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**From:** Dorjets, Vlad  
**Sent:** Tuesday, April 07, 2015 2:10 PM  
**To:** Renshaw, Katie; Fong, Tera L.; Wong, Jacqueline; Vahlsing, Candace; Rodan, Bruce; Nickerson, Cynthia  
**Subject:** Clean Water Rule (WOTUS) Review  
**Attachments:** Final Clean Water Rule (RIN 2040-AF30).docx

Colleagues:

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 a reminder, the attached materials are deliberative and pre -decisional and may not be shared or discussed with anyone outside of the Executive Branch. 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. To avoid a repeat of this, we only circulated the rule to a single official within each agency and asked them to limit distribution to personnel who were essential to the review process. We ask that you also limit your distribution as much as possible. If somebody outside of your office asks to review the rule or if you feel that someone outside of your office should participate in the review, please let me know and I will forward it to them myself. Please help us maintain the integrity of the interagency review process by respecting these process requirements.

Please send me comments by **COB Monday, April 20<sup>th</sup>**.

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

Vlad

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**From:** Dorjets, Vlad  
**Sent:** Tuesday, April 07, 2015 2:12 PM  
**To:** Laity, Jim  
**Subject:** RE: TIME SENSITIVE: WOTUS Distribution

I just distributed the rule to CEQ, RMO, DPC, OSTP and CEA but don't have a contact at USTR. I asked Tera but she hasn't worked with them before. Can you suggest to whom I should send the rule?

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**From:** Laity, Jim  
**Sent:** Tuesday, April 07, 2015 12:22 PM  
**To:** Dorjets, Vlad  
**Subject:** FW: TIME SENSITIVE: WOTUS Distribution

Vlad: Here's the final dist list, plus the cover note with Katie's edits. Please send out asap. Also include the usual EOP contacts. Thx. 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 ~~and asking that you~~ limit distribution within your agency to personnel who are essential to the review process ~~within your agency to only those personnel that need to review it.~~

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 ~~de~~ 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 20<sup>th</sup>**.

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**From:** Laity, Jim  
**Sent:** Tuesday, April 14, 2015 6:27 PM  
**To:** Shelanski, Howard; Johnson, Katie B.; Mancini, Dominic J.  
**Cc:** Dorjets, Vlad; Levenbach, Stuart  
**Subject:** WOTUS Update

Howard:

We had a productive meeting with EPA and Corps senior staff. Rule is in pretty good shape. We are still reading it, so don't know yet what substantive issues may warrant elevation. One issue we discussed is whether the potential number of case-by-case jurisdictional determinations in the draft final rule can be further reduced. EPA has made huge progress since proposal in shrinking the area where case-by-case determinations are required and included some very helpful bright lines for regulatory certainty. But for so-called "isolated waters" between 100 and 4,000 feet away from a jurisdictional water, a case-by-case determination is still required. This is a huge step forward from proposal, where all isolated waters required case-by-case, but still encompasses a large number of waters, especially in the East where waters tend to be pretty close together. A key feature of our review will be to explore this issue thoroughly. In other controversial areas, such as ditches and agricultural lands, they have simplified considerably, and based on the preliminary briefing, rule seems in good shape (but of course, devil is in the details).

Several process issues came up. EPA believes there is an understanding at your level that we will do a 60-day review. Apparently Gina has announced publicly that they will release the rule "this spring" (ie, by June 21). We told them that we were aware of their request for a 60-day review and would do our best to accommodate it, but that our understanding was that OIRA had not yet committed to that and it depends on the timing of getting supporting docs (we still do not have the economic analysis), level of interagency comments, how quickly EPA and the Corps are able to resolve issues, etc. This was how I interpreted our last discussion with you on this issue, so I hope I have not misrepresented OIRA's perspective. Based on this feedback, EPA agreed to speed up their completion of the EA and get it to us next week (they had started out saying several more weeks).

We are also concerned that the preamble does not discuss comments and the agencies' response to them, as final rules typically do. EPA staff said it was Gina's personal decision to write the preamble this way, and she was fully informed that this was "atypical" for a final rule preamble. EPA is frantically trying to finish a massive separate response to comment document by the release date, it is unlikely to be finished in time to show us during our review. However, it turns out that EPA does have a summary of major comments already; as a compromise they agreed to share this with us, along with some key representative raw comments, and then answer any questions we have about how they were addressed in cases where it is not already obvious from the rule and preamble. Less than ideal but probably the best we can get.

EPA expressed some concern about sharing the EA to the wider interagency review group. We indicated that this is fairly standard in our review process (and interagency reviewers have already asked for it), but emphasized the restricted distribution process we are using (one senior official at each agency). By the end of the conversation EPA seemed to agree that this was an acceptable approach. However, it is possible that you may get further blowback on some or all of these process issues.

Let me know if you need more info. Jim X [REDACTED]

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**From:** Dorjets, Vlad  
**Sent:** Monday, April 20, 2015 9:04 AM  
**To:** Laity, Jim  
**Subject:** FW: Clean Water Act Jurisdiction Comments  
**Attachments:** Final\_WOTUS Comment Letter.pdf

I'll review SBA's comments myself but to the extent you recall key points you agreed with (or disagreed with), I would appreciate your thoughts.

Sent with Good

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

**From:** Dennis, Kia [REDACTED]  
**Sent:** Monday, April 20, 2015 08:16 AM Eastern Standard Time  
**To:** Dorjets, Vlad  
**Subject:** FW: Clean Water Act Jurisdiction Comments

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**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 changes 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.

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

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**From:** Dorjets, Vlad  
**Sent:** Tuesday, April 21, 2015 4:44 PM  
**To:** Renshaw, Katie  
**Cc:** Mallory, Brenda; Patel, Manisha; Jensen, Jay; Tarquinio, Ellen; McConville, Drew  
**Subject:** RE: Clean Water Rule (WOTUS) Review  
**Attachments:** OverviewSummary\_Waters of the U.S. Comments.docx; Executive Summary DRAFT - Economic Analysis April 17 2015.docx

Katie – Thanks for submitting these. We are expecting the related Economic Analysis to be submitted to us by the end of the week at which point I will distribute it for interagency review. In regards to response to comment, EPA and Army Corps are still preparing the document which they expect to be VERY long and not available for several more weeks. In the meantime, they have provided a summary of public comments which I have attached for your information. I have also received from EPA a draft summary of the Economic Analysis which I have attached although it is no substitute for the actual report.

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**From:** Renshaw, Katie  
**Sent:** Tuesday, April 21, 2015 4:30 PM  
**To:** Dorjets, Vlad  
**Cc:** Mallory, Brenda; Patel, Manisha; Jensen, Jay; Tarquinio, Ellen; McConville, Drew  
**Subject:** RE: Clean Water Rule (WOTUS) Review

Vlad-

Thank you for the opportunity to review EPA's draft final Clean Water Rule, and I apologize for the belated submission. I've attached CEQ's comments on the draft. Our overarching comments are the following:

- **Key definitions:** We have flagged a few places throughout where we think the agencies could consider providing more specific definitions for terms used in the final rule.
- **Implementation guidance/ direction:** The final rule is an improvement over the proposed rule in that it offers more clarity on the types of waters that are covered. What actions are the agencies taking to ensure that the rule will be implemented consistently over the 38 Corps districts? Some particular areas that may benefit from agency training and coordination include watershed delineations, establishing 100 -year floodplain where no FEMA maps exist, and the process for establishing g exclusions.
- **Some sections would benefit from language revisions:** Several areas in the rule could use clearer, more precise language. This includes the discussion on significant nexus tests, categories of waters in (a)(7) or (b)(8), adjacency discussions, and the rationale for establishing thresholds.
- **Consideration of Science Advisory Board (SAB) recommendations:** The preamble discusses several comments and recommendations of the SAB that are not ultimately incorporated into the final rule. The final rule would benefit from a clearer explanation from the agencies as to how they considered these recommendations in making their ultimate decisions.
- **Missing key components to fully review the rule:** The Economic Analysis, the Response to Comments document and the Technical Support Document were not included with the final rule when it was submitted to OMB. The lack of these companion documents made the rule difficult to analyze and understand the full

implications. Mindful that we are on a fast turn, we view this as an incomplete package and request that we have the opportunity to review and comment on the additional documents as they are made available.

Please let me know if you have any questions or would like any further information from us on these comments.

Katie

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**From:** Dorjets, Vlad

**Sent:** Tuesday, April 07, 2015 2:10 PM

**To:** Renshaw, Katie; Fong, Tera L.; Wong, Jacqueline; Vahlsing, Candace; Rodan, Bruce; Nickerson, Cynthia

**Subject:** Clean Water Rule (WOTUS) Review

Colleagues:

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 a reminder, the attached materials are deliberative and pre-decisional and may not be shared or discussed with anyone outside of the Executive Branch. 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. To avoid a repeat of this, we only circulated the rule to a single official within each agency and asked them to limit distribution to personnel who were essential to the review process. We ask that you also limit your distribution as much as possible. If somebody outside of your office asks to review the rule or if you feel that someone outside of your office should participate in the review, please let me know and I will forward it to them myself. Please help us maintain the integrity of the interagency review process by respecting these process requirements.

Please send me comments by **COB Monday, April 20<sup>th</sup>**.

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

Vlad

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**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.

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**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 11<sup>th</sup>**.

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

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**From:** Renshaw, Katie  
**Sent:** Friday, May 08, 2015 6:07 PM  
**To:** Dorjets, Vlad  
**Cc:** Tarquinio, Ellen; Jensen, Jay; Mallory, Brenda; Patel, Manisha; McConville, Drew  
**Subject:** RE: Clean Water Rule (WOTUS) Economic Analysis  
**Attachments:** Draft Final Clean Water Rule Economic Analysis CEQ v2.docx

Vlad-

Thank you for the opportunity to review EPA's economic analysis for the Clean Water Rule. CEQ's comments are in the attached and summarized below:

1. The agencies characterize the baseline dataset (the FY13 and FY 14 JDs) as field practice based on the 2008 EPA and Corps jurisdiction guidance. Stakeholders have uniformly argued that the status quo case -by-case approach has likely resulted in fewer positive JDs than could theoretically be possible under a robust application of the 2008 guidance. To the extent that the stakeholders are correct, could the agencies acknowledge that uncertainty and regional differences may have led to inconsistent application of the 2008 guidance?
2. The EA for the proposed rule was based on an analysis of negative JDs from FY09 and FY10. In response to comments that that dataset represented a period of decreased economic activity, in the final rule, the agencies instead use an analysis of JDs from FY13 and FY14. By changing this baseline the agencies make it difficult to compare the impacts of the proposed rule to the final rule. Is there anything that the agencies can do or provide that would facilitate this type of comparison? In other words, is it possible to clarify whether the increase in covered waters from the proposed rule (~3% increase in jurisdiction) to the final rule (~5% increase in jurisdiction) has resulted from the changes made to the rule or from the change in baseline?
3. In the EA, the agencies recognize that the rule may result in some currently -jurisdictional waters being found to be non-jurisdictional. Can the agencies provide an explanation in the document as to why this fact is not incorporated into the analysis?
4. Several stakeholders have raised the permitting times as an area of significant cost increase. How was it determined that the associated costs would be relatively small?

Please let me know if you have any questions or would like to discuss further.

Katie

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**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; Heinzelman, Kate; Thomas, Amanda; Burke, Erin  
**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 11<sup>th</sup>**.



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**From:** Renshaw, Katie  
**Sent:** Monday, May 11, 2015 3:56 PM  
**To:** Dorjets, Vlad  
**Cc:** Tarquinio, Ellen  
**Subject:** RE: Technical Support Document

Vlad—thanks for sending this over. We just have one general question/comment on the document, which is to stress the importance of this document. The Technical Support Document provides valuable information that should be reviewed in conjunction with the final Clean Water Rule. It is referenced throughout the final rule, and provides the underpinning for decisions made in the rule. We believe that the TSD should be made readily available with the final rule, via the EPA website where the final rule is posted. Is the TSD being considered part of the overall roll-out materials?

Thanks!  
Katie

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**From:** Dorjets, Vlad  
**Sent:** Monday, May 04, 2015 3:21 PM  
**To:** Renshaw, Katie  
**Cc:** Fong, Tera L.; Burke, Erin  
**Subject:** FW: Technical Support Document

Katie – Here is the draft WOTUS TSD that you wanted to see. Please let me know if you have any questions/comments.

Tera/Erin – While neither of you specifically requested this document, I am sending it to you in case you want to review it.

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**From:** Peck, Gregory [REDACTED]  
**Sent:** Monday, May 04, 2015 3:19 PM  
**To:** Craig Schmauder; Dorjets, Vlad  
**Subject:** Technical Support Document

Here's the draft Technical Support Document. Craig will want to review - but suggest we could also send to other EOP offices who requested it.

Thanks,  
Greg

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**From:** Fong, Tera L.  
**Sent:** Tuesday, May 12, 2015 1:50 PM  
**To:** Dorjets, Vlad  
**Subject:** RE: Clean Water Rule rollout meeting

Interesting, thanks.

From the mtg today—I think EPA’s response to the argument about consultation would be letters a number of cities wrote to EPA and the Corps after the Rapanos decision saying essentially “we weren’t consulted on this, we want a full rulemaking and an APA process.” Their main overall point is on the final rule (to all groups) is “we’ve heard you and we’ve made changes responsive to your comments.”

About to type up my notes. Happy to follow up further afterwards too.

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**From:** Dorjets, Vlad  
**Sent:** Tuesday, May 12, 2015 1:10 PM  
**To:** Fong, Tera L.  
**Subject:** RE: Clean Water Rule rollout meeting

The National League of Cities, National Association of Counties, and US Conference of Mayor came in and had some pretty clear and strong comments.

First and foremost, they were very disappointed that EPA and the Corps did not consult with them before issuing the proposed rule (they actually said the rule caught them completely by surprise) as they would have advised the agencies do to certain things differently. Even though they have been assured recently that their concerns have been addressed, they feel slited and do not trust EPA or the Corps. As a result they are asking for the rule to be withdrawn or at least for a 2<sup>nd</sup> comment period.

In terms of specific concerns, they don’t want more roadside ditches and stormwater systems being drawn into scope and feel that the economic analysis understates the costs and burdens. For example, they feel that the economic analysis only reflects the costs of 404 permitting and thus ignores other costs (e.g. admin, MS4, NPDES, WQS, TMDL, etc.), that could have a real impact on them if they must be applied to new waters.

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**From:** Fong, Tera L.  
**Sent:** Tuesday, May 12, 2015 12:58 PM  
**To:** Dorjets, Vlad  
**Subject:** RE: Clean Water Rule rollout meeting

Just that all systems seem to be “go” for the 21<sup>st</sup>; meeting was nearly all about events and outreach before, during, and after roll-out. Will type up my notes and circulate this afternoon.

Note that the local groups are a key focus of outreach next week, so, yes, very curious what they had to say today.

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**From:** Dorjets, Vlad  
**Sent:** Tuesday, May 12, 2015 12:48 PM  
**To:** Fong, Tera L.  
**Subject:** RE: Clean Water Rule rollout meeting

I have just asked Katie for an update but she is in and out of meetings all day today. I understand one of the items on the agenda was next week's deadline. If you could let me know if there were any major decisions, I would really appreciate it. In exchange, I'll let you know the concerns expressed by cities, mayors and counties at the EO meeting.

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**From:** Fong, Tera L.  
**Sent:** Tuesday, May 12, 2015 12:46 PM  
**To:** Dorjets, Vlad; Laity, Jim  
**Subject:** RE: Clean Water Rule rollout meeting

Hope she could hear things, will try to connect with you later today.

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

**From:** Dorjets, Vlad  
**Sent:** Tuesday, May 12, 2015 11:25 AM Eastern Standard Time  
**To:** Fong, Tera L.; Laity, Jim  
**Subject:** RE: Clean Water Rule rollout meeting

Tera – Thanks for the heads up. Katie will call in for the meeting.

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**From:** Fong, Tera L.  
**Sent:** Tuesday, May 12, 2015 10:57 AM  
**To:** Laity, Jim; Dorjets, Vlad  
**Subject:** FW: Clean Water Rule rollout meeting

This is at 11:30 today. I know there's a 121866 at this time —and one I'd like to attend, too, but if either of you can make this meeting at CEQ, please join.

Thanks.

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**From:** Fong, Tera L.  
**Sent:** Tuesday, May 12, 2015 10:48 AM  
**To:** Hickey, Mike  
**Cc:** Maisel, Chad P.  
**Subject:** RE: Clean Water Rule rollout meeting

Yes, I can go. Thanks.

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**From:** Hickey, Mike  
**Sent:** Tuesday, May 12, 2015 10:47 AM  
**To:** Fong, Tera L.

**Cc:** Maisel, Chad P.  
**Subject:** FW: Clean Water Rule rollout meeting

Tera – This is the interagency roll out meeting I mentioned to you yesterday. It is at 11:30 today, can you go? Thanks.

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**From:** Maisel, Chad P.  
**Sent:** Tuesday, May 12, 2015 10:37 AM  
**To:** Hickey, Mike  
**Subject:** FW: Clean Water Rule rollout meeting

Hi Mike,

Might you or Tera be able to make this? Ali can't and nor can I. Seems pretty comms - and outreach-focused. Sorry for the late notice. If you can't make it, I can try and change my sched around.

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**From:** Zaidi, Ali  
**Sent:** Monday, May 11, 2015 12:50 PM  
**To:** Tuss, Taryn L.  
**Cc:** Maisel, Chad P.; Mohtadi, Shara  
**Subject:** RE: Clean Water Rule rollout meeting

Hi

Can I dial in to this?

-----Original Appointment-----

**From:** Tuss, Taryn L.  
**Sent:** Thursday, May 7, 2015 12:15 PM  
**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; Bond, Brian; Micah Ragland, EPA; Laura Vaught, EPA; Moira Kelley, DOD; Todd Batta, USDA; [REDACTED]; Billingsley, Tara; Anderson, Amanda D.; Reynolds, Thomas; [REDACTED]; Purchia, Liz; [REDACTED]; Matthew Herrick ([REDACTED]); Cullen Schwarz; [REDACTED]; Tarquinio, Ellen  
**Subject:** Clean Water Rule rollout meeting  
**When:** Tuesday, May 12, 2015 11:30 AM -12:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** 722 Jackson Place, 1st floor conference room

Let's get together the agency and EOP comms, leg and outreach teams to talk through the upcoming rollout of the Clean Water Rule. Just ring the bell at the front door; no WAVES needed. Thanks all.

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**From:** Fong, Tera L.  
**Sent:** Tuesday, May 12, 2015 2:58 PM  
**To:** Colyar, Kelly T.; Burke, Erin; Leung, Andrea; Dorjets, Vlad; Laity, Jim  
**Cc:** Hickey, Mike; Irwin, Janet  
**Subject:** Summary of Clean Water Rule Roll-out mtg at CEQ

Water and Power Branch and OIRA, please see the following quick summary of the interagency Clean Water Rule roll-out meeting at CEQ this morning. Please note our recommendations related to the Army Corps and let us know if you have any concerns with us flagging this for Ali.

I've tried to flag the big points first and additional details follow. I'm happy to follow-up on any of these points. Thanks.

Main points:

- **EPA's plan to roll-out the rule is very extensive.** All systems seem to be "go" for the 21<sup>st</sup>, and EPA indicates they are on-target to meet that. We should begin to see rollout materials (talking points, Q&As, blog posts, etc) as soon as tomorrow. EPA is working with the Corps on coordinating materials, timing, and the overall announcements.
- **However, the Corps seems to be a bit player in this process.** Although all roll-out seems to be joint between EPA and the Corps, the meeting was very EPA-centric. The Corps (Moiria Kelley) says they are working with the approach EPA has designed, but that they are still working on the economic analysis and need to make sure none of the comms materials conflict with the final EA. The Corps indicated a need to make sure they have their regions aligned on messaging, and CEQ acknowledged challenges in their ability to do so vs EPA's ability to align its regions. I think it would be helpful if Ali could touch-base at the policy level with CEQ and/or the directly with the Corps to make sure they're fully looped-in and ready for roll-out next week, particularly as there are concerns that immediate questions on implementation will be directed at the Corps, and EPA seems to be struggling to connect with stakeholders in the development sectors such as the homebuilders.
- **USDA has been engaged, but it is unclear how publically supportive they will be.** EPA has been sharing Ag-focused fact sheets, Q&A, and visual aids with representative pictures of covered waters with USDA, and they expect to work with NRCS and Farm Service Agency staff at the local level. However, Secretary Vilsack's public message may be more supportive of the highly consultative process EPA and the Corps have run, rather than outright support for the rule itself. His staff committed to trying to strike the appropriate balance of the two, but additional EOP outreach may be helpful.
- **Top-line roll-out messages:** (paraphrased) We've been listening, we've heard you, and the final rule reflects the significant input we received. Our goal is clean water to protect communities downstream —our drinking water and our economy depend on these protections. All agricultural exemptions continue.
  - CEQ cautioned to be careful not to quickly go to what the rule is not and to keep the focus on what it does do.
- **Additional work is needed around the legislative strategy.** It seems additional meetings are forthcoming and we ran out of time for this discussion, but with the House likely to pass a bill requiring EPA and the Corps to withdraw and re-propose the rule this week, it could be very awkward to follow that with a big roll-out of the rule next week. Timing and strategies on the Senate end are unclear and weren't discussed. I think it is expected that some of the environmental groups and messages from key regional officials will target key Democratic states.

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**From:** Dorjets, Vlad  
**Sent:** Wednesday, May 13, 2015 7:03 PM  
**To:** Johnson, Katie B.; Tarquinio, Ellen; Burke, Erin; Fong, Tera L.; Heinzelman, Kate  
**Subject:** FW: Clean Water Rule - Draft Environmental Analysis (UNCLASSIFIED)  
**Attachments:** WOTUS Environmental Assessment 13 May 2015 Army.docx  
  
**Importance:** High

FYI

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

From: Schmauder, Craig R SES (US) [REDACTED]  
Sent: Wednesday, May 13, 2015 7:02 PM  
To: Dorjets, Vlad; Peck, Gregory  
Cc: Mallory, Brenda; Greczmiel, Horst; Lee, Let M CIV (US); Dominguez, Marie Therese SES USARMY (US)  
Subject: Clean Water Rule - Draft Environmental Analysis (UNCLASSIFIED)  
Importance: High

Classification: UNCLASSIFIED  
Caveats: NONE

Colleagues, please find attached the current draft of the Environmental Analysis in support of the Clean Water Rule. This document presently incorporates changes received from EPA as well as the updated economics information just released. We will continue to polish this document over the next few days and of course we welcome any comments or suggestions you may have on how to improve this important record.

Respectfully,

Craig R. Schmauder, SES  
Deputy General Counsel  
Installations, Environment & Civil Works

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Classification: UNCLASSIFIED  
Caveats: NONE

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**From:** McConville, Drew  
**Sent:** Wednesday, May 13, 2015 8:26 PM  
**To:** Johnson, Katie B.  
**Subject:** FW: Advocacy testifying on WOTUS

Hey, did Howard or someone else over there follow up with SBA advocacy on this?

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**From:** Shelanski, Howard  
**Sent:** Wednesday, April 29, 2015 5:15 PM  
**To:** Laity, Jim; Billingsley, Tara; Bauserman, Trent; McConville, Drew; Johnson, Katie B.; Menter, Jessica; Neill, Allie; Dorjets, Vlad; Goldfuss, Christina; Costa, Kristina  
**Cc:** Mancini, Dominic J.  
**Subject:** RE: Advocacy testifying on WOTUS

Thanks Jim, that is absolutely right.

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**From:** Laity, Jim  
**Sent:** Wednesday, April 29, 2015 5:08 PM  
**To:** Billingsley, Tara; Bauserman, Trent; Shelanski, Howard; McConville, Drew; Johnson, Katie B.; Menter, Jessica; Neill, Allie; Dorjets, Vlad; Goldfuss, Christina; Costa, Kristina  
**Cc:** Mancini, Dominic J.  
**Subject:** RE: Advocacy testifying on WOTUS

Plus Dom

As you all probably know, SBA Advocacy is statutorily independent and there is no EOP prior review of their testimony. So it is very important to have a clear understanding with Claudia up front on Howard's point below (nothing about either the content or process of interagency review). SBA has always been a team player in interagency review and I'm sure they will agree to this, but it's good to remind them up front.

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**From:** Billingsley, Tara  
**Sent:** Wednesday, April 29, 2015 5:01 PM  
**To:** Bauserman, Trent; Shelanski, Howard; McConville, Drew; Johnson, Katie B.; Menter, Jessica; Neill, Allie; Dorjets, Vlad; Laity, Jim; Goldfuss, Christina; Costa, Kristina  
**Subject:** RE: Advocacy testifying on WOTUS

I would assume so; Sens. Cantwell and Risch (then Chair and RM on SBC) sent a joint letter on that last year.

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**From:** Bauserman, Trent  
**Sent:** Wednesday, April 29, 2015 4:57 PM  
**To:** Shelanski, Howard; McConville, Drew; Johnson, Katie B.; Menter, Jessica; Neill, Allie; Dorjets, Vlad; Laity, Jim; Goldfuss, Christina; Costa, Kristina; Billingsley, Tara  
**Subject:** RE: Advocacy testifying on WOTUS

+ Tara

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**From:** Shelanski, Howard  
**Sent:** Wednesday, April 29, 2015 4:52 PM  
**To:** McConville, Drew; Johnson, Katie B.; Menter, Jessica; Neill, Allie; Dorjets, Vlad; Laity, Jim; Goldfuss, Christina; Bauserman, Trent; Costa, Kristina  
**Subject:** RE: Advocacy testifying on WOTUS

My sense is that they should not be testifying about any of the rule's substance, on grounds that it is not final and may change during review. But I don't see any reason they cannot be asked about the process and SBA's views on it. I assume the committee is going after the lack of a SBREFA panel here.

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**From:** McConville, Drew  
**Sent:** Wednesday, April 29, 2015 4:48 PM  
**To:** Johnson, Katie B.; Menter, Jessica; Neill, Allie; Shelanski, Howard; Dorjets, Vlad; Laity, Jim; Goldfuss, Christina; Bauserman, Trent; Costa, Kristina  
**Subject:** Re: Advocacy testifying on WOTUS

Thanks. Would they typically participate in a hearing on a rule currently under OIRA and SBA's review?

+ Trent and Kristina.

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**From:** Johnson, Katie B.  
**Sent:** Wednesday, April 29, 2015 04:42 PM  
**To:** Menter, Jessica; Neill, Allie; McConville, Drew; Shelanski, Howard; Dorjets, Vlad; Laity, Jim; Goldfuss, Christina  
**Subject:** FW: Advocacy testifying on WOTUS

FYI

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**From:** Rodgers, Claudia [REDACTED]  
**Sent:** Wednesday, April 29, 2015 3:55 PM  
**To:** Blakemore, Emily; Johnson, Katie B.; Orris, Allison; Cobbina, Awenate; Seidman, David  
**Cc:** Kelley, Patrick; Landweber, Michael I.; Inge, Thaddeus; Maduros, Nicolas T.  
**Subject:** Advocacy testifying on WOTUS

FYI – We have been asked to testify at a WOTUS hearing on May 13<sup>th</sup> before the Senate Small Business committee.



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**From:** Thomas, Amanda  
**Sent:** Thursday, May 14, 2015 6:16 PM  
**To:** Dorjets, Vlad  
**Cc:** Laity, Jim  
**Subject:** RE: Revised Rule/Preamble and Economic Analysis

Vlad, I have two main concerns:

- 1) The RIA uses the term "indirect cost" inappropriately. In the parlance of RIAs, indirect costs mean costs that are borne by those who are not regulated. The affected entities identified in the RIA are regulated entities. The correct terminology should be "costs that flow from changes in scope of the regulation," not "indirect" costs. I understand that this is a contentious issue and I'm happy to be flexible about how to describe the costs, but I recommend that we don't be technically incorrect.
- 2) I recommend that the benefits estimated using the benefit transfer technique be "illustrative" rather than main estimates to be included in the executive summary. The extrapolation of the study results is very questionable, thereby not meet the requirements specified in the A4 regarding the use of benefit transfer technique. So I would recommend that (a) the benefit transfer benefits be deleted from the executive summary tables and be only discussed as illustrative; (b) the Section 9 discussion of the benefit transfer estimates have prominent "illustrative" caveats sprinkled throughout.

I will be in the office until Monday and I'm out of the office until the move date. So, please let me know what the next steps are. Thanks!

Amanda

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**From:** Dorjets, Vlad  
**Sent:** Wednesday, May 13, 2015 6:59 PM  
**To:** Thomas, Amanda  
**Subject:** FW: Revised Rule/Preamble and Economic Analysis  
**Importance:** High

Here is the WOTUS passback. I can only imagine how busy you must be but this is working on an extremely tight schedule as we need to conclude a week from today. If we have any shot of resolving open items I need to know about them by Friday so that I can raise them with EPA and the Corps on Friday afternoon. Could you please take a look at this and let me know if you have any comments by **end of day tomorrow**? Please note that a number of agencies had numerous comments on the economic analysis so, in addition to your thoughts on how the agencies responded to your comments, it would be very helpful to get your thoughts on other responses too to help me decide whether any of them warrant elevation. Thanks!

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**From:** Peck, Gregory [REDACTED]  
**Sent:** Wednesday, May 13, 2015 6:03 PM  
**To:** Dorjets, Vlad  
**Cc:** Schmauder, Craig R SES (US)  
**Subject:** Revised Rule/Preamble and Economic Analysis

Vlad:

Here are the current versions of the Rule/Preamble and EA revised to reflect in teragency comments. As we talked about, internal conversations are continuing on a couple of issues, but these documents are close and ready for your final review. We'll advise you immediately if any tweaks are made. Of particular note – we have included the 100-year floodplain change to (a)(8) and look forward to further discussion with you about that revision.

Both documents are in redline – let me know if you want clean versions.

As always, thanks for your hard work and thoughtful input on this review. Please let us know if you have any questions.

Best,  
Greg and Craig

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



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**From:** Laity, Jim  
**Sent:** Thursday, May 14, 2015 6:32 PM  
**To:** Thomas, Amanda; Dorjets, Vlad  
**Subject:** RE: Revised Rule/Preamble and Economic Analysis

Amanda, These are good issues but I think it unlikely we will make progress on either of them. I can give you more background later, but we essentially accepted both at proposal and they will likely argue that it is reopening old battles if we raise now.

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**From:** Thomas, Amanda  
**Sent:** Thursday, May 14, 2015 6:16 PM  
**To:** Dorjets, Vlad  
**Cc:** Laity, Jim  
**Subject:** RE: Revised Rule/Preamble and Economic Analysis

Vlad, I have two main concerns:

- 1) The RIA uses the term "indirect cost" inappropriately. In the parlance of RIAs, indirect costs mean costs that are borne by those who are not regulated. The affected entities identified in the RIA are regulated entities. The correct terminology should be "costs that flow from changes in scope of the regulation," not "indirect" costs. I understand that this is a contentious issue and I'm happy to be flexible about how to describe the costs, but I recommend that we don't be technically incorrect.
- 2) I recommend that the benefits estimated using the benefit transfer technique be "illustrative" rather than main estimates to be included in the executive summary. The extrapolation of the study results is very questionable, thereby not meet the requirements specified in the A4 regarding the use of benefit transfer technique. So I would recommend that (a) the benefit transfer benefits be deleted from the executive summary tables and be only discussed as illustrative; (b) the Section 9 discussion of the benefit transfer estimates have prominent "illustrative" caveats sprinkled throughout.

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Amanda

---

**From:** Dorjets, Vlad  
**Sent:** Wednesday, May 13, 2015 6:59 PM  
**To:** Thomas, Amanda  
**Subject:** FW: Revised Rule/Preamble and Economic Analysis  
**Importance:** High

Here is the WOTUS passback. I can only imagine how busy you must be but this is working on an extremely tight schedule as we need to conclude a week from today. If we have any shot of resolving open items I need to know about them by Friday so that I can raise them with EPA and the Corps on Friday afternoon. Could you please take a look at this and let me know if you have any comments by **end of day tomorrow**? Please note that a number of agencies had numerous comments on the economic analysis so, in addition to your thought on how the agencies responded to your comments, it would be very helpful to get your thoughts on other responses too to help me decide whether any of them warrant elevation. Thanks!

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**From:** Mancini, Dominic J.  
**Sent:** Thursday, May 14, 2015 6:51 PM  
**To:** Laity, Jim  
**Subject:** Re: Wotus

Thanks. Frustrating.

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Sent using BlackBerry

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

From: Laity, Jim  
Sent: Thursday, May 14, 2015 06:37 PM Eastern Standard Time  
To: Mancini, Dominic J.  
Subject: RE: Wotus

Our original idea was to say that any waters in the flood plain out to 4000 feet are jurisdictional by rule (technically, "adjacent") and all other waters more than 100 feet away from jurisdictional waters are out -- no case by case.

What they have done instead (and I think this goes in the wrong direction) is to say that all waters out to 100 feet, and in flood plain out to 1500 feet, are jurisdictional, and all others out to 4000 subject to case -by-case determination. Plus now, they are saying that even beyond 4000 feet is subject to case -by-case if it is in the flood plain. Around large rivers, this will significantly expand the scope for case -by-case, while we would like to narrow it.

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

From: Mancini, Dominic J.  
Sent: Thursday, May 14, 2015 10:02 AM  
To: Laity, Jim  
Subject: Wotus

What was our original idea about how to make the line brighter? Vlad was telling me about the change.

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Sent using BlackBerry

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**From:** Dorjets, Vlad  
**Sent:** Friday, May 15, 2015 12:00 PM  
**To:** Laity, Jim  
**Subject:** WOTUS CRA

Greg is now proposing to say the rule is major but that all costs are indirect. I don't see us reopening that battle of whether costs are direct or not so this seem acceptable. Do you agree?

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**From:** McConville, Drew  
**Sent:** Tuesday, April 28, 2015 9:16 PM  
**To:** Johnson, Katie B.; Mallory, Brenda; Goldfuss, Christina  
**Subject:** Re: SBA Advocacy's Position on WOTUS

The good news just keeps on coming with this one!

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**From:** Johnson, Katie B.  
**Sent:** Tuesday, April 28, 2015 06:27 PM  
**To:** Mallory, Brenda; Goldfuss, Christina; McConville, Drew  
**Subject:** FW: SBA Advocacy's Position on WOTUS

FYI

**From:** Dorjets, Vlad  
**Sent:** Tuesday, April 28, 2015 6:25 PM  
**To:** Shelanski, Howard  
**Cc:** Johnson, Katie B.; Mancini, Dominic J.; Laity, Jim  
**Subject:** SBA Advocacy's Position on WOTUS

Howard,

I spoke with Kia Dennis from SBA Advocacy this morning about WOTUS and wanted to give you a heads up about her Agency's position. As you may know, the rule certifies that there will not be a significant economic impact on a substantial number of small entities due to the fact that it is only a definitional change and that all costs are thereby indirect. SBA feels very strongly that allowing agencies to claim that such rules have no direct impact will set a dangerous precedent and undermine the Regulatory Flexibility Act. She has thus indicated to me at a staff level that her Agency would "almost certainly" file an amicus brief if/when the rule is challenged in court.

Kia understands that it is unlikely that EPA and Corps would revisit the entire economic underpinning of the rule at such a late stage (she thinks this matter will, instead, get determined by the courts). That being said, I think you should know of her Agency's position.

Please let me know if you have any questions.

Vlad

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**From:** Laity, Jim  
**Sent:** Wednesday, April 29, 2015 11:02 AM  
**To:** Dorjets, Vlad; Mancini, Dominic J.; Shelanski, Howard  
**Cc:** Johnson, Katie B.  
**Subject:** RE: SBA Advocacy's Position on WOTUS

While I have some concerns about certifying this rule, and not doing a SBREFA panel, OIRA agreed not to challenge EPA on this at the proposed stage. Our main reason for going along is that it is hard to see what value added a SBREFA panel would have. It is very difficult to determine what small entities will be affected, and whether any such effects would be "significant." The rule is based on legal and scientific interpretation, not cost-benefit analysis. EPA did do a "SBREFA-like" outreach to small entities and the comments received were not very useful.

As Vlad notes, the preamble language in the proposal describing their basis for certification was carefully negotiated; it seems reasonable that they stick to the same language here. SBA will make their own decisions about what to do after the rule is published.

**From:** Dorjets, Vlad  
**Sent:** Wednesday, April 29, 2015 8:58 AM  
**To:** Mancini, Dominic J.; Shelanski, Howard  
**Cc:** Johnson, Katie B.; Laity, Jim  
**Subject:** RE: SBA Advocacy's Position on WOTUS

The final rule had the same language as the proposed rule which I understand was the result of extensive discussion. The language says that that fewer waters will be subject to the CWA under the rule than are subject to it under current regulation and thus there will not be any adverse economic impact on small businesses. The language goes on to say that the rule is not designed to "subject" any entities of any size to specific regulatory burden - rather it is clarifying a definition - so all costs are indirect.

I find the language dubious at best but realize the ship may have sailed. Specifically, per Circular A-4, the baseline should be current practices in place following the SCOTUS cases and not current regulations. Moreover, the Economic Analysis confirms that there there will be an approximate 4.65% increase in positive JDs annually to to the new rule when compared to the current field practice. I'm also inclined to think that the impact on JDs and subsequent permitting costs are, in fact, a direct result of the rule and should thus be accounted for but also recognize that it would be very difficult to quantify those costs and benefits.

**From:** Mancini, Dominic J.  
**Sent:** Tuesday, April 28, 2015 11:19 PM  
**To:** Dorjets, Vlad; Shelanski, Howard  
**Cc:** Johnson, Katie B.; Laity, Jim  
**Subject:** Re: SBA Advocacy's Position on WOTUS

Thanks Vlad. Case law is ambiguous on this point, and we have talked a lot about this issue. What did EPA say in the proposed rule?

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Sent using BlackBerry

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**From:** Dorjets, Vlad  
**Sent:** Tuesday, April 28, 2015 06:25 PM Eastern Standard Time  
**To:** Shelanski, Howard  
**Cc:** Johnson, Katie B.; Mancini, Dominic J.; Laity, Jim  
**Subject:** SBA Advocacy's Position on WOTUS

Howard,

I spoke with Kia Dennis from SBA Advocacy this morning about WOTUS and wanted to give you a heads up about her Agency's position. As you may know, the rule certifies that there will not be a significant economic impact on a substantial number of small entities due to the fact that it is only a definitional change and that all costs are thereby indirect. SBA feels very strongly that allowing agencies to claim that such rules have no direct impact will set a dangerous precedent and undermine the Regulatory Flexibility Act. She has thus indicated to me at a staff level that her Agency would "almost certainly" file an amicus brief if/when the rule is challenged in court.

Kia understands that it is unlikely that EPA and Corps would revisit the entire economic underpinning of the rule at such a late stage (she thinks this matter will, instead, get determined by the courts). That being said, I think you should know of her Agency's position.

Please let me know if you have any questions.

Vlad