



Summary:

Regional Roundtables on Implementation of “Waters of the United States” December 2022

The U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army (Army) are committed to clear, practical, and transparent implementation of the scope of “waters of the United States.” The EPA and the Army (together, “the agencies”) hosted ten regional roundtables in 2022 to inform the agencies’ ongoing responsibility to implement the scope of “waters of the United States” consistent with the Clean Water Act. The roundtables provided the agencies with an opportunity to hear directly from communities on what is working well from an implementation perspective and where there are opportunities for improvement. The roundtables focused on the geographic similarities and differences across regions and provided site specific feedback about the way the scope of “waters of the United States” has been implemented by the agencies. The feedback provided was invaluable and the agencies are already taking steps to improve implementation based on these discussions. See [EPA’s website](#) for additional information about the roundtables.

Background

In October 2021, the agencies invited stakeholders to submit nomination letters to organize implementation-focused roundtables on “waters of the United States” in five regions—the Northeast, Southeast, Midwest, West, and Southwest. Stakeholders were encouraged to include representatives with diverse perspectives, including agriculture, small businesses, conservation groups, developers, drinking water and wastewater managers, environmental organizations, communities with environmental justice concerns, industry, tribal nations, and state and local governments. A priority was to maximize the geographic diversity represented at each multi-state regional roundtable. All of the roundtables included participants from small businesses and underrepresented areas.

Once selected, the agencies worked closely with the organizers to prepare for the roundtables. The agencies noted early in the planning process that the purpose of the roundtables was to discuss the ongoing implementation of “waters of the United States.” The roundtables were not part of the rulemaking process to revise the definition of “waters of the United States.” At the beginning of each roundtable, the agencies clarified that they would not be able to consider information presented in the roundtable as part of the rulemaking defining “waters of the United States,” but looked forward to feedback regarding the agencies’ ongoing implementation efforts. To the extent participants raised

comments or suggestions on the proposed rule, the agencies made clear that those would not be considered in the rulemaking process.

The roundtables took place virtually, each lasting approximately 2.5 hours and were livestreamed publicly. Recordings of all the roundtables are available on [EPA's website](#).

The ten selected roundtables were:

- Amigos Bravos (Southwest)
- Arizona Farm Bureau (Southwest)
- Cahaba Brewing (Southeast)
- California Farm Bureau (West)
- Kansas Livestock Association (Midwest)
- Natural Resources Defense Council (Northeast)
- National Parks Conservation Association (Midwest)
- North Carolina Farm Bureau (Southeast)
- Regenerative Agriculture Foundation (Midwest)
- Wyoming County Commissioners Association / Montana Association of Counties / Idaho Association of Counties (West)

Common Themes

The ten roundtables covered a wide range of issues, with the following themes being raised across multiple regions.

Consistency and Clarity

Many roundtable participants voiced the need for consistency and clarity in the interpretation and application of the scope of “waters of the United States.” This theme was raised in roundtables organized by agricultural interests (e.g., the Arizona, California, and North Carolina Farm Bureaus). The two West roundtables, organized by the California Farm Bureau and the Wyoming County Commissioners Association/Montana Association of Counties/Idaho Association of Counties (County Associations), also emphasized the need for clarity regarding implementation of exemptions and exclusions from the scope of “waters of the United States.”

One focus of the discussion was on practical implementation concerns. For example, the Regenerative Agriculture Foundation Midwest roundtable discussed the uncertainty created by different U.S. Army Corps of Engineers (Corps) districts taking different approaches to issues related to the scope of “waters of the United States” and how uncertainty about its application affected permitting and implementation of conservation projects. The North Carolina Farm Bureau Southeast roundtable made a similar point regarding mitigation and restoration projects.

Focus on Regional Differences

Across roundtables and perspectives, several participants expressed the need for the agencies to consider regional differences in implementation of the scope of “waters of the United States.” In some

roundtables, participants discussed regional water features of concern. The Amigos Bravos Southwest roundtable called for attention to the closed basins, ephemeral waters, and acequias in New Mexico; karst topographies in Oklahoma; and algal blooms in Texas. Other roundtables, such as the Kansas Livestock Association Midwest roundtable, discussed the challenges faced by small communities in having to take on water quality protection projects.

Roundtable participants from every region talked about implementation and jurisdictional determinations regarding ephemeral and intermittent streams and regional water features such as vernal pools.

Role of the State, Federal, and Tribal Governments in Protecting Water

As roundtable participants discussed regional differences, they often talked about the role of state implementation relative to federal implementation. Those who stressed the importance of implementation to protect ephemeral waters and other regional water features, such as vernal pools in the Northeast and pocosins in the Southeast, generally called for strong federal implementation procedures. Those who favored state implementation of protections for ephemeral waters, particularly in the West roundtables, generally noted that their states have more stringent water quality requirements. Participants in the North Carolina Farm Bureau Southeast roundtable also suggested that the federal agencies would need more staff to effectively implement broader water quality programs.

Several roundtables raised the importance of protecting waters on, or affecting, tribal lands. The discussion on this issue included references to federal responsibility for such protection and the need for tribal nations to have a greater role in Clean Water Act implementation.

The Impact of a Changing Climate on Water Resources

Most roundtables discussed the impact of a changing climate on water resources, and the need for implementation of the scope of “waters of the United States” to take into account regional variations. Roundtable discussions made clear that the impacts of climate change are being felt across the country, from droughts in the West and Southwest to more frequent and intense storms in the Midwest and East. For example, in the Kansas Livestock Association Midwest roundtable, it was noted that although there might be less precipitation overall, it was more intense when it occurred, making the determination of the scope of “water of the United States” more challenging. Roundtable participants noted that the consequences of climate change would hit underserved communities the hardest, and these communities often have the least resources to respond.

Public Education, Outreach, and Voluntary Programs

Multiple participants emphasized the need for increased public education and outreach on the scope of “waters of the United States” and water quality issues. Ideas ranged from educating people generally on the importance of water quality and local watersheds (Cahaba Brewing Company Southeast roundtable), to calls for engagement and dialogue with counties and local governments (County Associations West roundtable), to more education and involvement of underserved communities (National Parks Conservation Association Midwest roundtable), including small, rural, and tribal communities (Arizona Farm Bureau Southwest roundtable). Others called for more outreach to educate agricultural producers and others about permitting and to encourage and incentivize

voluntary efforts to protect water quality and wetlands, citing the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) agricultural conservation easement program and other programs (Regenerative Agriculture Foundation and Kansas Livestock Association Midwest roundtables).

Actions to Improve Implementation

The agencies received helpful feedback on implementation of the scope of “waters of the United States.” Based on that feedback EPA and Army are undertaking steps to improve implementation of the scope of “waters of the United States,” consistent with authority granted to the agencies by Congress through the Clean Water Act.

SUGGESTION: Improve coordination among federal agencies in implementation of the scope of “waters of the United States.” Foster consistency between federal agencies and across Corps districts in their application of “waters of the United States.”

FOLLOW UP ACTIONS:

- Developed a joint coordination memorandum on approved jurisdictional determinations that will clarify responsibilities and improve coordination between EPA and the Army Corps of Engineers on issues related to “waters of the United States.”
- Developed a coordination memo setting forth the roles of the Army Corps of Engineers, EPA, and United States Department of Agriculture in implementation of the scope of “waters of the United States” and outlining specific coordination procedures.
- Develop a jurisdictional determination form and instructional guidebook to ensure consistent implementation of the definition of “waters of the United States” in the final rule.
- Develop and implement trainings for Corps districts and EPA regional offices on using the jurisdictional determination form instructional guidebook and on overall implementation consistency for determinations of jurisdiction.

SUGGESTION: Enhance consideration of regional differences in implementation of the scope of “waters of the United States.”

FOLLOW UP ACTIONS:

- Provide training on the [national manual for determining ordinary high water mark](#) (the manual includes options for regional implementation as appropriate).
- Develop regional [Streamflow Duration Assessment Methods](#) (SDAMs) that account for differences and geographical variation in climate, geology, biogeography, and topography that can influence the relationships between field indicators and streamflow duration. SDAMs will be developed for:
 - Great Plains and Western Mountains
 - Northeast and Southeast
 - Arid West

SUGGESTION: Facilitate a greater role for Tribal Nations in implementation of the scope of “waters of the United States.”

FOLLOW UP ACTIONS:

- EPA will continue to prioritize Tribes’ requests to be treated as a state for the purposes of Clean Water Act implementation.
- The Army Corps of Engineers will update its Tribal consultation policy to include consultation with federally recognized tribes regarding approved jurisdictional determinations for “waters of the United States,” including the incorporation of Indigenous knowledge.

SUGGESTION: Expand outreach and education about the scope of “waters of the United States” and water quality more generally.

FOLLOW UP ACTIONS:

- The agencies will provide robust training to states, Tribes, and other interested stakeholders once the current rule proposal is finalized, with trainings expected to commence in the first half of 2023.

Conclusion

The agencies once again thank the roundtable organizers and participants for the time and effort they invested in these important discussions. Their contributions will help improve the agencies’ implementation of the Clean Water Act and protect our vital water resources.