

## Discussion Questions for Co-Regulator Forums

*A primary purpose of these forums is to allow for discussion with co-regulators on rule implementation considerations and the potential for developing geospatial datasets of “waters of the United States.” To help facilitate robust discussion, the agencies are providing participants with a list of questions to consider in advance of these discussions. The following questions are only suggestions, and the agencies welcome discussion on any aspects of the proposed rule.*

### Discussion Questions – Implementation of the Proposed “Waters of the United States” Definition

#### *Tributaries*

- 1) The agencies proposed a definition of “tributary” and introduced several terms to help clarify when a feature would meet the “tributary” definition and be considered jurisdictional. Are these terms clear, and where should the agencies focus additional guidance or technical clarification (e.g., intermittent, ephemeral, artificial vs. natural breaks in jurisdiction, typical year, etc.)?
- 2) Are there regional examples of seasonal or non-seasonal streams that could be incorporated into rule text or guidance to better articulate the range of intermittent flow duration versus ephemeral flow (e.g., monsoon driven streams)?
- 3) Do you anticipate any situations, specific to your state or tribal resources, that would pose a challenge in implementing certain aspects of the proposed tributary definition?
- 4) Are there any validated tools, methodologies, other technical resources or protocols that you currently employ which may be useful in the implementation of the proposed tributary definition?
- 5) Are there any additional tools, information, or resources that you anticipate would be needed to distinguish among perennial and intermittent vs. ephemeral flow regimes? To help determine the contribution of flow to a traditional navigable water? To identify downstream breaks in jurisdiction?

#### *Ditches*

- 6) Are there any aspects of the proposed ditch definition where additional guidance on implementation could improve clarity?
- 7) Do you anticipate any situations, specific to your state or tribal resources, that would pose a challenge in implementing certain aspects of the proposed ditch definition?
- 8) Are there any validated tools, methodologies, other technical resources or protocols that you currently employ which may be useful in the implementation of the proposed ditch definition?
- 9) Are there any tools, information, or resources that you anticipate would be needed to help identify whether a ditch was constructed in a tributary or an adjacent wetland vs. in upland?

#### *Adjacent Wetlands*

- 10) The agencies proposed several terms to help clarify when a wetland would be considered adjacent and thus jurisdictional. Are these terms clear and where should the agencies focus

addition guidance or technical clarification? (e.g., direct hydrologic surface connection, inundation, flooding, etc.)?

- 11) Do you anticipate any situations, specific to your state or tribal resources, that would pose a challenge in implementing certain aspects of the proposed adjacent wetlands definition?
- 12) Are there any validated tools, methodologies, other technical resources or protocols that you currently employ which may be useful in the implementation of the proposed definition of adjacent wetlands?
- 13) Are there any additional tools, information, or resources that you anticipate would be needed to help identify wetlands that abut jurisdictional waters? To help identify direct hydrologic surface connections, including overtopping into jurisdictional waters and inundation from jurisdictional waters?

#### *Other Categories of WOTUS and Exclusions*

- 14) Are there other clarifications regarding how the agencies would implement lakes/ponds, TNWs, impoundments?
- 15) Are there particular categories of exclusions that may need further clarification?
- 16) Are there any categories of exclusions that you anticipate may be particularly challenging to implement as proposed?

#### *State Resources and Programs*

- 17) Were the agencies' assumptions about state programs captured accurately? Can you provide additional information?
- 18) Are there other considerations the agencies should be aware of with respect to state implementation of CWA 402 and 303 programs or SDWA?

#### *Tribal Resources and Programs*

- 19) Were the agencies' assumptions about tribal programs captured accurately? Is there any additional information about tribal programs that would allow the agencies to more accurately estimate the potential effects of the rule that tribes may experience?
- 20) Is there traditional ecological knowledge that could be incorporated into guidance, providing further clarification of the tributary definition, and used to help identify tribal resources that would meet the proposed definition of tributary?
- 21) Are there tribal records or traditional knowledge that could be utilized for distinguishing between historical ditches that were constructed in existing tributaries versus ditches that were constructed in upland?
- 22) Do you have suggestions for how the agencies can continue to support tribal water programs?

## Discussion Questions on Creating Geospatial Datasets of “Waters of the United States”

**Background:** In response to the interest expressed by some states and tribes in participating in the federal jurisdictional determination process, the agencies are soliciting comment as to how they could establish an approach to authorize states, tribes, and other federal agencies to establish geospatial datasets of “waters of the United States,” as well as waters that the agencies propose to exclude, within their respective borders for approval by the agencies. This approach would not require state and tribal governments to establish these datasets; it would simply make this process available to those government agencies that would find it useful.

### *Regarding Level of Interest*

- 23) What is your level of interest in developing geospatial datasets of “waters of the United States” within in the boundaries of your state or tribe?
- 24) Would your state or tribe be interested in being part of a technical workgroup to collaborate with the agencies on this topic?
- 25) What resources (technical, financial, and otherwise) would your state or tribe require to develop geospatial datasets of “waters of the United States”? What resources do you currently have?

### *Generally Regarding the Effort*

- 26) What are the most pressing technical and process considerations the agencies should be aware of regarding developing geospatial datasets of “waters of the United States”?
- 27) Would a probabilistic mapping approach (e.g., via modelling) be acceptable to developing geospatial datasets? Such an approach, for example, could allow for waters in certain areas to be considered “potentially jurisdictional” or “potentially non-jurisdictional” (e.g., where a likely ephemeral stream or other ephemeral feature could potentially break jurisdiction for upstream waters under the proposed rule).
- 28) If models are used, what are the best models that can be used to help identify stream flow, stream flow permanence, and/or hydrologic surface connections between streams and wetlands? What are the best datasets (national, local, or regional) that could be used to inform those models?

### *Regarding State/Tribe Specific Data, Information, and Past Experience*

- 29) Do you have geospatial data of aquatic resources (e.g., streams and wetlands, stream flow) for your entire state/reservation or portions of your state/reservation? What does the dataset include? Is it publicly available? How often is it updated?
- 30) If there have been past aquatic resource mapping efforts in your state or on your reservation, how much time, resources, and technical expertise were needed? To what extent were remote sensing/GIS used, what were the limitations, and how much field work was required to field-verify remote sensing products?
  - a. Do you have a program and/or funding to update this data?
  - b. What challenges were faced in mapping various types of aquatic resources?

*Regarding National Datasets* (note: the questions are intended to get at viability of the datasets as a starting point and ideas on how to improve the datasets).

- 31) How have the National Hydrography Dataset (NHD) and National Wetlands Inventory (NWI) been used in the past by your state or tribe?
- 32) What modifications, updates, or extensions to national maps and datasets (such as NWI and the NHD) would most benefit states and tribes in mapping jurisdictional waters within their boundaries?

*Questions about Process*

- 33) Do you have suggestions for how the agencies could create a regulatory framework that would authorize interested states, tribes, and federal agencies to develop geospatial datasets for identifying or excluding “waters of the United States?”
- 34) What do you think the relevance or significance of these datasets should be, if any, for actual approved jurisdictional determinations?
- 35) Would your state or tribe prefer to submit your own method(s) for creating a dataset of “waters of the United State” for the agencies’ approval, or would you prefer for the agencies to create a national method for your state or tribe to use? What are some alternative approaches that the agencies might consider?
- 36) Are there other approaches the agencies could pursue instead of what was discussed in the proposed rule preamble to achieve a goal of greater public information about the jurisdictional status of waters across the country?

*Implementation of the Geospatial Datasets*

- 37) The agencies envision that state and tribal submitted data would be made public by the agencies at a central location on a federal government website. What are the appropriate features and attributes of the website that would publish this information?
- 38) Are there any preferences for addressing privacy considerations the agencies should consider regarding sharing the geospatial datasets with the public on their website(s)?
- 39) How often should such datasets be updated so that they reflect current conditions? What is the appropriate process for updating datasets, and who should be responsible for map updates once published?