determine if they have a “significant nexus ” (the Court’s term) to a navigable or interstate water.
- This rule would provide greater clarity and regulatory certainty than the agencies’ current regulations and guidance. The agencies will also request comment on alternative approaches for addressing “other waters” that would provide even greater regulatory certainty by identifying categories of such waters as either jurisdictional or not, and limiting case-by-case determinations. We expect this will be a significant focus of the comment period.
- **Expected Reaction:** Environmental and sportsmen groups will be happy to see the rule is moving forward and will push for as much jurisdiction as possible in the final rule. Farmers, developers, and industry will express opposition and if the reaction to the draft guidance is any indication, some are likely to mischaracterize the reach of the rule as a significant expansion of jurisdiction.
- **Recommendation:** Coordinate a careful rollout with EPA/Corps and USDA, and then conclude review.

From: James Lait [REDACTED]
Sent: Thursday, February 13, 2014 8:03 PM
To: Mancini, Dominic J.; Laity, Jim; Greenawalt, Andrei
Subject: HVP Memo for Waters of the US Rule

Andrei, We expect to be ready to conclude review by the end of next week. HVP attached. Call if you have questions. Jim

Clean Waters of the U.S. Proposed Rule (EPA + Army Corps)

- **Background:** Two Supreme Court decisions over the past decade have caused significant confusion over which waters in the United States are protected by the Clean Water Act. The issue is a controversial one. Environmental and sportsmen groups strongly support a broad interpretation of the Act's jurisdiction, while farmers, developers, and industry support a narrower interpretation. States and municipalities are split.
 - *2011 Draft Guidance:* In April 2011, EPA and the Army Corps released draft guidance (which was never finalized) to clarify protection of waters and stated they would finalize the guidance while working on a rulemaking. That guidance would have expanded jurisdiction beyond the Bush Administration interpretation, but not beyond where it stood before the Supreme Court rulings.
- **Current Proposed Rule:** EPA is now ready to issue a proposed rule that would be similar in scope to the guidance, but provide more clarity, primarily on agricultural exemptions. We have worked with EPA and with other agencies, including USDA, closely on this rule and are ready to conclude. The rule would state that navigable and interstate waters, their tributaries, and all waters (including wetlands) that are adjacent to these would be waters of the United States by rule and thus jurisdictional without the need for further analysis. "Other waters" (sometimes referred to as "isolated waters") would be evaluated on a case-by-case basis to determine if they have a "significant nexus" (the Court's term) to a navigable or interstate water. This rule would provide greater clarity and regulatory certainty than the agencies' current regulations and guidance. The agencies will also request comment on several alternative approaches for addressing "other waters" that would provide even greater regulatory certainty by limiting case-by-case determinations.