
From: Dorjets, Vlad
Sent: Tuesday, April 07, 2015 2:05 PM
To: Gregory Peck, EPA
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: Dennis, Kia <[REDACTED]>
Sent: Monday, April 27, 2015 2:43 PM
To: Dorjets, Vlad
Subject: RE: Clean Water Act Jurisdiction Comments

Hi Vlad,

I can give you a call tomorrow between 1 and 3pm.

Kia

From: Dorjets, Vla [REDACTED]
Sent: Monday, April 27, 2015 2:20 PM
To: Dennis, Kia
Subject: RE: Clean Water Act Jurisdiction Comments

Kia,

Do you have time to talk this afternoon? If not, I'm free tomorrow between 1:00 – 3:00 and after 4:00.

In regards to EO meetings, I have asked Mabel Echols, the scheduler, to include you on all future invitations and to forward existing invitations to you as well. I don't know if she's done that already but I'll go ahead and forward the upcoming meetings to you. Get ready, there are a lot of meetings coming up and I'm sure that this is only the beginning. I assuming that you will be calling into most if no t all of the meetings. If you want to attend in person, though, please work with Mabel re logistics.

Vlad

From: Dennis, Kia [mailto:[REDACTED]]
Sent: Monday, April 27, 2015 12:06 PM
To: Dorjets, Vlad
Subject: RE: Clean Water Act Jurisdiction Comments

Hi Vlad,

If you have some time today or Wednesday let's try to speak about this on the phone.

Also, I was not aware of the 12866 meeting on Friday. Could you please add me to your invitee list for all 12866 meetings concerning this rule. Thank you

Kia

From: Dorjets, Vla [REDACTED]
Sent: Sunday, April 26, 2015 1:26 PM
To: Dennis, Kia
Subject: RE: Clean Water Act Jurisdiction Comments

Kia,

As you know, I was not involved in OMB's review of the proposed WOTUS rule. I understand, however, that there was a great deal of discussion at various levels about your Agency's concerns and the impact on small business in general. As you saw, the RFA section in the final rule is the same as the one in the proposed rule and at present I'm not aware of any discussion to re-open those issues. That being said, I want to make sure that I have properly communicated your Agency's concerns to OMB's leadership. Is there anything specific you would like me to express to them especially in regards to the possibility of a public letter from your Agency?

Let me know if you would prefer to speak over the phone on next week about this.

Thanks,

Vlad

From: Dennis, Kia [mailto:[REDACTED]]
Sent: Monday, April 20, 2015 8:16 AM
To: Dorjets, Vlad
Subject: FW: Clean Water Act Jurisdiction Comments

From: Dennis, Kia
Sent: Monday, April 20, 2015 8:15 AM
To: Vlad Dorjet [REDACTED]
Subject: Clean Water Act Jurisdiction Comments

Hi Vlad,

I've reviewed the preamble for the CWA jurisdiction rule and just based upon it, it does not seem that EPA has addressed any of our comments. Possibly they have responded in the response to comment document and the economic analysis, but given that I don't see any substantive changes that reflect our comments I'm guessing the response that they aren't adopting any changings in response to our comments.

We reiterate everything that we've stated previously and I have attached our public comment letter to this email. I'd like to reserve the right to make more substantive comments when I see specific responses to our comment letter.

Kia Dennis | Assistant Chief Counsel | SBA Office of Advocacy |
409 3rd St. SW, Washington, DC 20416 | [REDACTED] | [REDACTED]
[REDACTED] | [website](#) | [News](#) | [Research](#) | [Regulation](#) | [blog](#) | [Facebook](#) | [twitter](#) |

From: Dorjets, Vlad
Sent: Monday, April 27, 2015 6:10 PM
To: Jonathan Levy, DOE; Gormsen, Eric T (OLP); Elizabeth Klein, DOI
Daniel Christenson, USDA; Kathryn Thomson, DOT; Welsh, DOC
Maierhofer, TVA; Claudia Rodgers, SBA; Patricia Toppings, DOD
Kumor, Kenneth M. (HQ-LD020)
Cc: Johnson, Katie B.; Mancini, Dominic J.; Laity, Jim
Subject: Clean Water Rule / WOTUS Economic Analysis
Attachments: Draft Final Clean Water Rule Economic Analysis.docx

Agency Reviewers:

Attached for your review is the Economic Analysis (EA) related to the final Clean Water Rule / WOTUS distributed several weeks ago. Like with the rule itself, we are only circulating the EA to a single official within each agency and asking that you 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 **Monday, May 11th**.

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

Vlad Dorjets

Vlad Dorjets
Clean Water Act Desk Officer
Office of Information and Regulatory Affairs
White House Office of Management and Budget
[REDACTED]

From: Dorjets, Vlad
Sent: Tuesday, May 05, 2015 6:30 PM
To: Shoshana Lew, DOT
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Thanks for letting me know. Do you know whether Katie distributed the rule to others in the Agency? Please do your best to get me something by Monday, the original deadline. If needed, I can send the other comments to EPA and the Corps and let them know that you're agency's comments will be provided later but I can't guarantee how that will go over given the pressure to get this rule out the door.

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

From: Shoshana Lew, DOT
Sent: Tuesday, May 05, 2015 6:23 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

Thank you. I'm not sure we can do it by end of week...

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:06 PM
To: Lew, Shoshana (OST)
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Attached.

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

From: Shoshana Lew, DOT
Sent: Tuesday, May 05, 2015 6:05 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

Can you resend?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:03 PM
To: Lew, Shoshana (OST)
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

From: Dorjets, Vlad
Sent: Tuesday, May 05, 2015 6:34 PM
To: Shoshana Lew, DOT
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

I apologize for not sending you a heads up after distributing the doc to the original set of recipients. I guess I assumed it would be forwarded it to you like the rule was. I'll do everything I can on my end to buy you some more time but it may be out of my control.

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

From: Shoshana Lew, DOT [REDACTED]
Sent: Tuesday, May 05, 2015 6:31 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

I am confirming but I don't think it went around -- suspect Katie assumed I was on the thread...

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:30 PM
To: Lew, Shoshana (OST)
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Thanks for letting me know. Do you know whether Katie distributed the rule to others in the Agency? Please do your best to get me something by Monday, the original deadline. If needed, I can send the other comments to EPA and the Corps and let them know that your agency's comments will be provided later but I can't guarantee how that will go over given the pressure to get this rule out the door.

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

From: Shoshana Lew, DOT [REDACTED]
Sent: Tuesday, May 05, 2015 6:23 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

Thank you. I'm not sure we can do it by end of week...

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:06 PM
To: Lew, Shoshana (OST)
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Attached.

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

From: Shoshana Lew, DOT [REDACTED]
Sent: Tuesday, May 05, 2015 6:05 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

Can you resend?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:03 PM
To: Lew, Shoshana (OST)
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

I used the same distribution list that was instructed to use for the preamble/rule which included Kathryn Thomson. Hopefully, she distributed the RIA to the appropriate people. I just assumed you were reviewing it because of your involvement on the regulation.

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

From: Shoshana Lew, DOT [REDACTED]
Sent: Tuesday, May 05, 2015 5:59 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

I never received the RIA. Did others at DOT?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 5:58 PM
To: Lew, Shoshana (OST)
Subject: FW: Clean Water Rule / WOTUS Economic Analysis

Shoshana,

The pressure on WOTUS/Clean Water Rule is getting turned up from on high and I have been asked to do whatever I can to provide all comments back to EPA and the Corps by the end of the week. I know that I originally set a deadline of Monday so I apologize for changing direction on the fly, but do you think you can get me any comments your agency may have on the RIA by noon on Friday? Thanks and sorry for the inconvenience.

Vlad

From: Dorjets, Vlad

Sent: Monday, April 27, 2015 6:10 PM

To: Jonathan Levy, DOE [redacted] Gormsen, Eric T (OLP) [redacted] Elizabeth Klein, DOI [redacted]
[redacted] Daniel Christenson, USDA [redacted] Kathryn Thomson, DOT [redacted] K. Welsh, DOC [redacted] Justin Maierhofer, TVA [redacted]
[redacted] Claudia Rodgers, SBA [redacted] Patricia Toppings, DOD [redacted] Kumor, Kenneth M. (HQ-LD020)

Cc: Johnson, Katie B.; Mancini, Dominic J.; Laity, Jim

Subject: Clean Water Rule / WOTUS Economic Analysis

Agency Reviewers:

Attached for your review is the Economic Analysis (EA) related to the final Clean Water Rule / WOTUS distributed several weeks ago. Like with the rule itself, we are only circulating the EA to a single official within each agency and asking that you 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 w ho 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 Monday, May 11th.

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

Vlad Dorjets

Vlad Dorjets
Clean Water Act Desk Officer
Office of Information and Regulatory Affairs White House Office of Management and Budget

[redacted] [redacted]

From: Kumor, Kenneth M. (HQ-LD020) <[REDACTED]>
Sent: Tuesday, May 05, 2015 6:35 PM
To: Dorjets, Vlad; WENNERBERG, LINDA S. (HQ-LD020)
Cc: Leatherwood, James (HQ-LD020); Mcneill, Mike A (HQ-LD020); Laity, Jim
Subject: Re: NASA request, current interagency review of draft WOTUS Definition Final Rule

Vlad,

You're killing us. I have 3 NASA Centers working hard to a present deadline of COB May 7 (that would leave time to address ambiguities and holes for a NASA response by the 11th). BTW, I am on leave since I won't have any this summer. I guess that loses. While I feel for your situation and am grateful for your candor, I think it is fair to say that the powers that be are more interested in schedule (apparently compressed) than a reasoned response that objectively lays out likely ramifications to NASA programs, projects, and operations. We will do our best, but NASA's response may be raw, less than comprehensive, and overall less than is needed to properly weigh the implications of the new definition of WOTUS on NASA and our proud nation as a whole.

Ken

*Kenneth M. Kumor
OSI/Environmental Management Division
NASA Headquarters
300 E Street SW
Washington, DC 20546*

[REDACTED]
[REDACTED]
[REDACTED]

"Perfection is the enemy of the Done." -- Jeremy from the comic strip Zits

From: <Dorjets>, Vla [REDACTED]
Date: Tuesday, May 5, 2015 6:07 PM
To: Linda Wennerberg [REDACTED]
Cc: James Leatherwood <[REDACTED]>, MICHAEL MCNEILL <[REDACTED]> "Kumor, Kenneth M. (HQ-LD020)" <[REDACTED]>, "Laity, Jim" <[REDACTED]>
Subject: RE: NASA request, current interagency review of draft WOTUS Definition Final Rule

Linda,

I know that NASA wanted additional time to review the RIA but I'm afraid I have to inform you that there is even less time than originally expected. The pressure on WOTUS/Clean Water Rule is getting turned up from on high and I have been asked to do whatever I can to provide all comments back to EPA and the Corps by the end of the week. Is there any way you can get me comments on the RIA by **noon on Friday**? I really am sorry for the inconvenience .

Vlad

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, Vlad [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

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]

From: Kohl, Elizabeth <[REDACTED]>
Sent: Wednesday, May 06, 2015 7:11 AM
To: Dorjets, Vlad
Cc: Cohen, Daniel
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Vlad – I've revised our deadline so we can get you comments by noon Friday. Thanks,

Betsy

From: Dorjets, Vla [REDACTED]
Sent: Tuesday, May 05, 2015 5:51 PM
To: Kohl, Elizabeth
Cc: Cohen, Daniel
Subject: FW: Clean Water Rule / WOTUS Economic Analysis
Importance: High

Betsy,

The pressure on WOTUS/Clean Water Rule is getting turned up from on high and I have been asked to do whatever I can to provide all comments back to EPA by the end of the week. I know that I originally set a deadline of Monday so I apologize for changing direction on the fly, but do you think you can get me your agency's comments on the RIA by **noon on Friday**? Sorry for the inconvenience.

Vlad

From: Dorjets, Vlad
Sent: Monday, April 27, 2015 6:10 PM
To: Jonathan Levy, DOE [REDACTED]; 'Gormsen, Eric T (OLP)'; Elizabeth Klein, DOI [REDACTED]; Daniel Christenson, USDA [REDACTED]; Kathryn Thomson, DOT [REDACTED]; K. Welsh, DOC [REDACTED]; Justin Maierhofer, TVA [REDACTED]; Claudia Rodgers, SBA [REDACTED]; Patricia Toppings, DOD [REDACTED]; Kumor, Kenneth M. (HQ-LD020)
Cc: Johnson, Katie B.; Mancini, Dominic J.; Laity, Jim
Subject: Clean Water Rule / WOTUS Economic Analysis

Agency Reviewers:

Attached for your review is the Economic Analysis (EA) related to the final Clean Water Rule / WOTUS distributed several weeks ago. Like with the rule itself, we are only circulating the EA to a single official within each agency and asking that you please limit distribution within your agency to personnel who are essential to the review process.

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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 **Monday, May 11th**.

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

Vlad Dorjets

Vlad Dorjets
Clean Water Act Desk Officer
Office of Information and Regulatory Affairs
White House Office of Management and Budget

██████████ ██████████

From: Gormsen, Eric T (OLP) <[REDACTED]>
Sent: Wednesday, May 06, 2015 9:14 AM
To: Dorjets, Vlad
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Vlad,

I hope to be able to meet the new deadline.

Thanks,

Eric

Signed ...
--- Eric Taylor Gormsen ---
Office of Legal Policy
Department of Justice
[REDACTED]
[REDACTED]

From: Dorjets, Vla [REDACTED]
Sent: Tuesday, May 05, 2015 5:52 PM
To: Gormsen, Eric T (OLP)
Subject: FW: Clean Water Rule / WOTUS Economic Analysis
Importance: High

Eric,

The pressure on WOTUS/Clean Water Rule is getting turned up from on high and I have been asked to do whatever I can to provide all comments back to EPA and the Corps by the end of the week. I know that I originally a set a deadline of Monday so I apologize for changing direction on the fly, but do you think you can get me your agency's comments on the RIA by **noon on Friday**? Sorry for the inconvenience.

Vlad

From: Dorjets, Vlad
Sent: Monday, April 27, 2015 6:10 PM
To: Jonathan Levy, DOE [REDACTED]; 'Gormsen, Eric T (OLP)'; [REDACTED] Elizabeth Klein, DOI [REDACTED]
Daniel Christenson, USDA [REDACTED] Kathryn Thomson, DOT [REDACTED] K. Welsh, DOC [REDACTED] Justin Maierhofer, TVA [REDACTED]
Claudia Rodgers, SBA [REDACTED] Patricia Toppings, DOD [REDACTED]; Kumor, Kenneth M. (HQ -LD020)
Cc: Johnson, Katie B.; Mancini, Dominic J.; Laity, Jim
Subject: Clean Water Rule / WOTUS Economic Analysis

Agency Reviewers:

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Please send me comments by **Monday, May 11th**.

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

Vlad Dorjets

Vlad Dorjets
Clean Water Act Desk Officer
Office of Information and Regulatory Affairs
White House Office of Management and Budget

██████████ ██████████

From: Dorjets, Vlad
Sent: Friday, May 08, 2015 11:03 AM
To: Shoshana Lew, DOT
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Shoshana - I'm terribly sorry but I just remembered that I owed you a response to your question. Hopefully, you have been able to proceed with your analysis without it. Please let me know if you have any questions or if there is anything else I can do to help with your analysis. In terms of timing, only a handful of agencies should be able to get me their comments today. Do you think you can get me something on Monday? If you send me anything beyond that, I will certainly forward it to EPA and the Corps but I can't guarantee that it will get the same level of attention.

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

From: Shoshana Lew, DOT
Sent: Tuesday, May 05, 2015 6:43 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

That would be great - thank you

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:41 PM
To: Lew, Shoshana (OST)
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

I can probably get you an answer on that tomorrow.

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

From: Shoshana Lew, DOT
Sent: Tuesday, May 05, 2015 6:40 PM
To: Dorjets, Vlad
Subject: Re: Clean Water Rule / WOTUS Economic Analysis

If you could buy us a bit of time would be great. Do you have a sense of where the issues that were of greatest interest to us are covered in the RIA? Knowing that might help expedite.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message
From: Dorjets, Vlad
Sent: Tuesday, May 5, 2015 6:34 PM
To: Lew, Shoshana (OST)

From: Portis, Benjamin C [REDACTED]
Sent: Friday, May 08, 2015 2:18 PM
To: Dorjets, Vlad
Subject: RE: Resubmit - TVA Comments - Waters of the U.S. rulemaking
Attachments: WOTUS Final Rule Economic Analysis TVA Comments 2015.pdf

Vlad,

Sorry for the delay.

Please find our comments attached.

If you have any questions, please don't hesitate to let me know.

Ben

From: Dorjets, Vla [REDACTED]
Sent: Tuesday, May 05, 2015 6:08 PM
To: Portis, Benjamin C
Subject: RE: Resubmit - TVA Comments - Waters of the U.S. rulemaking

TVA External Message. Please use caution when opening.

Ben,

The pressure on WOTUS/Clean Water Rule is getting turned up from on high and I have been asked to do whatever I can to provide all comments back to EPA and the Corps by the end of the week. I know that I originally set a deadline of Monday so I apologize for changing direction on the fly, but do you think you can get me any comments your agency may have on the RIA by **noon on Friday**? Thanks and sorry for the inconvenience.

Vlad

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

From: Portis, Benjamin C [REDACTED]
Sent: Monday, April 20, 2015 5:05 PM
To: Dorjets, Vlad
Subject: Resubmit - TVA Comments - Waters of the U.S. rulemaking

Vald,

Per my voicemail I just left with you, TVA needs to resubmit its comments for the final WOTUS rule.

Could you please use this copy and disregard the previous submittal?

Also – would you mind confirming once you receive this?

Our apologies for the confusion.

Ben

From: Portis, Benjamin C

Sent: Monday, April 20, 2015 10:49 AM

To: 'Vlad Dorjets'

Subject: TVA Comments - Waters of the U.S. rulemaking

Mr. Dorjets,

Please find TVA's comments on the final Clean Water Rule concerning the definition of the "Waters of the United States."

Thank you for the opportunity to comment, and please do not hesitate to let us know if you have any additional questions.

Sincerely,

Ben Portis

Ben Portis

Tennessee Valley Authority
One Massachusetts Ave, NW
Suite 300
Washington, DC 20444

E-mail: [REDACTED]
[REDACTED]



Tennessee Valley Authority , 1101 Market Street, Chattanooga, Tennessee 37402-2801

May 8, 2015

Transmitted via E-mail to: [REDACTED]

Mr. Vladik Dorjets
Clean Water Act Desk Officer
Office of Information and Regulatory Affairs
White House Office of Management & Budget
725 17th Street, NW
Washington, DC 20503

RE: Interagency Review of Clean Water Rule / WOTUS Economic Analysis

Dear Mr. Dorjets:

The Tennessee Valley Authority (TVA) appreciates the opportunity afforded by the White House Office of Management and Budget (OMB) to review and comment on the subject document. As requested we have reviewed the text of the draft final document. In this regard we offer the following comments:

1. TVA notes that there is apparently an error in the projected change in jurisdictional determinations as presented in Figure 2 on page 9 of Section 2: *Clean Water Act Regulatory Programs*. The accompanying description related to the figure indicates on page 6 that "The greatest change in current practice of CWA jurisdictional determinations is expected for waters currently know as "other waters," and captured in the ORM2 other waters category." On page 7 it further divides the "other waters" category into jurisdictional type by percentage. For the jurisdictional sample utilized in the discussion there are 17.1 % that meet the definition of adjacent waters and an additional 21.8 % that fall within special categories identified in section (a)(7) of the final rule. This accounts for only 38.9 of the "other waters" category but in the subsequent discussion on page 8 it appears that 66.9 % are assumed to be in those two categories as the initial sentence indicates that "The remaining 33.1 percent of ORM2 other waters could be determined to be jurisdictional under paragraph (a)(8) of the final rule....". Based on TVA's analysis this should reflect the remaining portion of "other waters" as 61.1%. As a result several values in Figure 2 are believed to be in error. Based on the above assumptions the actual increase in jurisdictional ORM2 other waters should be 3.1% rather than 1.7%. As a result the first sentence in the second paragraph on page 9 should read "In total the agencies estimate that 35.9% of the ORM2 other waters will be found to be jurisdictional under the final rule." This also would necessitate that the columns titled Projected Percent Positive Jurisdiction values for the relevant rows in both Figures 2 and 3 to be changed. Finally, the first sentence under Figure 3 should reflect a **4.9 percent overall increase** rather than current estimate of "...a 4.65 percent increase in positive jurisdictional determination based on the final rule....".

2. The estimated annual indirect costs identified in the economic analysis are skewed low due to the fact that the primary cost components, which are driven by the CWA §404 permitting and mitigation processes, are assumed to be directly proportional to the projected change in positive jurisdictional determinations discussed above. TVA notes that the associated costs are not directly proportional to either the number or acreage of jurisdictional waters. This is due to the unacknowledged relationship to the number/quantity of jurisdictional waters and the resultant implications for permitting via general permits. With a projected increase of ~5% in jurisdictional waters it is acknowledged by the agencies that more projects and activities will be subject to CWA jurisdiction and they have assumed that costs will increase proportionally. It should be noted, however, the more relevant impact is that a variety of projects that otherwise would have qualified for streamlined permitting processes under general Corps nationwide permits (NWP) will be required to undergo more lengthy and costly individual permit procedures because of the increase in jurisdictional waters. As a result, these projects will, at a minimum, face more complex permitting issues (including project planning time spent determining whether and how to avoid jurisdictional waters), higher costs, and increased requirements for compensatory mitigation. The document identifies the relative number of individual/general permits in Figure 10 and the associated costs in Figure 11. As indicated by Figure 10 it is apparent that a shift to more individual permits will result from a 5% increase in jurisdictional waters. In our opinion, a 5% increase in jurisdictional waters could result in a **double-digit increase** in the requirement for individual permits. The increased number of individual permits is due to the fact that the general permit scheme is based on limiting impacts to threshold values identified by the Corps in the NWP process. TVA notes that two of the most often utilized NWPs in the utility industry are NWP 12 for Utility Line Activities and NWP18 for Minor Discharges. NWP 12 stipulates that the "Activity does not result in the loss of >1/2 acre of waters of the United States." NWP 18 requires that "The discharge will not cause the loss of more than 1/10 acre of waters of the United States." Many of the NWPs restrict usage to similar thresholds and this will limit their applicability further as a result of the final rule. In addition, to the increased costs this change will result in additional project delays due to longer, more onerous permitting. While the agencies note on page 7 of the executive summary that they were not able to monetize permitting time and project redesign costs, TVA believes that these will be significant. As noted in the *Federal Register* notice reissuing these permits "In 2003, the average processing time for NWPs was 27 days and for individual permits it was 144 days." The economic analysis should account for these additional costs.

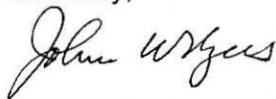
3. While TVA recognizes the prior use in regulatory programs and ongoing development of currently employed methods to estimate non-use benefits, it is our opinion that the stated preference survey and benefits transfer methodologies are not presently of sufficient rigor to provide a realistic assessment of non-use benefits. TVA has significant reservations whether the values elicited in related surveys truly represent a willingness to pay (WTP) to enjoy a particular benefit. As presented in previous TVA comments, our experience in conducting similar surveys indicates that the results are often exaggerated and are not very reliable. For example, consistent with contemporary industry business

Mr. Vladik Dorjets
Page 3
May 8, 2015

practice, TVA surveyed its residential customer base to determine the potential interest for purchasing renewable energy with the understanding that electing to do so would result in an increase in the customer's monthly utility bills. Response rates were typically very high; as much as 80 to 90 percent of the customer base affirming intent to subscribe to the renewables program. TVA has approximately 4,000,000 residential meters. Thus, a high percentage of the survey respondents indicated a "willingness-to-pay" for power sourced from renewables. In actuality, less than one-half of one percent of the customer base has signed on to the renewables program. Notably, the renewables survey estimated potential "use" as opposed to a "non-use" attribute; thus it was not nearly as complex or abstract to respondents as EPA's survey. Specifically, in this economic analysis it is noted that in Figure 13 on page 46 the range of projected household willingness to pay values for various wetlands in various regions based on selected studies varies from 0.005 to 7.548 \$ per household. The highest value is greater than 1500 times that of the lowest. Nevertheless, these are blended and presented in the final analysis of costs and benefits (Figure ES-1 on page 8) to reflect a variation of zero between the high and low annual benefits value for the wetlands mitigation benefit category. This lack of technical rigor due to the employed benefits estimation methodologies results in ambiguity and calls into question the benefits of the proposed rule change.

TVA appreciates the opportunity to provide these comments to OMB on the final "Waters of the United States" Economic Analysis. If you have any questions or wish to discuss any of these comments in greater detail, please contact me at [REDACTED]

Sincerely,



John W. Myers
Director
Policy & Regulatory Affairs

From: Peck, Gregory [REDACTED]
Sent: Friday, May 08, 2015 6:08 PM
To: Dorjets, Vlad; Schmauder, Craig R SES (US)
Cc: Cooperstein, Sharon
Subject: RE: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

Vlad:

I'm confused – I thought OMB was comfortable with the economic analysis? Who is raising concerns that will require "significant changes" to the economic analysis?

Thanks
Greg

From: Dorjets, Vla [REDACTED]
Sent: Friday, May 08, 2015 5:06 PM
To: Peck, Gregory; Schmauder, Craig R SES (US)
Cc: Cooperstein, Sharon
Subject: FW: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

NASA's comments...

I may send a couple others directly to you as well. I'm also hoping to send an initial set of consolidated OMB comments shortly. I'm expecting some additional comments on Monday. If necessary, I'll send a revised set of comments. Finally, while I don't specifically say it in my comments, I'm assuming there will be significant changes to the economic analysis due to the new changes we have recently discussed.

From: Kumor, Kenneth M. (HQ-LD020) [REDACTED]
Sent: Friday, May 08, 2015 11:50 AM
To: Dorjets, Vlad
Cc: Leatherwood, James (HQ-LD020); Mcneill, Mike A (HQ-LD020)
Subject: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

Vlad --

NASA thanks you for providing us an opportunity to review and comment on the Economic Analysis (EA) related to the interagency draft of the Final Rule that would establish a new definition for Waters of the United States (WOTUS). As mentioned previously, NASA Headquarters requested three of our field installations to participate in the review from the perspective of impacts to their operations. Under the time constraints for the review, the comments were:

- **Johnson Space Center (JSC)** was unable to review and provide comments by our internal deadline because relevant staff was either out of the office or already working other JSC operational issues..
- **Kennedy Space Center (KSC)** provided summary comments that made two points: (1) KSC generally agrees with the comments I provided you earlier concerning the interagency draft of the WOTUS Final Rule; and (2) the specific impacts on KSC operations will be minimal because all of its wetlands already have been found jurisdictional by the local Army COE field office. All other water bodies except for some manmade trenches have been found to be jurisdictional.

From: Dorjets, Vlad
Sent: Friday, May 08, 2015 6:12 PM
To: Peck, Gregory; Schmauder, Craig R SES (US)
Cc: Cooperstein, Sharon
Subject: RE: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

I certainly did not intent to give the idea that OMB would not be providing any comments. What I said when we spoke is that I had just received our economists' comments and I didn't see any major concerns but had not reviewed them in detail yet. Also, I had not received any of the comments from other EOP office or other agencies yet. I believe I also explained that comments from reviewers were due on Monday but that I had urged reviewers to get me something by today due to the accelerated review schedule. The comments I received are reflected in the document I sent over. I hope that helps clarify things.

From: Peck, Gregory [REDACTED]
Sent: Friday, May 08, 2015 6:08 PM
To: Dorjets, Vlad; Schmauder, Craig R SES (US)
Cc: Cooperstein, Sharon
Subject: RE: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

Vlad:

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Greg

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Sent: Friday, May 08, 2015 5:06 PM
To: Peck, Gregory; Schmauder, Craig R SES (US)
Cc: Cooperstein, Sharon
Subject: FW: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

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Sent: Friday, May 08, 2015 11:50 AM
To: Dorjets, Vlad
Cc: Leatherwood, James (HQ-LD020); Mcneill, Mike A (HQ-LD020)
Subject: Economic Analysis of the CWA Waters of the U.S. Definition Final Rule

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- **Wallops Flight Facility** predicted substantial adverse impacts to its operations. Their major summary points are:
 1. The proposed amended definition of WOTUS significantly increases the number of water bodies that were previously only covered by "waters of the state" definitions.
 2. Expanded definitions of wetlands may also increase the need for increased wetlands mitigation when construction projects border WOTUS under the new definition of *adjacent*.
 3. The phrase "all waters located within 4000 feet of the high tide line or ordinary high water mark" is significant because all waters located on or around WFF's three landmasses (Main Base, Mainland, and Island) fall within 4000 feet of the new definition of WOTUS, and then all major releases that have the potential to threaten "state waters" will also have the potential to threaten WOTUS, and would require additional reporting to federal agencies.

The detailed WFF comments are attached above.

NASA Headquarters review of the EA:

There are a number of issues that we believe merit OMB's attention. On pages 4-5 the Executive Summary, the *Baseline for Comparison*, (and later in the document) poses two possible baselines: (1) scope of WOTUS before *SWANNC* and *Rapanos* and (2) scope after those Supreme Court decisions. We feel the first alternative was posed only so EPA and COE can claim the proposed WOTUS Final Rule has a narrower scope than some historic application of WOTUS. The only relevant baseline today is the scope of WOTUS post - *SWANNC/Rapanos* as applied by regulators. Discussion of pre-*SWANCC/Rapanos* only adds confusion and muddies the issue. In choosing the present WOTUS scope as the relevant baseline, EPA and COE concede the upcoming Final Rule has a greater jurisdictional scope than present practice. We recommend reference to pre-*SWANNC/Rapanos* be dropped as confusing and irrelevant.

On page 5 of the Executive Summary, EPA and COE assert that "nationwide data do not exist on the areal extent of all waters covered by the CWA ..." In an Environmental Law Institute seminar earlier this year, one of the speakers displayed two slides showing the nationwide areal extent of waters covered by the CWA both under current law and what the areal extent would be under the WOTUS Proposed Rule issued in 2014. There was a great increase in areal coverage under the Proposed Rule. He also showed a series of slides that showed a dramatic increase in areal coverage under the Proposed Rule for a more localized U.S. Region. We believe such maps likely were supplied by some of the commenters on the Proposed Rule. While the draft Final Rule has changed from the Proposed Rule, NASA feels the failure to address commenter assertions of a dramatic

increase in areal extent of CWA coverage is a major omission from both this EA and the draft Final Rule supplementary information.

Finally, a major portion of the EA is devoted to attempting to measure the value of ecological services as a benefit. We note in passing that recently an interagency draft of a Presidential Memorandum entitled Incorporating Ecosystem Services in Federal Decision-Making was circulated for comment. That draft promised later implementing guidance on how to estimate the value of such services. In any event, the EA focuses on using the value of wetlands as a measure of ecological services benefit. The EA relies on a series of academic studies that use "Willing to Pay" (WTP) surveys of the public to estimate the value of the benefit of wetlands. Our time-limited review did not uncover whether the EA identifies any studies that challenge the validity or limitations of the WTP valuation approach. If there are no such critiques, the EA, should so state. NASA's independent consideration of the WTP methodology suggests several inherent limitations that raise major questions of how relevant and realistic this approach is for measuring the value of ecological services:

- The answer of an individual to a WTP survey is often very different from what that person would agree to pay if actually asked to make a financial commitment;
- Often the parties who would actually be required to directly pay for such services are different from those actually polled in a WTP survey. In other words, most, if not all, of the survey respondents have "no perceived skin in the game";
- The survey respondents typically are asked to give their WTP estimate to an isolated factor (e.g., wetlands) rather than give the WTP where there are a wide variety of alternatives for which they must allocate their financial resources.

The above three limitations are only illustrative of the spectrum of difficulty in trying to monetize values that are not inherently economic/financial in nature. Overall, we fear that the EPA/COE WTP approach may substantially overestimate the public value on wetlands services.

In summary, NASA believes that while impacts of the WOTUS Final Rule will vary among field installations, the overall impact on Agency operations, programs and projects will be adverse and material. Taking into account our previous comments, we feel that the shortcomings and omissions identified in the supplementary information accompanying the Final Rule, the changes between the Proposed and Final Rules, and the questions concerning the validity and relative accuracy of the EA merit a second reasonable public comment period on the revised new definition of WOTUS before the definition is issued as a Final Rule.

If you have any questions on these comments, please contact me at your earliest convenience.

KEN KUMOR

*Kenneth M. Kumor
OSI/Environmental Management Division
NASA Headquarters
300 E Street SW
Washington, DC 20546*



From: Dennis, Kia <[REDACTED]>
Sent: Monday, May 11, 2015 6:49 AM
To: Dorjets, Vlad
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Hi Vlad,

Under the RFA the agency is required to respond to our comments individually. If others have made the same comments the agency can have the same response. I always advise the agency to make it clear though that they are responding to our comments to that they meet their RFA obligations.

Kia

From: Dorjets, Vla <[REDACTED]>
Sent: Friday, May 08, 2015 2:39 PM
To: Dennis, Kia
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Kia,

EPA and the Corps are still preparing their passback. For your purposes under the RFA, is it enough to see the Agencies' response to the master set of comments or do you need a separate set of responses that address your comments alone?

Vlad

From: Dennis, Kia <[REDACTED]>
Sent: Friday, May 08, 2015 7:44 AM
To: Dorjets, Vlad
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Vlad,

I have no comment other than what we have already discussed and I've detailed in our comment letter and my prior comments to the documents. I understand that this rule is on a fast track but I do want to see EPA's specific response to Advocacy's comments. They are required by the RFA statute to respond to our comments specifically. I didn't see a response in the preamble, I assume it is in the response to comments document. Will that document be circulated soon?

Kia Dennis | Assistant Chief Counsel | SBA Office of Advocacy | 409 3rd St. SW, Washington, DC 20416 | p [REDACTED]
[REDACTED] | [REDACTED] | [website](#) | [listserv](#) | [blog](#) | [Facebook](#) | [twitter](#) |

From: Dorjets, Vla <[REDACTED]>
Sent: Tuesday, May 05, 2015 5:59 PM
To: Dennis, Kia

From: Peck, Gregory <[REDACTED]>
Sent: Tuesday, May 12, 2015 3:21 PM
To: Laity, Jim
Subject: RE: Please call re WOTUS

Will call you.

Gregory E. Peck
Chief of Staff
Office of Water
1200 Pennsylvania Avenue
Washington, D.C. 20460

[REDACTED]

From: Laity, Ji [REDACTED]
Sent: Tuesday, May 12, 2015 2:59 PM
To: Peck, Gregory
Subject: Please call re WOTUS

One or two issues I need to discuss. Thx. [REDACTED]

From: Johansson, Robert - OCE <[REDACTED]>
Sent: Tuesday, May 12, 2015 5:26 PM
To: Dorjets, Vlad
Subject: RE: wotus

Thanks. Just hadn't heard about them addressing comments, but will work on responses asap. I suspect they'll agree with my CAFO comment, but won't add anything in there for PGP since there probably isn't much data on that yet. We'll see.
Rob

From: Dorjets, Vla [REDACTED]
Sent: Tuesday, May 12, 2015 5:25 PM
To: Johansson, Robert - OCE
Subject: RE: wotus

Rob,

No, your questions made perfect sense and were very appropriate. We should get passback within a couple days. I will send it directly to you out of the interest of time. Not sure if you know, but OMB has committed to concluding its review by next Wednesday. That means we will have next to no time to review passback and send follow-up questions. I'm about to send a heads-up to reviewers that they will only have 24 hours to get comments back to me...which I'm sure they will not like. Once you get the passback, please do your best to get your comments back to me as soon as possible because I really do want to know what you think.

Vlad

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

From: Johansson, Robert - OCE [REDACTED]
Sent: Tuesday, May 12, 2015 5:15 PM
To: Dorjets, Vlad
Subject: wotus

Vlad,

Did you have any questions about the RIA comments on WOTUS that I sent?

1. Cafo costs
2. PGP costs

Did EPA respond?
Thanks,

From: Peck, Gregory <[REDACTED]>
Sent: Wednesday, May 13, 2015 2:11 PM
To: Dorjets, Vlad; Schmauder, Craig R SES (US)
Cc: Cooperstein, Sharon
Subject: RE: Clean Water Act Jurisdiction Comments

Vlad:

Checked with our attorneys regarding our obligations under the RFA. RFA itself only requires agencies to respond to SBA's comments individually in a Final Regulatory Flexibility Analysis (FRFA), per 5 U.S.C. § 604(a)(3). Because the Agency is certifying no SISNOSE and not preparing a FRFA, that provision wouldn't apply.

However, even though we've certified no SISNOSE, there is a requirement under E.O. 13272. Executive Order 13272, § 3(c) (2002), directs agencies to "[g]ive every appropriate consideration to any comments provided by Advocacy," and "include, in any explanation or discussion accompanying publication . . . of a final rule, the agency's response to any written comments submitted Advocacy on the proposed rule," unless the Administrator certifies that doing so would not be in the public interest.

In any case – I will include redline responses to each of the SBA comments. Second, accompanying publication of the final rule will be our RTC and that responds in detail to the SBA advocate comments.

Still Looking to have the rule/preamble back to you by COB – and the economic analysis. Craig is making great progress with the EA/FONSI

Best,
Greg

Gregory E. Peck
Chief of Staff
Office of Water
1200 Pennsylvania Avenue
Washington, D.C. 20460

[REDACTED]

From: Dorjets, Vla [REDACTED]
Sent: Monday, May 11, 2015 10:27 AM
To: Schmauder, Craig R SES (US); Peck, Gregory
Cc: Cooperstein, Sharon
Subject: FW: Clean Water Act Jurisdiction Comments

Greg/Craig,

While you will find the comments submitted by SBA Advocacy to have been incorporated into my master set of comments, SBA just pointed out to me that, under the RFA, you are required to respond to their comments individually. I realize you'll address the comments in the master, but can you please also make sure that those responses are provided in this document?

Thanks,

Vlad

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

From: Dennis, Kia [REDACTED]
Sent: Wednesday, April 22, 2015 12:29 PM
To: Dorjets, Vlad
Subject: RE: Clean Water Act Jurisdiction Comments

Vlad,

Attached are additional comments to the CWA rule embedded in the draft document.

Kia

Kia Dennis | Assistant Chief Counsel | SBA Office of Advocacy |
409 3rd St. SW, Washington, DC 20416 | [REDACTED] | [REDACTED]
[REDACTED] | [website](#) | [News](#) | [Research](#) | [Regulation](#) | [blog](#) | [Facebook](#) | [twitter](#) |

From: Peck, Gregory <[REDACTED]>
Sent: Friday, May 15, 2015 3:01 PM
To: Dorjets, Vlad
Subject: RE: Log Ponds

1. Vlad – this is language we added to the preamble – is there something here that would be responsive to your request for additional clarity. Significant concern here about conflating waters we routinely cover under the waste treatment exclusion based on site specific analysis and waters that would always be excluded under the rule with no evaluation. And in several examples here, they are not even “waters” covered by the Act, e.g., Wastewater treatment tanks, including oil-water separators and sumps, and piping/conveyances. I’m also concerned that a list this long and specific looks more exclusive than illustrative?

Here’s the preamble language

Language in preamble-- The agencies have also added cooling ponds to the list of uses in the rule. The list of uses has always been illustrative rather than exhaustive, and this addition responds to many requests to clarify that cooling ponds created in dry land are excluded. Artificial lakes and ponds subject to this exclusion are created in dry land to hold or store water for uses where isolation from downstream waters for the duration of the associated activity is essential. Conveyances created in dry land that are physically connected to and are a part of these artificial lakes and ponds created in dry land are also excluded from jurisdiction under this provision. These artificial features work together as a system, and it is appropriate to treat them as one functional unit.

From: Dorjets, Vlad [REDACTED]
Sent: Friday, May 15, 2015 1:48 PM
To: Peck, Gregory
Subject: RE: Log Ponds

Greg – Do you have a second to chat about another item?

From: Dorjets, Vlad
Sent: Friday, May 15, 2015 1:33 PM
To: Peck, Gregory
Cc: Srinivasan, Gautam; Schmauder, Craig R SES (US); Tera L. Fong; Erin Burk [REDACTED]; Cooperstein, Sharon
Subject: RE: Log Ponds

Greg – This is not the type of water we’re talking about. Clearly, the pond below is part of a bigger navigable water and is jurisdiction. We are talking about “purpose-built industrial and commercial waters constructed in dry land, including treatment ponds or lagoons, designed to that meet the requirements of the Clean Water Act” or something along those lines. The facility below and the one in the other picture you sent me were not built on dry land for commercial or industrial activity. It is our understanding from the many stakeholders who have mentioned it, is that this is a very real concern. Admittedly, the stakeholders understand that your intent is not to start regulating these ponds but they are

still nervous about the policy not being implemented consistently on the ground. I've copied Sharon Cooperstein since she heard listened in on many of the calls.

We would address this by using the text above (or something like it) and expanding the list of examples currently in the reg:

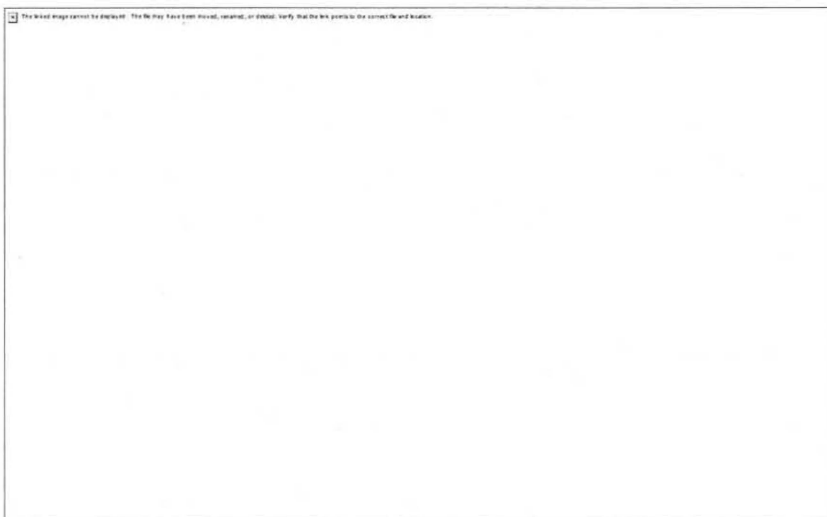
1. Treatment ponds and lagoons;
2. Drainage systems;
3. Stormwater and emergency water detention/retention ponds;
4. Cooling water ponds;
5. Spill diversion features and containment ponds;
6. Polishing ponds;
7. Canals and similar features that connect units of a waste treatment system; and
8. Wastewater treatment tanks, including oil -water separators and sumps, and piping/conveyances

What do you think?

From: Peck, Gregory [REDACTED]
Sent: Friday, May 15, 2015 12:37 PM
To: Dorjets, Vlad
Cc: Srinivasan, Gautam; Schmauder, Craig R SES (US)
Subject: RE: Log Ponds

Bellingham Waterfront Log Pod

In 2005, the Port of Bellingham acquired approximately 137 acres of waterfront property and tidelands along Bellingham Bay. It was a site of a former paper mill.



The Waterfront District is divided into five areas of unique character. The Port and City designated two areas for industrial land use -- the Log Pond and Shipping Terminal areas. The former Long Pond area encompasses 52 acres of industrial mixed-use land. It is adjacent to the Shipping Terminal area -- a 25 acre area preserved for shipping, port and industrial related opportunities.

Both areas lay across the Whatcom Waterway from the 58-acre Marine Trades area – an area characterized as a working waterfront. The Marine Trades area includes a number of established businesses and industries. The Port of Bellingham is home to over 1,400 commercial and pleasure boats, including a large charter boat fleet.

The Log Pond and Marine Terminal areas are either undeveloped or underdeveloped. Their combined area of 77 acres has the potential to generate nearly 1,500 jobs. The proposed market study will identify the types of industries most likely to locate in the area.

The Log Pond area includes an industrial-sized water line that historically supplied water to the former paper mill. The Port plans to use this waterline to operate a mini-hydroplant. The site also includes a natural gas power plant. They propose using the excess heat from this power plant to heat nearby buildings. Together these two facilities will give the Log Pond and Shipping Terminal properties both a comparative and competitive advantage.


With assistance from Commerce's Brownfields Program, the Port of Bellingham is conducting a market study for the industrial use of the Log Pond area. They want to include in the market study the impact of a micro or mini hydroplant. The analysis will include the use of alternative power to fund the cleanup of brownfields sites and/or create an economic incentive for the redevelopment of the Log Pond area. The Port will use this market study to recruit new and/or expanding industries.

Given the nearby renewable energy resources, the market study will look at the viability of a clean energy industry cluster in and around the Bellingham Waterfront. The Port will look at using the alternative power to create economic incentives to redevelop the Log Pond and Shipping Terminal areas.

From: Peck, Gregory
Sent: Friday, May 15, 2015 12:35 PM
To: 'Dorjets, Vlad'
Cc: Srinivasan, Gautam; Schmauder, Craig R SES (US)
Subject: Log Ponds

Is this what we want to be excluding?

Gregory E. Peck
Chief of Staff
Office of Water
1200 Pennsylvania Avenue
Washington, D.C. 20460



From: Dorjets, Vlad
Sent: Friday, May 15, 2015 3:44 PM
To: Peck, Gregory; Schmauder, Craig R SES (US)
Subject: SBA Advocacy's Request

Greg/Craig,

Passing along SBA's response. Not sure I want to get in the middle of this but let me know if you think that's best.

Vlad

From: Dennis, Kia [REDACTED]
Sent: Friday, May 15, 2015 8:15 AM
To: Dorjets, Vlad
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Vlad,

I understand that the statute can be interpreted the way EPA has interpreted it. However, the language in EO 13272 directs agencies to respond to our comments regardless of whether they have certified or done an IRFA unless the agency can say it isn't in the public's best interest to do so. I've pasted it below. This isn't a heavy lift and for no other reason EPA should include a response to ward off this claim of failure to comply with the RFA in the event of litigation.

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that inclusion is not required if the head of the agency certifies that the public interest is not served thereby.

Kia Dennis | Assistant Chief Counsel | SBA Office of Advocacy | 409 3rd St. SW, Washington, DC 20416 | [REDACTED] [REDACTED]
[REDACTED] | [website](#) | [listserv](#) | [blog](#) | [Facebook](#) | [twitter](#) |

From: Dorjets, Vlad [REDACTED]
Sent: Wednesday, May 13, 2015 7:36 PM
To: Dennis, Kia
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Kia,

You should have received passback to comment. I asked EPA and the Corps about responding to your comments individually and they feel that the RFA only requires agencies to respond to SBA's comments individually in a Final Regulatory Flexibility Analysis (FRFA), per 5 U.S.C. § 604(a)(3). Because the Agency is certifying no SISNOSE and not preparing a FRFA, that provision wouldn't apply. Hopefully, the consolidated responses meet your needs.

Vlad

From: Dennis, Kia [REDACTED]
Sent: Monday, May 11, 2015 6:49 AM
To: Dorjets, Vlad
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Hi Vlad,

Under the RFA the agency is required to respond to our comments individually. If others have made the same comments the agency can have the same response. I always advise the agency to make it clear though that they are responding to our comments to that they meet their RFA obligations.

Kia

From: Dorjets, Vla [REDACTED]
Sent: Friday, May 08, 2015 2:39 PM
To: Dennis, Kia
Subject: RE: Clean Water Rule / WOTUS Economic Analysis

Kia,

EPA and the Corps are still preparing their passback. For your purposes under the RFA, is it enough to see the Agencies' response to the master set of comments or do you need a separate set of responses that address your comments alone?

Vlad

From: Peck, Gregory <[REDACTED]>
Sent: Saturday, May 16, 2015 11:02 AM
To: Dorjets, Vlad; Schmauder, Craig R SES (US)
Subject: Re: WOTUS passback comments

DOT's interpretation of the revised ditch exclusion is correct in my view. Craig?

From: Dorjets, Vla [REDACTED]
Sent: Saturday, May 16, 2015 10:34 AM
To: Peck, Gregory; Schmauder, Craig R SES (US)
Subject: FW: WOTUS passback comments

DOT's comments on passback are below. I think I have already captured the instances of confusion and grammatical errors they note in my own comments but forwarding to you for thoroughness. Also, please note the clarification question they have posed.

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

From: Shoshana Lew, DOT [REDACTED]
Sent: Thursday, May 14, 2015 9:27 PM
To: Dorjets, Vlad; Johnson, Katie B.
Cc: Kathryn Thomson, DOT [REDACTED]
Subject: WOTUS passback comments [REDACTED]

Vlad, Katie -

Thank you for the opportunity to review the passback. We greatly appreciate both the changes that have been made to address our comments and the early and continued engagement by EPA and USACE to discuss and largely accommodate our feedback.

Below are our comments on the passback, most of them minor. A quick conversation tomorrow might help to provide clarification on a couple of these.

Thanks -
Shoshana

--

-- There appears to be an inconsistency between 328.3(b)(3)(A) of the passback and the revised 328.3(b)(3)(B). It appears that the agencies intended to eliminate ephemeral from 328.3(b)(3)(B), based on the language in the preamble on Page 98. However, "ephemeral" currently appears in (3)(B).

-- Definition in 328.3(b)(3)(B) (page 199): Grammatical correction needed to revised language, now reading "Ditches with ephemeral or intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands."

-- The text in many parts of the preamble has not been updated to reflect the revised exemption definitions in the regulatory text (see, e.g., pages 25, 98, 103-104, 166), or the revised significant nexus standard (see, e.g., pages 23, 24, 28, 68, 79-80, 128, 132-144, 160).

From: Laity, Jim
Sent: Thursday, May 21, 2015 4:38 PM
To: Peck, Gregory
Subject: RE: WOTUS

Working on it with Kelly, will get back to you shortly.

From: Peck, Gregory [REDACTED]
Sent: Thursday, May 21, 2015 4:37 PM
To: Laity, Jim
Subject: RE: WOTUS

Looks good – I'll drop this language into the preamble. Thanks.

How's the grandfather language?

From: Laity, Ji [REDACTED]
Sent: Thursday, May 21, 2015 4:21 PM
To: Peck, Gregory
Subject: FW: WOTUS

See below; OK?

Cooling ponds created to serve as part of a cooling water system with a valid state permit constructed in waters of the United States prior to enactment of the Clean Water Act and currently excluded from jurisdiction will remain excluded under the new rule.

From: Dorjets, Vlad
Sent: Wednesday, May 27, 2015 11:10 AM
To: Johansson, Robert - OCE
Subject: RE: wotus

Rob,

The real challenge here was working on a very tight schedule which required me to provide short deadlines. To the extent that Agencies were able to provide me comments in response the marked -up versions I sent around by the specified deadline, I did all that I could to address them with EPA and the Corps...but even then there was only so much I could do. That being said, I understand your concerns and agree completely that the interagency process is critical to a rule's review. Happy to discuss if you want.

Vlad

From: Johansson, Robert - OCE [REDACTED]
Sent: Wednesday, May 27, 2015 11:00 AM
To: Dorjets, Vlad
Subject: RE: wotus

Hi Vlad,

Yes that process was not well managed. There was no return solicitation for agencies to see what EPA had proposed (or not) changing in response to comments. You will find that it becomes difficult to convince folks to participate in the interagency process if they feel that their time is just being wasted. However, as I am sure you agree given the resource limitations at OIRA that leveraging the interagency process is one way to significantly improve rulemakings and the supporting docs such as the RIA. In other words, you cannot do it alone and sometimes the folks across the street from you do not care about longer term issues that other agencies do care about.

Rob

From: Dorjets, Vla [REDACTED]
Sent: Wednesday, May 27, 2015 10:56 AM
To: Johansson, Robert - OCE
Subject: RE: wotus

Rob – Sorry for not replying to your earlier message. Things have been hectic – as I'm sure you can imagine – as we finalized the rule for roll out. I don't know how/whether the Agencies plan to make the documents available prior to them being published in the FR but OMB concluded its review on both the preamble/rule and the RIA. Unfortunately, by the time I got your message we had already wrapped up the RIA and it would have been extremely difficult to re-open it at that point. I'd be happy to discuss the RIA with you in greater detail over the phone one of these days. I'm working from home today though (FYI: OIRA is in the process of being relocated to another building for 1 -2 years while the 9th and 10th floors at NEOB are completely remodeled) so can be reached on my cell at 202 -491-7216.

From: Johansson, Robert - OCE [REDACTED]
Sent: Wednesday, May 27, 2015 10:47 AM
To: Dorjets, Vlad
Subject: wotus

I see the rule will be announced today. Will it have the RIA attached or are you still working on that?
Thx,
Rob

Robert Johansson, Ph.D. | Acting Chief Economist | US Department of Agriculture
Whitten Building, Room 112 -A | 1400 Independence Ave., SW | Washington, D.C. 20250 -3810
[REDACTED]

From: Peck, Gregor [REDACTED]
Sent: Tuesday, September 17, 2013 5:00 PM
To: Laity, Jim
Subject: RE: WOTUS

Thanks Jim. Its always good to work with you – I'll look forward to it.

Best,
Greg

From: Laity, Ji [REDACTED]
Sent: Tuesday, September 17, 2013 4:56 PM
To: Peck, Gregory
Subject: WOTUS

We were able to fix at our end. I will circulate to interagency reviewers tonight and give them until cob Friday, Oct 4 for comments. Look forward to working together. Jim

From: Peck, Gregory [REDACTED]
Sent: Tuesday, September 17, 2013 4:01 PM
To: Laity, Jim
Subject: RE: Please cal [REDACTED]

Our OP folks have gone home for the day. We can resubmit in the morning – do you have to “unaccept” first? Is there additional info needed or is the EA enough?

Thanks Jim.

Greg

Gregory E. Peck
Chief of Staff
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

From: Laity, Jim [REDACTED]
Sent: Tuesday, September 17, 2013 3:35 PM
To: Peck, Gregory
Subject: Please call asa [REDACTED]

We would like the CWP rule submitted as “economically significant.” I understand that we will have further discussions in the context of review on how to characterize the costs, and I don't mean to prejudice that discussion. But the

guidance (about to be withdrawn) is listed as “economically significant” and I’m afraid it may raise eyebrows if the rule is not similarly characterized. You do include an EA that shows costs well in excess of \$100 million.

From: Laity, Jim
Sent: Friday, October 25, 2013 6:17 PM
To: [REDACTED] Pendergast, Jim [REDACTED] Gaffney-Smith, Margaret E [REDACTED]; Smith, Charles R CIV (US)
Subject: FW: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction
Attachments: EO12866_CWA_WUS2040-AF30_NPRM_EA_20130917.docx

FYI

From: Roach, Emma
Sent: Friday, October 25, 2013 2:07 PM
To: Laity, Jim
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Jim,

Thanks for the opportunity to review the draft rule and economic analysis. I've been crunched for time, but wanted to provide my thoughts based on my quick review. I have proposed an edit in the economic analysis (attached) to strike language about a need to increase the Corps' regulatory program budget.

My general comments/questions are as follows:

- What does EPA/Corps plan to do regarding this rule in the event that EPA's Scientific Advisory Board finds fault with the connectivity report?
- The portion of the economic analysis on the Corps' administrative costs seems to indicate that this rule only increases costs. Are there any ways in which the rule would decrease particular administrative costs due to the greater certainty in terms of what section 404 covers?

Thanks, and let me know if you have any questions.

Best,
Emma

From: Laity, Jim
Sent: Wednesday, October 23, 2013 6:00 PM
To: Roach, Emma
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

No problem

From: Roach, Emma
Sent: Wednesday, October 23, 2013 5:49 PM
To: Laity, Jim
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Jim—

Would you mind if I got you my comments tomorrow or Friday? Unfortunately, we had a number of things explode in the Corps world today and I wasn't able to finish my review.

Let me know. Thanks.

Best,
Emma

From: Laity, Jim
Sent: Friday, October 18, 2013 6:16 PM
To: Roach, Emma
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Will do, my mistake. Jim

From: Roach, Emma
Sent: Friday, October 18, 2013 12:05 PM
To: Laity, Jim
Subject: FW: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Jim,

I realized I'm not on the distribution, but will get you comments by October 23rd. Can you put me on any future emails on Corps rules? Thanks!

Best,

Emma

From: Fong, Tera L.
Sent: Friday, October 18, 2013 9:06 AM
To: Roach, Emma
Subject: FW: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Sorry, Emma. Forgot you weren't on this distribution. Probably worth shooting a note to Jim.

From: Laity, Jim
Sent: Thursday, October 17, 2013 11:40 AM
To: [REDACTED]

[REDACTED]

Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Please provide interagency comments by cob, Wed Oct 23. If this is a problem, please let me know. Jim

From: Laity, Jim
Sent: Monday, September 30, 2013 5:55 PM
To: [REDACTED]

Cc: Mancini, Dominic J.; Comisky, Nicole E.; Fong, Tera L.; Finken, Anne; Rodan, Bruce; Stock, Jim; Hickey, Mike; Irwin, Janet; McConville, Drew; Utech, Dan G.; Higgins, Cortney
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

In the event of a lapse in funding, we will extend the deadline below by one day for each day of the lapse. If you have separately discussed an extension with me, we will also extend the agreed upon date in the same manner.

Jim Laity

From: Laity, Jim
Sent: Tuesday, September 17, 2013 7:43 PM
To: [REDACTED]

Cc: Mancini, Dominic J.; Comisky, Nicole E.; Fong, Tera L.; Finken, Anne; Rodan, Bruce; Stock, Jim; Hickey, Mike; Irwin, Janet; McConville, Drew; Utech, Dan G.; Higgins, Cortney
Subject: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Interagency Reviewers: Please ignore previous e-mail, I hit send by accident before I had finished preparing.

Attached is the EPA/Corps draft proposed rule on CWA jurisdiction, along with the economic analysis. Please review and provide comments by Friday, October 4, 2013. As you know, the agencies previously submitted draft guidance on this same issue for review. The agencies have decided to proceed with rule making and the draft guidance has been withdrawn.

As a reminder, these documents should not be shared or discussed with anyone outside the executive branch. You may share as appropriate within your agency. If you feel someone outside your agency should review, please let me know and I will forward it to them. Please help ensure the integrity of the interagency review process by respecting these guidelines.

Feel free to call me if you have any questions or concerns.

Jim Laity
OMB/OIRA Desk Officer for CWA
[REDACTED]

From: Laity, Jim
Sent: Monday, November 04, 2013 5:22 PM
To: Peck, Gregory; Pendergast, Jim [REDACTED] Gaffney-Smith, Margaret E
[REDACTED] 'Chip Smith'
Cc: Finken, Anne
Subject: FW: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

FYI

From: Finken, Anne
Sent: Monday, November 04, 2013 11:18 AM
To: Laity, Jim
Cc: Guzy, Gary S.; McConville, Drew; Jensen, Jay; Kumar, Chitra; Huang, Jennifer (Intern); Patel, Manisha; Foy, Phillip (Intern); Snow, Sydney (Intern)
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Hi Jim –

Thank you again for the additional time to review the WOTUS rulemaking package. Attached are CEQ's specific comments and edits on the draft rule. We did not have any comments on the EA. Below we describe some general comments on the rule. We appreciate your efforts in ensuring that the agency receives all of these comments. If you have any questions, please let us know!

Again, thanks!

Best,
Anne

General comments on the WOTUS package:

- **Legal:** Include a concise legal analysis of why EPA is adopting the interpretation set forth in the Kennedy concurrence. The executive summary, preamble and Appendix B should include a broader discussion of Rapanos, including how both the plurality and Justice Kennedy's concurrence articulated narrower grounds than the dissent, and therefore both the plurality and Justice Kennedy's concurrence are grounds on which a majority of the Justices in Rapanos would confirm CWA jurisdiction. Once a fuller description of Rapanos is provided, the agencies may better describe why they are adopting the jurisdictional interpretation set forth by Kennedy. Currently, the executive summary jumps without explanation to use of Kennedy's significant nexus test, and the executive summary would be strengthened if the logic for this approach is set forth.
- **Context:** Add background information early on in the preamble and Appendix B regarding the CWA permitting programs (404 and 402/NPDES). The agencies should describe how those programs are set forth in statute and rely on the jurisdictional definition of "waters of the United States". Some of the text on page 19, for example, could be moved to earlier in the preamble where there is a discussion of the CWA statutory structure.
- **Context:** Add background information early on in the preamble and Appendix B regarding the rulemakings and guidance documents issued by the Agencies. On page 15, for example, the "2008 guidance" is introduced

without explanation. Instead, it would be useful to have a brief discussion of the agencies' deliberative actions to define WOTUS over the years. A logical flow of the preamble and Appendix B could include a discussion of the statute, regulations and guidance, and then the discussion of SCOTUS opinions.

- **Weight of Discussion:** Consider the amount of text in the rule provided to each category of jurisdictional waters. The agencies include a significant amount of discussion on traditional navigable waters, interstate waters, and territorial seas in the preamble, when these categories are fairly well settled regarding jurisdiction. Have the agencies considered focusing the preamble language on those jurisdictional categories that are less well settled?
- **Drafting:** Revise the drafting to be concise, omit repetition, and ensure a logical flow of content. Currently, the preamble and legal analysis are challenging to digest due to repetition and, in the legal appendix, the large volume of block quotes (use text to state summarized main points from the cases and use more citations/FNs to incorporate direct quotes). EPA's rule would be stronger also if the repetition of language between the text and both appendices is reduced, and this would reduce the overall length of the rule and appendices. It seems the preamble should serve as a stand alone document, with the appendices serving as true appendices.
- **Drafting:** The agencies should work to make the linkage between the legal "significant nexus" test and the scientific rationale easily accessible to the reader. For example, one takeaway that any reader should have is that the proposed rule is narrower in scope than the agencies' previous interpretation under the CWA.
- **Scientific Appendix:** Generally this appendix reads better than preamble and it summarizes the Connectivity Report.

Anne Finken
Deputy Associate Director for Regulatory Policy
Council on Environmental Quality
[REDACTED]

From: Laity, Jim
Sent: Monday, September 30, 2013 5:55 PM
To: [REDACTED]

Cc: Mancini, Dominic J.; Comisky, Nicole E.; Fong, Tera L.; Finken, Anne; Rodan, Bruce; Stock, Jim; Hickey, Mike; Irwin, Janet; McConville, Drew; Utech, Dan G.; Higgins, Cortney
Subject: RE: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

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Jim Laity

From: Laity, Jim
Sent: Tuesday, September 17, 2013 7:43 PM
To: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Cc: Mancini, Dominic J.; Comisky, Nicole E.; Fong, Tera L.; Finken, Anne; Rodan, Bruce; Stock, Jim; Hickey, Mike; Irwin, Janet; McConville, Drew; Utech, Dan G.; Higgins, Cortney

Subject: Interagency Review of Joint EPA/Corps Proposed Rule on Clean Water Act Jurisdiction

Interagency Reviewers: Please ignore previous e-mail, I hit send by accident before I had finished preparing.

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Feel free to call me if you have any questions or concerns.

Jim Laity
OMB/OIRA Desk Officer for CWA
[REDACTED]

From: Peck, Gregor [REDACTED]
Sent: Tuesday, December 03, 2013 3:03 AM
To: Laity, Jim
Subject: Re: WOTUS.

Thanks Jim. I think Gina's office is trying to schedule a call before she leaves for China. I've tried to suggest that you and I could come up with options - but so far no success. Strong interest here to resolve quickly.

we'll need to involve Army too.

Gregory E. Peck
Chief of Staff
Office of Water
USEPA
Washington, DC. [REDACTED]

From: Laity, Ji [REDACTED]
Sent: Monday, December 02, 2013 9:54:55 PM
To: Peck, Gregory
Subject: RE: WOTUS.

I believe Howard will suggest that the staff work these issues a bit first and tee up for policy level discussion with specific options, as normally happens. However, not sure how he will respond if Gina disagrees. I will ping him again tomorrow about making the call. I would expect it to be very soon. Jim

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

From: Peck, Gregor [REDACTED]
Sent: Wednesday, November 27, 2013 11:16 AM
To: Laity, Jim
Subject: RE: WOTUS.

Jim - do you have a sense about how Howard will want to resolve these issues? A face to face with Gina (and JoEllen)? Some type of larger principals meeting including other agencies? Also - did Howard indicate when he might call Gina? We'll need to talk with her first if that works for you all.

Thanks

From: Laity, Jim [REDACTED].>
Sent: Wednesday, November 27, 2013 12:49 AM
To: Peck, Gregory
Subject: WOTUS.

Meant to get back to you sooner. Howard will call Gina soon to discuss process and timing for resolving the five policy level issues that I mentioned earlier today. Have a good Thanksgiving. Jim

Ps. If u can get me a draft small entity outreach report soon, I will try to make that work per our earlier agreement. I will offer SBA the opportunity to make comments (we might have some too) and try to convince them this is a good way forward.

Sent with Good (www.good.com)

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

From: Peck, Gregor [REDACTED]
Sent: Tuesday, November 26, 2013 01:15 PM Eastern Standard Time
To: Laity, Jim
Subject: FW: RFA

I don't think a report was prepared - but let me double check. Here's the scanned emails I mentioned that includes input from Cass and Dom.....

From: Laity, Ji [REDACTED]
Sent: Tuesday, November 26, 2013 12:54 PM
To: Peck, Gregory
Subject: RE: RFA

Greg, This is very helpful, and jogs my memory. One quick question, was a report ever prepared coming out of the outreach meeting with small entities? I don't remember seeing one, but I may well have forgotten. If you could let me know before 3:30 that would be great. Jim

From: Peck, Gregor [REDACTED]
Sent: Tuesday, November 26, 2013 11:01 AM
To: Laity, Jim
Subject: RFA

Here's a set of emails starting with Mike Fitzpatrick. I'll find a couple more

Gregory E. Peck

Chief of Staff

Office of Water
[REDACTED]

[Redacted]

[Redacted]