

**National Roundtable on Waters of the United States:
July 21, 2022
Notes and Suggested Next Steps Summary¹**

Overview

Building smart, modern, resilient infrastructure has long been among our top priorities at the U.S. Chamber of Commerce and for other stakeholders. And if we are to meet our ambitious climate and infrastructure agenda, a consistent, predictable, and durable Waters of the United States (WOTUS) definition is foundational.

As our [proposal](#) for a national capstone event, as part of the Environmental Protection Agency's and the Army's (the "Agencies") [regional engagement approach](#) on WOTUS, was not accepted, the U.S. Chamber and the [Waters Advocacy Coalition](#) convened more than 100 stakeholders from state and local government, the private sector, and environmental NGOs on July 21, 2022 to:

- Enable more participation and more voices in the process to ensure the Agencies receive the best ideas and account for additional, differing perspectives. The flexibility of the virtual environment enables simple inclusion of more participants.
- Highlight local differences, outcomes, experiences, and discussion points from the Agencies' regional meetings and around our nation, creating a transparent summary of key discussion points and suggested next steps to report back to the Agencies especially should a new regulatory process move forward.

Key Discussion Points

- Provide a clear, consistent, and durable definition and approach.
- Balance costs and benefits of implementation.
- Include reasonable timeframes for Jurisdictional Determinations (JD) and permit approvals.
- Underscore the importance of cooperative federalism and the role of the states.
- Highlight that regardless of whether states do or do not accept primacy or program management, an appropriate federal definition will result in more states protecting waters under their own laws and regulations – the question is not whether they will or will not be protected, but rather by whom and how.
- Develop innovative solutions, including ways to address U.S. government capacity issues, especially to ensure timely permitting and JDs, interstate flows, and downstream impacts; to provide a greater role for mitigation banks and mobilizing private capital; to fund state wetlands and water stewardship actions; and to promote no net loss of wetlands.

The discussion also included how key tools (e.g., checklists and use of data) fostered by states can make JD decisions simpler. Regional differences are also particularly important in the more

¹ These notes do not represent official policy positions of the Waters Advocacy Coalition, of the U.S. Chamber of Commerce, or of other participants in the roundtable. Instead, these notes summarize key discussion points and suggested next steps that arose in the roundtable.

arid west and under the unique conditions in Alaska. The group also stressed that EPA and the Army should wait to move forward with the rulemaking until the Supreme Court hears oral arguments and rules on the upcoming *Sackett* case. The outcome of the case will likely have significant implications for the Agencies' approach to the proposed [Phase 1 WOTUS rule](#). The [Chamber](#) and WAC commented on this proposed rule.

Outcomes from Regional Roundtables

Organizers of several of the Agencies' regional roundtables (e.g., AK, AZ, CA, NC) briefed the group on the best practices and experiences from the events:

- The time to assemble and coordinate the diverse participation for regional roundtable proposals was significant and still left out stakeholders who wanted to weigh into the discussions.
- The selection process seemed inconsistent with little timely communication even for panels that were accepted.
- The facilitation of the various roundtable meetings was helpful. But the lack of clarity on how findings and outcomes will be used made the discussions less effective.
- The message in the final roundtable of counties on "filling gaps in actions on water quality outside of the regulatory process" was an important contribution.
- Exemptions for states such as Alaska in which the impacts are substantial and vary greatly from other regions should be prioritized.
- Treatment of ephemeral flows and ditches were universally challenging under the Agencies' proposal and is a key issue in determining costs.
- The costs for landowners to consider JDs are not inconsequential.

Slido and Survey Analysis

The audience provided feedback during and subsequent to the meeting on the following:

- **Challenges** – 85.7% of meeting attendees stated that the most significant challenge related to the definition of WOTUS is that it is too vague and confusing. 71.4% said that it is too broad, and that the timeline for permitting and jurisdictional determination process present key challenges. Other issues include that the Regulatory Branch of the USACE is currently understaffed and underfunded by about \$65 million per year.
- **Priorities** – More than 57% of participants identified that clarity about definitions is needed prior to determinations and that definitions should be based on sound science.
- **Agency methods to gather feedback** – 90% of respondents suggested that a 90-day comment period or roundtables aligned with EPA regions and U.S. Army Corps of Engineers districts would be the most effective way to gather feedback from stakeholders.

Other Questions and Comments from Participants

- How can the Agencies more effectively implement a permitting system and JDs? Re-clarify that JDs are good for 5 years. The EPA's and the Corps' recent policy changes that undermined the [5-year safe harbor](#) relied on by the Supreme Court caused significant uncertainty.

Increase transparency and standardization of JDs process. Use templates and make JDs easily available as public records, either on District websites or via searches in the Corps' operations and maintenance regulatory module (ORM). Transparency is important to predictability and building a record of precedent.

- How can there be more clarity on what's in and what's out?

Need clear exclusions and clear definitions for the exclusions (like the definition of waste treatment system and prior converted cropland in the 2020 rule).

- What are the ways the Agencies can provide more transparency regarding implementation? Training?

Establish a docket so stakeholders can provide input on any implementation guidance. Ongoing and transparent communication with stakeholders should be part of the implementation process. Public training sessions and in-depth training sessions for industry practitioners. Mapping as discussed above.

- Are there specific resilience and climate challenges and associated solutions catalyzed by WOTUS?

Climate change studies and reporting indicate that interconnected watersheds and in particular wetlands provide invaluable storm surge and flood mitigation benefits. The next WOTUS definition should, within reasonable bounds, consider the resiliency benefits that watersheds and wetlands provide to the overall health and climate response of communities' watersheds.

However, jurisdictional determinations are made for a waterbody when the property owner applies for a JD or permit. It is not appropriate to look into the future based on climate change to determine if a feature will be jurisdictional.

- How can WOTUS contribute to EJ solutions?

EPA and the Corps should recognize the important role the business community has in addressing environmental justice concerns. We need to know what's in/out so we can plan our operations to maximize environmental stewardship and economic opportunity in the communities in which we operate.

Many watersheds are degraded in disadvantaged communities, or disadvantaged communities are located downstream of impacts. Consistent with law, the next WOTUS rule should provide appropriate protections to limit this degradation and consider the impact of a CWA section 404 permit action on downstream waters and functions.

- What are the roles of the states and other stakeholders in improved implementation?

States know their land and water resources best, and the federal agencies should not usurp their expertise in their own communities. A narrower federal definition does not mean that water is not protected; it just means the states can decide how best to do that. EPA and the Corps should have consistent and transparent conversations with states about the scope of jurisdiction.

States and industry are essential partners that should be empowered with tools and funding for transparent and consistent implementation.

- What are real world impacts of permitting on communities (e.g., affordable housing)?
- Confusion and delays in the permitting process can put U.S. businesses at a competitive disadvantage in numerous industry sectors. It can cost jobs and other investment in areas that need these opportunities most. A clear definition of WOTUS and clear permitting process helps facilitate investment in and development of projects that employ people, build affordable housing, provide electricity, mine minerals and other materials needed for sustainable infrastructure, and support quality of life and our nation's economy as a whole. EPA and the Army Corps should consider the practical implications of the confusion and uncertainty around the WOTUS rule.

Regulatory delays because of slow permitting hinder development. The public does not benefit from these delays. However, the answer is not to eliminate the needed public interest regulation but improve the process of regulating—we need well-funded Agencies, agency staff who are trained and industry partners, and readily available permitting solutions like mitigation bank credits to expedite the time to a permit decision. The participant urged the Chamber Coalition to organize around collective asks for increased Corps and EPA regulatory funding and oversight and improving the timelines for review of mitigation project proposals.

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