



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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April 28, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
U.S. Department of the Army
108 Army Pentagon
Washington, DC 20310-0108

Dear Administrator Regan and Assistant Secretary Connor:

We write today regarding the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers' (Corps) (collectively, the "Agencies") stakeholder outreach in advance of the Agencies' revision of the definition of "waters of the United States" (WOTUS) under the *Clean Water Act*.¹ In October 2021, the Agencies announced a new and complex process for receiving stakeholder feedback consisting of ten regional roundtables for interested parties to provide input on differing regional challenges, opportunities, and experiences concerning the definition of WOTUS.² The ramifications of a new definition of WOTUS will be far reaching for farmers, small businesses, rural communities, infrastructure projects, and countless other stakeholders across the country. While we agree robust and meaningful public outreach is critical, we have substantial concerns and questions regarding the Agencies' use of a new and complicated roundtable process for public outreach, particularly around its organization and execution.

The roundtable process, which was announced on October 13, 2021, required interested stakeholders to organize a group of regional participants across a wide range of prescribed interest groups specified by the Agencies and then self-nominate by November 3, 2021.³ As a

¹ Press Release, EPA, EPA and Army Announce Next Steps for Crafting Enduring Definition of Waters of the United States (July 30, 2021), available at <https://www.epa.gov/newsreleases/epa-and-army-announce-next-steps-crafting-enduring-definition-waters-united-states>.

² Press Release, EPA, EPA, Army Announce Regional Roundtables on WOTUS (Oct. 13, 2021), available at <https://www.epa.gov/newsreleases/epa-army-announce-regional-roundtables-wotus> [hereinafter *EPA Army Announcement*].

³ Notification of Regional Roundtable Discussions Regarding "Waters of the United States", 86 Fed. Reg. 58,829, (Oct. 25, 2021), available at <https://www.federalregister.gov/documents/2021/10/25/2021-23039/notification-of-regional-roundtable-discussions-regarding-waters-of-the-united-states>.

result, stakeholders only had three weeks from the press release and a little over a week from the *Federal Register* notice on October 25th to organize and respond.⁴ This rushed timeline necessitated the deadline for nominations be extended until December 1, 2022.⁵

The Agencies' process also appeared to outsource the administrative work of the Agencies to applicants, thereby potentially excluding smaller groups lacking the resources needed to meet the extensive requirements. Given the Administration's repetitive calls for equity and inclusion, a process that puts small participants at a disadvantage hardly seems to be a means of achieving those goals. Despite this complex process and short timeframe, regional roundtables are not expected to be held until this summer.⁶ On February 24, 2022, the Agencies announced selection of the ten regional roundtables, but have not provided further clarity on execution of the roundtables and when they will take place.⁷

Furthermore, we have concerns with the lack of transparency in the selection process, as well as with the purpose of the discussions facilitated at the roundtables. In the original announcement, the Agencies stated the roundtables will provide dialogue "to help inform the [A]gencies' work to develop an enduring definition of WOTUS."⁸ Yet when the Agencies announced selection of the participants, they described the role of each roundtable as being "to facilitate discussion on implementation of 'waters of the United States' (WOTUS)."⁹ This phrasing suggests that the Agencies are not interested in soliciting and considering feedback for a new WOTUS definition. Rather, it appears they have already moved onto implementation of a new definition of WOTUS, despite ongoing legal challenges and an anticipated ruling from the Supreme Court. We strongly believe that the Agencies must fairly and genuinely utilize this roundtable process to incorporate as much input as possible from across the spectrum of the regulated community prior to reaching a final regulatory decision. This simply cannot be a perfunctory exercise for the Agencies that is designed to encourage failure instead of success.

It is crucial that the process the Agencies use to inform any update of the regulatory definition of WOTUS is transparent to the public. Accordingly, we respectfully ask that the Agencies provide the following documents and written responses to the questions by May 12, 2022:

1. Please provide the criteria used to evaluate each application; including any documents and memos used to expand the criteria and its development.

⁴ *Id.*

⁵ Deadline Extension for Regional Roundtable Discussions Regarding "Waters of the United States", 86 Fed. Reg. 61,730, (Nov. 8, 2021), available at <https://www.federalregister.gov/documents/2021/11/08/2021-24317/deadline-extension-for-regional-roundtable-discussions-regarding-waters-of-the-united-states>.

⁶ Letter from the Hon. Radhika Fox, Assistant Administrator, EPA, and the Hon. Michael L. Connor, Assistant Secretary of the Army (Civil Works), to the Hon. Sam Graves, Ranking Member, Comm. on Transp. & Infrastructure, et. al., (Apr. 4, 2022) (On file with Committee) [hereinafter EPA Letter].

⁷ Press Release, EPA, EPA and Army Select 10 Roundtables to Highlight Regional Implications of WOTUS (Feb. 24, 2022), available at <https://www.epa.gov/newsreleases/epa-and-army-select-10-roundtables-highlight-regional-implications-wotus#:~:text=EPA%20and%20Army%20are%20announcing,environmental%20justice%20concerns%2C%20industry%2C%20Tribal>.

⁸ [EPA Army Announcement](#), *supra* note 2.

⁹ EPA Letter, *supra* note 6.

2. How many applications/nominations did the Agencies receive for the regional roundtable process?
3. Who at the Agencies, or other individuals within the Administration, approved the applications/nominations?
4. Please provide copies of each application for the regional roundtables, as well as the corresponding evaluation of each application.
5. When will the Agencies make public the participants in each of the ten regional roundtables? Please also provide the list of participants the Agencies have selected for each regional roundtable.
6. How did the Agencies ensure that small entities and traditionally underrepresented organizations were given the ability to participate in the regional roundtables? Please also provide the list of participants the Agencies have selected for each regional roundtable which falls into these categories.
7. Why did the Agencies provide such a short time frame for the roundtable nomination process when that the roundtables were not expected to be held until the summer?
8. How were the geographic regions for the ten roundtables determined?
9. Will implementation of the regional roundtables by the Agencies be done by Federal agency personnel or by contract?
10. Where in the process are the Agencies in organizing the regional roundtables?
11. Please provide documentation concerning the format and organization of each regional roundtable.
12. When will the regional roundtables be scheduled?
13. How will the regional roundtables be recorded or documented?
14. Will other stakeholders or members of the public who were not selected to participate in any of the regional roundtables be able to submit information and feedback in this process? If so, how?
15. Which rule in the Agencies' two-part rulemaking process to revise the definition of WOTUS will the discussion at the regional roundtables inform?
16. Please provide the discussion topics for the regional roundtables.

Thank you for your attention to this matter. If you have questions, please contact Ryan Hambleton, Republican Staff Director, Subcommittee on Water Resources and Environment, at (202) 225-9446.

Sincerely,



Sam Graves
Ranking Member



David Rouzer
Ranking Member
Subcommittee on Water, Resources, and
Environment