



EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE'S  
**SMALL COMMUNITY ADVISORY SUBCOMMITTEE -  
JUNE 29, 2017 MEETING SUMMARY**

# EPA's Local Government Advisory Committee's

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## **Small Community Advisory Subcommittee (SCAS)**

Thursday, 29 June, 2017

1:00 pm - 1:50 pm (EDT)

Call in number- 1-866-299-3188, Conference Code-202-564-3115#

### **Meeting Participants**

#### **SCAS Members:**

*Commissioner Robert Cope, Chair*

*Mr. Rodney Bartlett*

*Mayor Bob Dixson*

#### **Public:**

*Tom Womack State of Tennessee Deputy Commissioner of Agriculture*

*John McClurkan State of Tennessee Department of Agriculture*

*Nathan Ohle, Rural Community Assistance Partnership*

*Reed Hopper, Attorney, The Pacific Legal Foundation.*

*Frank Watson Montana Company*

#### **EPA Participants:**

*Demond Matthews Designated Federal Officer, SCAS, Office of Intergovernmental Relations*

*Fran Eargle, Designated Federal Officer, LGAC, Office of Intergovernmental Relations*

*Preston Cory, Special Assistant to the Deputy Associate Administrator for Intergovernmental Relations*

*Tate Bennett, Deputy Associate Administrator for Intergovernmental Relations*

*Mindy Eisenberg EPA Office of Water, Office of Wetlands, Oceans and Watersheds*

*Chad Nitsch, State and Regional Partnerships, Office of Intergovernmental Relations*

### **I. Introduction/Welcome**

**Chairman Cope** called the Small Community Advisory Subcommittee (SCAS) meeting to order at 1:01pm. He welcomed all members participating on the call, stated the mission of the SCAS and called roll for members, members of the Public and EPA Staff on the phone.

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### II. EPA Updates

**DAA Tate Bennett** gave updates. Administrator testified at Appropriations hearing. Federal Register notice of step one of the Water of the U.S. (WOTUS) Process was signed. She discussed spending time with mayors at the United States Conference of Mayors Summer retreat.

**Bennett** mentioned the administrator was at the White House meeting on the Energy Dominance Summit. The goal of the Summit is to collect ideas from different principals of agencies on how to make America more energy independent.

She also noted that the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends Toxic Substances Control Act (TSCA) was celebrating an anniversary on June 22, 2017. Bennett stated EPA recently announced 10 communities selected to participate in the Healthy Places for Healthy People planning assistance process. That program helps communities, as you know, leverage healthcare facilities to (prosper) downtown revitalization economic growth. In closing, **DAA Bennett** also mentioned the arrival of her new Special Assistant, **Preston Cory**.

**Chairman Cope** thanked Ms. Bennett then asked any questions.

### III. Agriculture Updates

**Chairman Cope** then called on **Chad Nitsch** for an agriculture updates. Nitsch stated earlier this month, EPA registered four products containing a new plant incorporated (protectant), PIP called SmartStax Pro that will help U.S. farmers control corn rootworm, which is a corn pest that has developed resistance to several other pesticides.

**Chad Nitsch** also stated EPA delayed the effective date of the certification of pesticide applicator rule until May 22, 2018 to allow time to consider comments. Administrator Pruitt signed an order that denied a petition to ban chlorpyrifos, a leading ingredient in insecticides in order to more fully complete – fully complete their reevaluation by 2022.

He also mentioned that on May 11, 2017 EPA accepted a petition from National Association of State Departments of Agriculture (NASDA) to extend the effective dates of the Worker Protection Standard, a proposed rule under development until at least January 2, 2018.

Finally, **Nitsch** said EPA staff continues to provide technical assistance to U.S. House and Senate Agriculture committees, and reauthorizing pesticide (freeze) rule, Pesticide Registration Improvement Extension Act (PRIA) that expires in September.

**Chairman Cope** thanked **Mr. Nitsch** then asked any questions.

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### IV. Public Comment

**Chairman Cope** then opened the call for public comment. **Tom Womack**, Deputy Agriculture Commissioner for the State of Tennessee mentioned Tennessee submitted joint comments with the Tennessee Department of Environment Conservation for the June 19, 2017 deadline.

Their comments outlined Tennessee's approach to defining jurisdictional water and we just offered up that as an example of how EPA may approach this on the WOTUS rule.

**Chairman Cope** stated he looked over it and thought it would be a real good example to use the appendix of some of the things we talked about where we wanted some regional flexibility and variation.

**Frances Eargle** stated the LGAC did put that as a recommendation in the report, that they look at Tennessee's program. So it certainly will be with the report, it will go along and be a companion piece to the report.

**Chairman Cope** then called on additional public comment.

**Nathan Ohle** from Rural Community Assistance Partnership (RCAP) introduced himself as the new executive director. He stated RCAP were doing work across the country with small water systems and just wanted to thank the SCAS for the invitation to participate and look forward to working with the subcommittee. Chairman Cope thanked him for his comments.

**Chairman Cope** then called on final public comment.

**Reed Hopper**, Attorney, The Pacific Legal Foundation introduced himself. He stated he represented John Rapanos in the Supreme Court, and acknowledged that he has an invested interest in the proper interpretation of the WOTUS decision.

**Reed Hopper** stated he'd been working with a number of small communities on the WOTUS definition in particular the Nevada Association of Counties and some others.

**Reed Hopper** stated his proposed definition of WOTUS for the record.

It read as the following, "the proposed definition of waters of the United States, (producing CFRs section 328.3 A turn) waters of the United States, includes only one, both interstate waters that are (applicable) in the fact, and currently used of susceptible to use, in interstate of foreign commerce. These waters include the territorial seas.

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Number two, permanent standing or continuously flowing streams, rivers, and lakes directly connected to waters described in (A1) continuously flowing means an uninterrupted flow except in extreme weather conditions, such as droughts.

These waters do not include groundwater or channels through which waters flow intermittently or ephemerally or channels that provide only periodic drainage such as from rainfall.

And, three, those (wetlands) that directly (abut) and are indistinguishable from the waters described in (A1) and (A2). Wetlands are those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes and bogs. Wetlands are indistinguishable from the waters described in A1 and A2 when the wetlands and marsh have merged so there is no clear demarcation between the two. “

**Reed Hopper** thanked the subcommittee then asked for any questions. **Chairman Cope** thanked **Mr. Hopper** then stated that Hopper's definition was close to where this subcommittee has been working on and he didn't see anything really standing out dramatically different.

**Mayor Bob Dixon** reaffirmed he didn't hear anything different. He also stated for the last three years the LGAC and through the Water workgroup and SCAS and all of our other work groups have been using something similar to the definition he read.

**Demond Matthews** asked for **Mr. Hopper** to provide a link to his published article to forward out to all participants on the call. **Reed Hopper** expressed he would.

### V. Waters of the US (WOTUS) Update

**Chairman Cope** than asked for updates from **Mindy Eisenberg**; acting director of the Oceans, Wetlands and Communities division. **Ms. Eisenberg** stated the Office of Water was the lead in WOTUS rulemaking. She thanked SCAS and full LGAC for all the work they've been done and helping the Office of Waters over the years and especially as their WOTUS Charge Report to the agencies.

**Mindy Eisenberg** stated the EPA and Department of the Army signed the Federal Register Notice on Tuesday (June 27, 2017) and it's on its way to the Federal Register's office. She expected it to get published in a couple of weeks but we do have the prepublication version on our EPA Web Site. Once published, there will be a 30-day public comment period. The Agency

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is eager to hear comments from LGAC/SCAS members all as well as other members of the public on the Step One rule.

The Administrator decided to take a two-step rulemaking process to expeditiously implement the President's executive order. So, first step, we are combining a rescission of the Clean Water Rule from 2015 and recodifying the prior regulations as we've been implementing them over the years consistent with Supreme Court decisions and longstanding practice.

Our intent is at this interim step, the public shouldn't see any difference from what's being implemented today under the Six Circuit stay. EPA will be moving expeditiously to evaluate comments. We anticipate quite a few comments, from folks, on what we're doing.

The Agency will be working toward finalizing the Step 1 rule, later this year and as our second step, we are working towards revising the definition of Waters of the U.S., and really do appreciate the time that the SCAS/LGAC has invested in giving up a perspective, from local governments, on how we should be defining waters of the U.S., which is really the scope of the Clean Water Act. It's an incredibly important issue.

The Agency will be continuing to engage with states and local governments, and other stakeholders, as we're developing our Step 2 rule making. And we really look forward to reading and accepting the comments that came in through the federalism consultation process, as well as our travel consultation. The LGAC's report and then, we will publish a proposed Step 2 rule for public comment, and will engage with folks prior to the proposal, and we will have additional meetings, to hear from folks during the public comment process, so that we can finalize Step 2 as well.

**Eisenberg** then asked for questions. **Chairman Cope** thanked **Mindy Eisenberg** then asked was **Stacy Jensen** on the call.

**Stacy Jensen**, US. Army Corps of Engineers introduced herself and reiterated Corps really appreciate all the input up to this point, and look forward to continuing to work with SCAS/LGAS on this rule making effort. **Chairman Cope** thanked **Stacy Jensen** then asked for questions for **Mindy Eisenberg** and **Stacy Jensen**.

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### VI. Wrap Up/Next Steps

**Chairman Cope** then asked for SCAS members to pull up the LGAC Water charge and turn to page 31, and look at line 1006 to 1025. He stated the whole section on significant nexus, which he believed part of the Clean Water Act, and is from Justice Kennedy's opinion and decision It is not applicable and suggested that section on significant nexus be stricken from the document.

He asked for discussion, and if agreement a motion for our staff to recommend the strike, those four sections of it, under significant nexus.

**Mayor Dixon** agreed and was in favor of striking it. **Rodney Bartlett** agreed as well.

He asked for discussion, and if agreement a for our staff to recommend the strike, those four sections of it, under significant nexus.

**Mayor Dixon** made the motion.

**Rodney Bartlett** second.

**Chairman Cope** asked for further discussion. Then asked members for voice vote of approval. All members vote "Aye."

**Chairman Cope** noted the departure of Mayor Johnny DuPree from the SCAS because of the results of the most recent election. the reason that Mayor Dupree isn't on is they're having the swearing in ceremony in Hattiesburg today, for the new Mayor. So this would have been his last meeting, because he's no longer Mayor of Hattiesburg.

### VII. Wrap Up/Next Steps

**Chairman Cope** then asked for other comments, anything for the good of the order, suggestions, questions, comments, from any members, then asked for a motion to adjourn.

**Mayor Dixon** second.

**Chairman Cope** thanked everyone. He adjourned the meeting at 1:29pm.

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



\_\_\_\_\_  
Commissioner Robert Cope Chairman  
Local Government Advisory Committee's Small Community  
Advisory Subcommittee

July 17, 2017

Date



\_\_\_\_\_  
Demond L. Matthews  
Designated Federal Officer  
Local Government Advisory Committee's Small Community  
Advisory Subcommittee  
U.S. Environmental Protection Agency

July 17, 2017

Date