

U.S. Environmental Protection Agency

Local Government Advisory Committee (LGAC)'s

Small Community Advisory Subcommittee (SCAS)

July 3, 2014

Meeting Summary

The Meeting Summary that follows reflects what was conveyed during the course of the meeting that is summarized. The Subcommittee is not responsible for any potential inaccuracies that may appear in the meeting summary as a result of information conveyed. Moreover, the Subcommittee advises that additional information sources be consulted in cases where any concern may exist about statistics or any other information within the Meeting Summary.

SMALL COMMUNITY ADVISORY SUBCOMMITTEE

I. Introduction/Welcome

Commissioner Robert Cope, Chair

Chairman Commissioner Robert Cope called the meeting to order. Chairman Cope stated that this is a public meeting of the SCAS, the only standing subcommittee of LGAC. Its focus is on communities of populations less than 10,000.

Commissioner Cope stated that the purpose of the meeting is to discuss input on the LGAC's Charge regarding EPA's proposed rule on Clean Water Act¹ definition of *Waters of the US*. Commissioner Cope said during the meeting EPA presenters, Donna Downing and Damaris Christensen, from the Office of Wetlands, Oceans and Watersheds (OWOW) will discuss the agricultural exemptions proposed in the rule. Commissioner Cope asked members of the public to identify themselves. [*No response*]. Commissioner Cope indicated that this is a public and open meeting and that there is a time on the agenda for the public to give comment.

II. SCAS Update

Commissioner Robert Cope, Chair

Commissioner Don Larson, Vice-Chair

Chairman Commissioner Cope summarized recent activities of the SCAS subcommittee. At the last SCAS meeting on March 26th, there was a presentation on affordability and also agriculture. The SCAS subcommittee workgroup met on May 21, 2014, to discuss representation at the May 28th St. Paul meeting on *Waters of the U.S*. Commissioner Cope asked for a motion to enter the minutes in the record. The motion was seconded by Commissioner Don Larson and was approved.

The Chairman thanked Jeff Tiberi, Mayor Dixon and Commissioner Don Larson for participating at the LGAC Protecting America's Waters Workgroup meeting in St. Paul on May 28, 2014. He called on **Vice Chair Commissioner Don Larson** to give a report from the meeting in St. Paul for the benefit of the SCAS members. Commissioner Larson said the handout given from the meeting hits most of the key points of concern from the meeting. There was discussion regarding the affordability of new regulations, or project delays and the speed of the permitting process. Among the public speaking, there was overall general comments made that the impacts on industry are not understood. Most agreed that clarity was needed for the definition of upland, and in regarding to definitions across the board. He commented that all speakers were in favor of clean water, but they were unsure if more regulation was necessary.

¹ 33 U.S.C. 1251 - 1376

III. Waters of the U.S. (WOUS) –LGAC Update

Susan Hann, Chair, Protecting America's Waters Workgroup

The Chairman asked Susan Hann, Chairwoman of the Protecting America's Waters Workgroup to give a report out to the SCAS. **City Manager Susan Hann** thanked Commissioner Larson for a great report out. The initial Workgroup work product is a draft letter of recommendation on initial findings and recommendations (for the LGAC to consider) to go to the EPA Administrator. The draft letter also asks EPA for an extension of the public comment period for 180 days (from the initial public comment period). That draft letter is on the agenda for discussion at the LGAC teleconference (immediately following). City Manager Susan Hann also mentioned the next Workgroup meeting is in Atlanta, GA on July 10th. She said that there will be good attendance and that the agricultural sector would be well represented. She also updated the SCAS on the Protecting America's Waters Workgroup meeting where EPA's Office of Water briefed the workgroup on the economic analysis of the proposed rule and the methods used for the cost benefit analysis. The EPA's analysis compared the new proposed rule to the current practice, not the existing rule. Since existing practice does not align with existing rule, there is a perceived increase in jurisdiction from the new rule (approximately 2.7 percent). City Manager Susan Hann also added that there were many comments regarding the absence of the Army Corp of Engineers at the May 28th public meeting. She also said that she was very excited about continuing the Workgroup's work, and about receiving feedback on how local governments perceive this rule. She then asked if SCAS would be interested in taking on the agricultural component of the new proposed rule, and add input to the Workgroup for their final report.

Commissioner Cope said he thinks that all members would support taking this on. All members agreed it was a good idea.

IV. Interpretative Rule Status –WOUS

Damaris Christensen

Donna Downing

EPA's Office of Wetlands, Oceans and Watersheds

Commissioner Cope thanked Susan Hann for her leadership and the Workgroup's work. Commissioner Cope introduced Damaris Christensen and Donna Downing.

Donna Downing began the discussion with an overview of the proposal regarding "waters of the US." She said that the EPA did indeed extend the public comment until October 20th. The EPA is looking for local government feedback on what parts of the rule work and what parts do not work. Comments can also be provided in the formal docket, as a part of the formal comment process. The LGAC process is another way to provide comment, but it is not part of the 'public comment.' Adding to the public docket can benefit other members of the public to help build on ideas that they already have.

She went on to describe the revised definitions would apply to all Clean Water Act programs. The new proposal retains much of the structure, provisions and bright line categories for what

'Waters' are already jurisdictional, and what is not jurisdictional. This new rule is consistent with Supreme Court decision regarding jurisdiction for waters. Existing agricultural exemptions are not changed. The agricultural interpretative rule actually clarifies one of the exemptions that are unchanged. Donna Downing also mentioned that the exemptions that exist today as 'prior converted crop land' (PPC) through the Food Security Act is protected. The PCC exclusion remains, as does exemptions for waste treatment systems. New exemptions from the proposed rule include those waters that are not previously considered a '*Water of the US*'. The rule does not list 'non waters of the US' as a significant nexus. Artificially irrigated areas, artificial lakes and ponds in uplands, groundwater and drainage systems are exempt. If you did not need a Clean Water Act Section 404 permit before, you do not need a 404 permit rule now. Damaris Christensen was introduced to discuss further details regarding the interpretive rule² regarding agricultural exemptions.

Damaris Christensen clarified that the Clean Water Act programs apply only where a pollutant is discharged to a Water of the US. The proposed rule defines what a Water of the US is. In order to require a permit there needs to be discharge of a pollutant into a Water of the US, from a point source. If any of these components are missing then regulation does not apply. This is important for exemptions for agriculture. Agricultural stormwater discharge is not a pollutant, and thus does not require a permit. She also emphasized that the interpretative rule is separate from the proposed rule. The EPA met with the U.S. Department of Agriculture to address farmers' concerns about mitigation impacts of the rule, and prevent the unintended consequence of discouraging farmers from using conservation practices. Farming practices have changed since the 1970s, so the agencies wanted to clarify "normal farming" methods by adding 56 conservation practices that are exempt from regulation. Even if these practices take place in a Water of the US, a permit is not required.

Chairman Cope asked if there were any questions from the SCAS members. He then asked whether groundwater drainage, such as open ditches and tile drains such as sub surface drainage systems, were exempt. Ditches that are only in uplands with less than perennial flow are exempt.

Mayor Peterson asked if there was a side by side comparison of the new and old rule. There is no existing compiled document. They indicated that this could be useful.

A concern was raised that other groups can use unrelated jurisdiction for law suits. Donna Downing said she would look forward to hearing those concerns. Damaris Christianson clarified that the interpretive rule addresses agricultural exemptions and is procedurally different from the proposed rule defining Waters of the US. The public comment for the interpretive rule closes on July 7th. But since it is not a formal rule making, they can continue to take comment even after that date.

² 33 U.S.C. 404(f)(1)(A)

V. Public Comment

Chairman Cope again asked if any members of the public wanted to comment. No one signed up to speak, and no comments were made.

VI. SCAS Input –Waters of the U.S. (WOUS)

Workgroup Discussion

Chairman Cope said that they will need to schedule a time for the SCAS to discuss their findings and report back to the LGAC. Chairman Cope announced that he would be attending the July 10th meeting in Atlanta, GA. There will likely be an agricultural focus of the July 10 meeting. The following Protecting America’s Waters Workgroup meeting will be on August 13th in Tacoma, WA, and it would be great if SCAS members could attend. SCAS members should also think about other officials that may be interested in knowing about the meeting and contact them.

VII. Next Steps/Action Items

Chairman Cope said the next subcommittee workgroup meeting would be July 23rd. This will be a discussion regarding *Waters of the US*. He thanked all of the Workgroup members as well as the EPA staff on the call for a great meeting. He reminded everyone that there is an LGAC teleconference immediately following to discuss recommendations on *Waters of the U.S.*

VIII. Adjournment

Commissioner Robert Cope, Chair

Motion to adjourn made by Commissioner Don Larson, seconded by Mr. Jeff Tiberi, and approved.

**Local Government Advisory Committee
July 3, 2014**

MEETING PARTICIPANTS

LGAC Members

Commissioner Robert Cope
Mayor Bob Dixson, Chair
City Manager Susan Hann
Commissioner Don Larson
Mayor Marilyn Murrell
Mayor Carolyn Peterson
Executive Director Jeffrey Tiberi

EPA Representatives

Mark Rupp, Deputy Associate Administrator, OCIR Damaris Christensen, OWOW
Frances Eargle, DFO, LGAC Donna Downing, OWOW
Jenna Behrendt, OCIR Intern
Jeremy Allen, OCIR Intern

We hereby certify that, to the best of our knowledge, the foregoing minutes are accurate and complete.

Respectfully submitted.



August 6, 2014

Frances Eargle
Designated Federal Officer
Small Community Advisory Subcommittee
U.S. Environmental Protection Agency



August 6, 2014

Commissioner Robert Cope
Chairman
Small Community Advisory Subcommittee