

Message

From: Don Parrish [donp@fb.org]
Sent: 1/25/2017 1:23:14 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Bodine, Susan (EPW) [Susan_Bodine@epw.senate.gov]
Subject: RE: meeting

Thank you -- what phone number would you like me to use? And I am at my desk and you are welcome to call me. **Ex. 6**

Ex. 6

*Don R Parrish
American Farm Bureau Federation®*

Ex. 6

donp@fb.org

From: Bangerter, Layne [mailto:bangerter.layne@epa.gov]
Sent: Wednesday, January 25, 2017 8:22 AM
To: Bodine, Susan (EPW)
Cc: Don Parrish
Subject: RE: meeting

Thank you for the introduction. Don: Feel free to contact me here.

Layne Bangerter

From: Bodine, Susan (EPW) [mailto: Susan_Bodine@epw.senate.gov]
Sent: Tuesday, January 24, 2017 5:30 PM
To: Bangerter, Layne <bangerter.layne@epa.gov>
Cc: Don Parrish <donp@fb.org>
Subject: meeting

Layne, I would like to introduce you to Don Parrish, who is interested in setting up a meeting with you.

Don works on environmental issues for the American Farm Bureau Federation and can be reached at the above email or at: **Ex. 6**

Susan Parker Bodine
Chief Counsel
U .S. Senate Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Ex. 6

Message

From: Greene, Joshua [JGreene@aosmith.com]
Sent: 3/22/2017 12:19:55 PM
To: Helton, Sarah C. (59575) [schelton@michaelbeststrategies.com]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: RE: Thank you - A. O. Smith

Indeed, thank you Layne, most appreciative of your time and we look forward to working with you.

Joshua C. Greene, Esq.

Vice President – Government and Industry Affairs | A. O. Smith Corporation

e: jgreene@aosmith.com | o: | m:
a: 400 North Capitol Street, NW Suite 585 Washington, D.C. 20001 | i: www.aosmith.com



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http://www.aosmith.com/uploadedFiles/Web_Assets/Documents/History/A.O.%20Smith%20Timeline%20Brochure.pdf

From: Helton, Sarah C. (59575) [mailto:schelton@michaelbeststrategies.com]
Sent: Monday, March 20, 2017 3:15 PM
To: bangerter.layne@epa.gov
Cc: Greene, Joshua
Subject: Thank you - A. O. Smith

Hi Layne:

Thank you for taking time to meet with Josh Green of A. O. Smith and me last week. We appreciated the opportunity to meet you and share information about A. O. Smith and its contributions to the energy and water industries. Please let us know how Josh can be a resource to you and the EPA team as you work with Congress and state and local governments on water infrastructure issues, particularly on role of water technology and solutions through point of source treatment systems.

Additionally, thank you for your suggestion to reach out to Mike Shapiro about EPA's advisory committees. We will reach out to Mike this week.

Best,

Sarah

Sarah C. Helton

Senior Advisor

E schelton@michaelbeststrategies.com

T | M | F 202.347.1819



[my bio](#) | [our firm](#) | [vCard](#)

Email Disclaimer

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Message

From: Hanson, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=976B280C3EAF4E50B91A25D75466CF3C-HANSON, ANDREW]
Sent: 4/19/2017 5:21:09 PM
To: Hanson Carolyn [chanson@ecos.org]; randerson@usmayors.org; Schaefer, Alex [ASchaefer@NGA.ORG]; wscott@westgov.org; Chris Hornback [CHornback@nacwa.org]; Gerry Baker [gerry.baker@iogcc.state.ok.us]; nathan@nasda.org; peg.bostwick@aswm.org; twillardson@wswc.utah.gov; ilyle@nwra.org; Jeffrey Stockdale [jstockdale@csg.org]
CC: Hanson, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=976b280c3eaf4e50b91a25d75466cf3c-Hanson, Andrew]; Eargle, Frances [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63fca70ff3944cebf60b10b80a2acb6-FEargle]; Christensen, Damaris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e04107c23c1043d6967754064c477a29-Christensen, Damaris]; Bowles, Jack [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78e63acc248f41328768db82d95464c3-JBOWLES]; Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
Subject: WOTUS Federalism Meeting Agenda.docx and Slide presentation
Attachments: WOTUS Federalism Meeting Agenda.docx; WOTUSFedSlides4.19.17.pdf

Folks –

Attached are the agenda (which includes the call-in number) and a copy of the slide presentation for this afternoon's Federalism briefing.

Please do not forward any portion of this email, including attachments, to colleagues or your groups' members until AFTER the meeting concludes.

AH

EPA Intergovernmental
Ex. 6 mobile

Waters of the U.S. Federalism Consultation Meeting

AGENDA

Date: April 19, 2017

Time: 2:00 to 4:00 PM Eastern Time

Location: Room 1117 William Jefferson Clinton Building East
U.S. Environmental Protection Agency
1201 Constitution Ave., NW
Washington, DC 20004

Call-in: For those who will speak during the meeting, please call **Ex. 6**
For those just listening, please call – **Ex. 6**
For both, please reference the conference ID to be admitted into the call: **Ex. 6**

Agenda

- 2:00 - 2:10 Check-In, Roll Call – *Jake Strickler, Facilitator, EPA Conflict Prevention and Resolution Center*
- 2:10 - 2:20 Call to Order and Initial Business
- Welcome, Meeting Goals – *Michael H. Shapiro, Acting Assistant Administrator for Water*
 - *Layne Bangerter, Deputy Associate Administrator for Intergovernmental Relations*
 - *Byron Brown, Deputy Chief of Staff for Policy*
 - *Douglas W. Lamont, the Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works*
 - Review of Agenda, Meeting Procedures – *Facilitator*
- 2:20 - 2:45 Presentation of WOTUS2
- “The Definition of Waters of the U.S. – Federalism Discussion” – *John Goodin, Acting Director of the Office of Wetlands, Oceans and Watersheds*
- 2:45 - 3:55 Statements from and Discussion with Federalism Invitees
- There will be an opportunity for each Invitee to provide input and discuss implications, if desired
- 3:55 - 4:00 Next steps – *Michael H. Shapiro*
- 4:00 Adjourn – *Facilitator*

[PAGE * MERGEFORMAT]

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule...”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus streams with “seasonal” flow

Current practice: seasonal flow = about 3 months (varies regionally)

Perennial plus streams with another measure of flow

Use appropriate, implementable metrics, e.g., frequency of flow, intersecting water table

Perennial streams only

Streams that carry flow throughout the year except in extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov

Contacts

Project Lead:

Donna Downing

- (202) 566-2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

Message

From: Helton, Sarah C. (59575) [schelton@michaelbeststrategies.com]
Sent: 3/8/2017 6:27:12 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: Follow up - AO Smith meeting

Hi Layne:

Great to reconnect with you this morning after a busy couple weeks and congratulations on your new leadership role at EPA. We were connected through Patrick Davis who we know given our colleagues and work in Colorado.

As mentioned on our calls, I would like to request a brief meeting with you, Josh Greene, VP of A. O. Smith and myself. We would like to discuss the administration's and Congress' work on infrastructure and the incorporation of water infrastructure and technology into it. We have appreciated and been encouraged by Administrator Pruitt's support for water infrastructure to be included in the discussion and bill.

Understanding your schedule is tight, please let me know if you are able to meet any of the following days -- March 9 at 300pm or after, March 15 after 200pm, March 16, March 23 or March 24.

I appreciate your time and look forward to meeting you in person soon.

Best,

Sarah

Sarah C. Helton

Senior Advisor

E schelton@michaelbeststrategies.com

T M F 202.347.1819



[my bio](#) | [our firm](#) | [vCard](#)

Email Disclaimer

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Message

From: Don Parrish [donp@fb.org]
Sent: 3/13/2017 5:23:06 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: RE: Today's Meeting

Layne

Call me.

*Don R Parrish
American Farm Bureau Federation®*

Ex. 6

donp@fb.org

From: Bangerter, Layne [mailto:bangerter.layne@epa.gov]
Sent: Monday, March 13, 2017 1:14 PM
To: Don Parrish; Ed Thomas
Subject: Today's Meeting

It would help me greatly if you could ask the Administrator's scheduler, Michelle to put me on this meeting with you today. It would also be helpful to me if you mentioned our relationship and the need for me to be Deputy Associate Administrator – Office of Water. New management is just getting acquainted with us, they don't know who they can trust, but they can trust me.

Thanks!

Layne

Message

From: Don Parrish [donp@fb.org]
Sent: 3/7/2017 3:01:34 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: Do you have a minute to talk?

I have a couple of things to run past you.

Don R Parrish
American Farm Bureau Federation®

Ex. 6

donp@fb.org

Message

From: William Myers III [WMyers@hollandhart.com]
Sent: 5/24/2017 10:05:11 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: Re: Superfund task force

Thanks Layne. I met Samantha when we visited your office. I'm sure she could be helpful on this.

Bill

On May 24, 2017, at 12:11 PM, Bangerter, Layne <bangerter.layne@epa.gov> wrote:

Samantha is very and close to the Administrator and runs our Office of Policy.

Sent from my iPhone

Begin forwarded message:

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: May 24, 2017 at 12:13:48 PM MDT
To: "Bangerter, Layne" <bangerter.layne@epa.gov>, "Wagner, Kenneth" <wagner.kenneth@epa.gov>
Subject: RE: Superfund task force

I will make sure to send this on, Layne. Thank you! Miss seeing you.

From: Bangerter, Layne
Sent: Wednesday, May 24, 2017 2:03 PM
To: Wagner, Kenneth <wagner.kenneth@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Superfund task force

Ken and Samantha: This is likely a very good recommendation for the Superfund task force. I know Bill Myers very well he's a former interior solicitor. Please pass this along as a recommendation if you feel inclined.

Thank you.

Layne

Sent from my iPhone

Begin forwarded message:

From: William Myers III <WMyers@hollandhart.com>
Date: May 24, 2017 at 11:40:34 AM MDT
To: "Layne Bangerter (bangerter.layne@epa.gov)"

<bangerter.layne@epa.gov>
Subject: Superfund task force

Hi Layne – Hope you are well.

I see that Administrator Pruitt is setting up a Superfund task force. One of my partners in my Salt Lake office is a Superfund expert and is interested in serving on this task force. He'd be a great addition. His name is Kevin Murray. If there are still openings on the task force, how would Kevin go about getting his name considered?

Thanks.

Bill

Year	People	Practice Areas	Web Site
<image001.gif>	William G. Myers III Partner wmyers@hollandhart.com	Holland & Hart LLP 800 W. Main Street Suite 1750 Boise, ID 83702	

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Message

From: William Myers III [WMyers@hollandhart.com]
Sent: 5/24/2017 7:11:03 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: Automatic reply: Superfund task force

I am out of the office until Thursday afternoon. If you need immediate assistance during my absence, please contact Connie Dart at 208-342-5000 or cdart@hollandhart.com. Thank you.

Message

From: Don Parrish [donp@fb.org]
Sent: 1/26/2017 3:35:52 PM
To: Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]
Subject: RE: meeting

Are you available to visit at 11:00?

Don R Parrish
American Farm Bureau Federation®

Ex. 6

donp@fb.org

From: Bangerter, Layne [mailto:bangerter.layne@epa.gov]
Sent: Wednesday, January 25, 2017 6:46 PM
To: Don Parrish
Subject: Re: meeting

Ex. 6

Sent from my iPhone

On Jan 25, 2017, at 6:32 PM, Don Parrish <donp@fb.org> wrote:

Layne

Somehow your phone number got garbled on your message. You are welcome to call my cell -

Ex. 6

Ex. 6 Thanks

Don Parrish
American Farm Bureau

Sent from my iPhone

On Jan 25, 2017, at 8:21 AM, Bangerter, Layne <bangerter.layne@epa.gov> wrote:

Thank you for the introduction. Don: Feel free to contact me here.

Layne Bangerter

From: Bodine, Susan (EPW) [mailto:Susan_Bodine@epw.senate.gov]
Sent: Tuesday, January 24, 2017 5:30 PM
To: Bangerter, Layne <bangerter.layne@epa.gov>
Cc: Don Parrish <donp@fb.org>
Subject: meeting

Layne, I would like to introduce you to Don Parrish, who is interested in setting up a meeting with you.

Don works on environmental issues for the American Farm Bureau Federation and can be reached at the above email or at **Ex. 6**

Susan Parker Bodine
Chief Counsel
U .S. Senate Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Ex. 6

Message

From: Bangerter, Layne [bangerter.layne@epa.gov]
Sent: 4/4/2017 11:53:07 PM
To: donp@fb.org
Subject: Please call tomorrow

Ex. 6

Sent from my iPhone