



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

September 17, 2014

MEMORANDUM

SUBJECT: Preparations for Chartered Science Advisory Board (SAB) September 29, 2014 Discussion of the Adequacy of the Science Informing the EPA's proposed rule titled *Definition of Waters of the United States Under the Clean Water Act*

FROM: Angela Nugent, DFO for the Chartered SAB

TO: Members of the Chartered SAB and SAB Liaisons

At the upcoming September 29, 2014 public teleconference, the Chartered SAB will deliberate on the adequacy of the scientific and technical basis of the proposed rule titled *Definition of Waters of the United States Under the Clean Water Act* (79 FR 22188-22274). To support this discussion, an SAB Work Group was charged with providing the Board with a draft letter to the Administrator on this topic. This memorandum transmits that draft letter (Attachment A) and provides background on this activity and the process used by the Work Group.

Background

The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with relevant scientific and technical information on which the proposed action is based. The SAB may then provide to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed action.

In public teleconferences leading to a letter to the Administrator dated July 26, 2013, *Science Advisory Board (SAB) Discussions about EPA Planned Actions in the Fall 2012 Unified (Regulatory) Agenda and their Supporting Science* (EPA-SAB-14-003), the chartered SAB discussed the agency's intent to propose the rule. The Board also discussed the EPA's plan to use the EPA's September 2013 draft report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* to inform determinations in the rule. In those discussions, the chartered SAB highlighted the importance of this rulemaking and of the SAB's providing advice and comment on the adequacy of the science to support the rule.

Although the EPA's Office of Research and Development (ORD) had previously requested SAB peer review of the draft connectivity synthesis report and an SAB *ad hoc* panel of experts had been formed to draft a peer review report, the panel's charge was to consider: (1) the overall clarity and technical accuracy of the draft report, (2) whether it included, and correctly summarized, the most relevant peer-reviewed scientific literature, and (3) whether the findings and conclusions of the report were supported by the available science. The panel, however, was not asked to consider the adequacy of the science to support the proposed rule, which was released on March 25, 2014. The SAB Chair, therefore, sent a memorandum on June 25, 2014, requesting comment from the SAB Panelists for the Review of the EPA Water Body Connectivity Report on the scientific and technical basis of the EPA proposed rule entitled "Definition of 'Waters of the United States' Under the Clean Water Act." In response to his request, the SAB panel held public teleconferences on August 20 and 21, 2014, (79 FR 40100-40101) to discuss this topic. Attachment B provides a memorandum from the panel Chair transmitting panel members' comments and the Chair's summary of the panel teleconference discussion. This summary does not constitute a consensus report from the panel; rather it provides an overview of the issues discussed and the comments provided by the members of the *ad hoc* panel.

Summary of the process used by the SAB Work Group

The EPA SAB Staff Office formed a Work Group to develop recommendations in the form of a draft letter to the Administrator in July 2014; the Work Group consisted of chartered SAB members with past experience in evaluating the scientific basis of planned EPA regulatory actions and/or broad expertise in scientific and technological fields related to the proposed rule. The Work Group had the following members: Drs. James R. Mihelcic (chair); Joseph Arvai; Ingrid Burke; Steven Hamburg; Duncan Patten; Amanda Rodewald; James Sanders; William Schlesinger; and Jeanne VanBriesen.

Many of the Work Group members listened to the August 20 and 21, 2014 panel teleconferences. The Work Group considered the information provided by the agency at those teleconferences, the written comments provided by the *ad hoc* panel members, and the panel chair's summary memorandum. The Work Group then developed the draft letter in Attachment A. When the draft letter is approved and finalized, the letter to the Administrator would enclose the panel chair's summary memorandum (Attachment B).

Attachments

Attachment A: Draft letter to the Administrator for SAB Consideration

Attachment B: Memorandum from the Chair of the SAB Connectivity Panel transmitting comments on the adequacy of the scientific and technical basis of the proposed rule titled "Definition of 'Waters of the United States' under the Clean Water Act"