

McCaleb, Iris

From: Birdshill CPO/NA <birdshill.cpo.na@gmail.com>
Sent: Monday, September 14, 2015 1:45 PM
To: randyarthur7@gmail.com; McCaleb, Iris; Birdshill CPO/NA; Simpson, Anne-Marie
Cc: Charles Ormsby; BBRD00100a_MARKS_Christopher Marks
Subject: TSTM LU 15-0019 Rqst Recall of 2015 TMDL Plan
Attachments: HOG#1 FINAL 20150728 April 27 Peabody Memo.pdf; EPA-HQ-OW-2011-0880 City of Lake Oswego 111314.pdf

Birdshill CPO / NA Co-Chair 2015-2016
Charles Ormsby (Skip) submits testimony on LU 15-0019 and relations to Clean Water Rule (CWR aka Waters of the US / WOTUS / WOUS / WU), LiDAR, and GIS repositories. Combination of the above policies, plans and technologies represents a “Clear and Present Danger” to private property rights along with home values in LO and likely imposition of costly fees – shortly. Policies will likely be enforced by capricious interpretation of regulations with substantial fines for perceived violations and system development charges with minimal environmental benefit. Please read ABSTRACTS A1 and A2 below. Please See LO Mayor letter opposed to WOTUS. Please consider Q1 and respond. Details of testimony with multiple requests for immediate action(s) and links to pertinent documents provided below.

2015 Sep 14 Monday 13:40 U [1:40 PM PT]

Charles B. Ormsby (Skip)
Co-Chair Birdshill CPO / NA 2015 – 2016
A joint Clackamas County Community Planning Organization (CPO) and City of Lake Oswego Oregon Neighborhood Association (NA)
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E-mail: birdshillcpona@gmail.com

Randy Arthur
Chair 2015 – 2016
John LaMotte, Vice Chair 2015 – 2016
Adrienne Brockman
Ed Brockman
Bill Gaar
Robert Heape
Bill Ward

Members of 2015 - 2016

Lake Oswego Planning Commission (LOPC, 2015 – 2016)

Also

Lake Oswego Committee for Citizen Involvement

Care of Iris McCaleb, Administrative Aide for (LOPC)

City Hall, 380 A Avenue Lev 3 4th St / “A” Avenue SE

PO Box 369 Thms_gde PDXC / 0656 / F6

Lake Oswego OR 97034-0369

Google Earth: [45 25'10.42"N, 122°40'3.18"W](#)

Ph: 503.697.6591, Fax: 503.635.0269

Wb: http://www.ci.oswego.or.us/boc_pc

Em: randyarthur7@gmail.com

Em: irmccaleb@ci.oswego.or.us (for the record)

1.0 Disposition

1.1 Forward as you see fit

1.1.1 AGND = Agenda document

1.1.2 AGIN = Interactive Agenda document (links to meeting video)

1.2 Record as testimony for LO Planning Commission (LOPC)

aka Lake Oswego Committee for Citizen Involvement

Meeting: 2015 Sep 14 Monday

Link: [LOPC 2015 Sep 14 Mon 18:30 U \(6:30 PM PT\)](#)

Agenda Item by Interactive Agenda (AGIN)

Link: [AGIN LOPC 2015 Sep 14 Mon 18:30 U](#)

7.0 – LU 15-0019

1.3 Record as testimony for LO City Council Meeting

Meeting: 2015 Sep 15 Tuesday

Link: [LOCC 2015 Sep 15 Tue 18:30 U \(6:30 PM PT\)](#)

Agenda Item by Interactive Agenda (AGIN)

Link: [AGIN LOCC 2015 Sep 15 Tue 18:30 U](#)

7.0 – Citizen Comment

1.4 Record as testimony for Case file:

LU 15-0019: Natural Resources Program and Sensitive Lands Revisions

Link: [LU 15-0019](#) - Natural Resources Program and Sensitive Lands Revisions

Distribution over time

Lake Oswego City Council 2015-2016

Birdshill CPO / NA Board

Lake Oswego Chairs

Many other affected parties in LO UGMA

Posting to Birdshill webpage to be determined.

Subject: TSTM LU 15-0019 Rqst Recall of 2015 TMDL Plan

Where:

TSTM = Testimony

Rqst = Request

[LU 15-0019](#) = Natural Resources Program and Sensitive Lands Revisions

[2015 TMDL Plan](#) = [TMDL Implementation Plan 2015-2020](#)

[LOEN](#) Page: [Surface Water – Permits Plans and Reports](#)

TMDL = Total Maximum Daily Load

BH / BHCN = Birdshill CPO / NA

LO = Lake Oswego (City of)

Good Afternoon:

Substantial sums of personal family money associated with Lake Oswego home values along with potential rapidly escalating stormwater fees, fines for violation of “regulations”, and fees for playing sports amongst many other undiscovered

and unenumerated items are at stake by [LU 15-0019](#):
Natural Resources Program and Sensitive Lands Revisions.

[LU 15-0019](#) is now by Lake Oswego Engineering Division (LOEN) choices fundamentally dependent upon compliance conditions associated by references to United States Environmental Protection Agency (USEPA / EPA) documents and regulations labeled: Clean Water Rule (CWR) ([CWR_docs_epa](#)). The documents and regulations were previously labeled: “Waters of the United States” (WOTUS / WOUS / WU).

I expect members of the Lake Oswego Planning Commission (LOPC 2015-2016) members to **READ** abstracts A1 and A2 below from attached and cross referenced US Army Corps of Engineers (USACE) memoranda. Regarding the validity of both science and legality about CWR / WOTUS regulations. These memoranda surfaced at the end of 2015 July after the rushed [intentional(?)] submitted – in the name of schedule compliance, of the [2015 TMDL Plan](#); which is now the foundational regulatory underpinnings of [LU 15-0019](#).

The “work” of [2015 TMDL Plan](#) submittal to the Oregon Department of Environmental of Quality ([ODEQ](#)) circa 2015 Jun 30 Tuesday by combined actions of Lake Oswego Engineering Division ([LOEN](#)) and LO City Manager ([LOCM](#)) Scott Lazenby thwarted effective and complete citizen review and supporting document disclosure of the plan implications to residents in Lake Oswego and regulated environs including the Birdshill CPO / NA.

Citizen involvement in development of [2015 TMDL Plan](#) was severely curtailed through:

1. Capricious LO City Manager decision(s) supported by staff consultation and NO public discussion before LOPC and LOCC that resulted in revisions to TMDL metric compliance with regulations being declared an UPDATE of existing (2004) documents rather than a NEW release. Reference to evolving USEPA CWR / WOTUS regulations should have been sufficient justification to declare the LO TMDL plan document new rather than just an update.
2. Failure to establish a case file identifier by either a LU (Land Use) or PP (Planning Project) designation and associated webpage for collecting documents and enabling complete transparent public review.
3. Failure to contest ODEQ denial of extension of time to prepare Lake Oswego TMDL plan which ultimately utilized new technologies of LiDAR combined with undisclosed GIS layers through undisclosed and likely unvalidated programs that synthesized data patterns for justification of rules related to LU 15-0019 Sensitive Lands and likely forthcoming revisions to Tree Code.

Please also note I personally requested and ultimately publicly begged for a pannel discussion to be held on WOTUS / CWR. For details that are evolving as I collect and post documents please consider the following:

Visit: [BH Rqst Gov WOUS Smry 2014 - 2015](#)

Visit: [2015 Jun DG TMDL Codify Rept](#)

SEE: 2014 LO-USEPA WOUS Opposed

See AT02

Page: [2015 Jun DG TMDL Codify Rept](#), Item 2.5

Site: [2015 Jun BH Digest](#)

SEE: [2014 CC-USEPA WOUS Opposed](#)

Page: [2015 Jun DG TMDL Codify Rept](#), Item 2.4

Site: [2015 Jun BH Digest](#)

The abstracts of US Army Corps of Engineers (USACE) documents that shread the validity of the US include (PLEASE READ):

A1 – Abstract 01

“The rule's contradictions with legal principles genernate multiple leagal and technical consequences that, in the view of the Corps would be fatal to the rule in its current form.”

Source of Abstract 01

AT01: Draft final Rule on Definition of "Waters of the United States"

Page 1 of 2, paragraph 1, last sentence.

or see the same at:

See: [ZX6 2015 May 15 Fr Memo USACE MGen Peabody](#)

Item 1.6 Posted to: [2015 Jul DG HOGGR Docs](#)

Visit BH webpage: [2015 Jun DG TMDL Codify Rept](#)

A2 – Abstract 02

“In conclusion, it should be made clear by EPA within each document the sections or subject matter areas for which the Corps provided data, but the documents should not be characterized as anything other than analyses performed solely by the EPA. The Corps should not be identified as an author, co-author or substantive contributor to either document. Additionally, all references to the "agencies" in the documents should be removed as well as references to conclusions drawn based on the agencies' "experience and expertise.”

Source of Abstract 02

CR01: Economic Analysis and Technical Support Document

(Concerning the Draft Final Rule on Definition of "Waters of the United States"

Page 7 of 7, paragraph 26.

See: [ZX7 2015 May 15 Fr Memo USACE Chief Moyer](#)

Item 1.7 Posted to: [2015 Jul DG HOGGR Docs](#)

Visit BH webpage: [2015 Jun DG TMDL Codify Rept](#)

Q1 – Question 01

Q1 – Bluntly – Please answer the following question by a response in writing for the record of [LU 15-0019](#) and to this email and oral responses by each member of the LOPC after I give testimony on 2015 Sep 14 Monday under agenda item 7..

If the USACE can withdraw any references to itself by

the USEPA in the set of CWR / WOTUS regulations; after their publication in the Federal Register, then why cannot the City of Lake Oswego, through action of Mayor, LO City Council, LO Planning Commission, LO City Manager and LO city staff remove and all references and linkages to demonstrated defective USEPA documents and regulations of CWR / WOTUS, in City of Lake Oswego plans and policies **immediately?**

Please do not give the lame excuse “Its the law of the land.”
CWR / WOTUS is being challenged in Court by thirteen states.
See: [2015 Sep NLRV Court Enjoins CWR](#)
Where NLRV = National Law Review

State of Oregon and multiple jurisdictions including but not limited to Metro, Clackamas County, and City of Lake Oswego did not include themselves in the suits ... YET. Because of self censorship in the local press and obfuscation by multiple self interested parties following their own agendas for power and domination over homeowners in suburban single family dwelling units ie “homes”. This was attempted before circa 2004 October and averted.
See: [2004 Oct OREG Ed Metro disaster averted](#)

The LOPC and public would have known these facts about the CWR / WOTUS nearly two months ago, if the Lake Oswego Stormwater Quality Program Coordinator (SQPC) had cared to inform the LOPC, LOCC and LOCM. Rather than obfuscate its existence to the tax and fee paying public in deference to time spent following her own personal agenda for likely future profit from consulting contracts or potential change of employers.
See: [Rivergrove Environmental Consulting \(About Us\)](#)

I expect following my testimony on 2015 Sep 14 Monday to the Lake Oswego Planning Commission (LOPC, 2015 – 2016), [LOPC 2015 Sep 14 Mon 18:30 U \(6:30 PM PT\)](#) the members to immediately act upon and fulfill the following requests.

- R1. Request recall (or what ever is appropriate legal action verb) the [2015 TMDL Plan](#) from codification processes by the Oregon Department of Environmental Quality (ODEQ).
- R2. Commence an investigation of conflicts of interests associated with compliance in ALL of the following:
 - R2.1. Aspects of complying with regulations,
 - R2.2. Drafting of plans based upon regulations,
 - R2.3. Linkages of policies to plans and regulations.
- R3. Stop / Suspend ALL actions on [LU 15-0019](#), until at least items R1 and R2 are completed.
- R4. Create a case file for evolution of 2015 TMDL Plan.
 - R4.1. Post all documents to that webpage as is done for most other planning endeavors the LOPC presides over. This negates hiding of documents and need for Freedom of

Information Act (FOIA) requests. It also helps with developing transparency which City of Lake Oswego ignores with most LOEN projects.

R5. Create a case file for evolution of LiDAR dataset acquisition.

R6. Review all policies with respect to application of any and evolving technologies of remote sensing.

R7. Establish, conditions, rules, boundaries and limitations for use and application of remote sensing technologies PRIOR to time in the immediate future when fines will likely be assessed and police actions for enforcement initiated by out of control regulators and power craving dominators in the City of Lake Oswego.

Consider a public review of actions leading to dispatch of LO Police to residence of Gary Buford circa 2011.

R8. Establish a corrective action program to track multiple aspects of citizen complaints in regards to issues of public process involvement and exclusion, Land Use (density increases), Infrastructure (Water, Sewer and Storm Water management), Transportation (be sure to include other critical modes of vehicle and trains rather than the mode du jour – bicycles). Along with resultant actions of resolution that are satisfactory to complainant.

In summary with respect to CWR / WOTUS (the rule), [2015 TMDL Plan](#), and [LU 15-0019](#).

S1. [Ditch the rule](#).

See: [2015 May BHCN WOTUS Rslt](#)

Page: [2015 Feb 2014.21 Exec Sm](#)

Site: [2015 Feb BH Mtng 2014.21](#)

S2. Ditch ALL LO plans based on the rule.

S3. Ditch ALL LO policies linked to the rule and plans.

S4. Scrap the current approach of [LOEN](#) to evolution of policies related to [LU 15-0019](#) because the foundation regulations it is dependent upon for justification in the name of compliance are the demonstrably defective USEPA CWR / WOTUS documents and enabling regulations.

S4. Investigate conflicts of interests with respect to evolution of regulation compliance by plans and polices and associated authors and consultants.

S5. Establish rules, boundaries, limitations and conditions for technologies, and processes associated with ALL remote sensing capabilities utilized by City of Lake Oswego including but not limited to LiDAR interwoven with datasets in Geographical Information Systems (GIS) repositories and any and all report generating application programs used to analyze, compare, contrast and make inferences.

I along with the residents of the Birdshill CPO / NA desire to see specified as in an ASME pressure vessel calculation for any program the Given(s), Requirement(s), Assumption(s) along with a proof of calculation. Not to forget any and all program identifiers including but not limited to program title, date of creation, date of revision, serial number, source,

and product identifier(s). See resources 3.0 below

See: [Require Basic Issue Itemization](#)

RSLT: [BH RSLT 2014.21.14.16](#)

GIST: For any project or endeavor specify a simple diagram, and produce itemized lists of givens, requirements and assumptions that may be easily referenced in a proof of calculation. Refer to ASME Boiler code as template.

Site: [BH Resolutions 2014-2015](#)

Note: Gist format only – Page and Resolution Pack being compiled

S6. Reveal all Common Action Processes by creation of either Land Use or Planning Project (PP) case file designators for previously requested

See: [2015 May CAT and Process Chart](#)

Page: [2015 May DG SLO Revisions](#)

Site: [2014 May BH Digest](#)

I look forward to the Lake Oswego Planning Commission (LOPC, 2015-2016) acting upon and full filling the above requests immediately.

Please send the requested documents in PDF file format to Birdshill CPO / NA at the following e-mail.

birdshillepona@gmail.com

Questions please call 503.636.4483.

Thanks

Skip

Charles B. Ormsby (Skip)

Birdshill CPO / NA, Co-Chair 2015 – 2016

A Joint Clackamas County Community Planning Organization

City of Lake Oswego Oregon Neighborhood Association (NA)

Locale Centroid GMap: [45°25'46.48"N, 122°39'40.02"W](#)

Clackamas County & Lake Oswego UGMA

170 SW Birdshill Road

Portland Oregon 97219-8502

Phn: 503.636.4483 Residence

E-mail: birdshillepona@gmail.com

Web: <http://birdshillepona.shutterfly.com/> (Not Open Yet)

2.0 – Resources:

2.1 EPA document page on Waters of the US (WOUS)

now known as Clean Water Rule (CWR)

[WOUS Docs](#) or [CWR Docs](#)

2.2. Birdshill CPO / NA Sheet Information Summary on Waters of the US

2.2.1. [2014.01](#) – Birdshill CPO / NA (BHCN) webpage on Waters of the US

2.2.2. [2014 Apr - 2014x01 Waters of US 01](#) – Sheet Information Summary (SHIS)

, 2 pages.

2.2.3 [2014 May Press Kit Waters of US 01](#) – Press Kit, 1 page

3.0. LiDAR

3.0.1 [LiDAR wkpd](#)

3.0.1 [2014 Jul OREG LiDAR Project](#)

3.0.2 [2014 May MTRO LiDAR Collaboration](#)

3.0.3 [2015 Feb PMTX LiDAR and Canopy](#)

3.0.3.1 [2015 Jun DG TMDL Time Chart](#) Site: [2015 Jun BH Digest](#)

4.0. GIS – Geographical Information System(s) / Repositories.

4.0.1 [GIS_wkpd](#)

4.0.2 [GIS_esri](#) (ESRI – primary vendor of GIS mapping systems)

4.0.3 [GIS_gsch](#)

4.0.4 [GIS_imag](#)

4.0.5 [2014 May FXNW Policing for Profit](#)

3. 0 – Attached Documents (ATnn) Two (2) total:

AT01

Title: Draft final Rule on Definition of "Waters of the United States"
Link: [ZX7 2015 May 15 Fr Memo USACE Chief Moyer](#)
Date: 2015 Apr 27 Monday 17:00 R (BH time designation – close of business)
File HOG: HOG #1 FINAL 20150728 April 27 Peabody Memo.pdf
Size: 69 kb, Page(s): 2
Page BH: [2015 Jul DG HOG Docs](#), within site: [2015 Jul BH Digest](#)

AT02

Title: Proposed Rule on "Definition of 'Waters of the United States'
Under the Clean Water Act, " Docket No. EPA-HQ-OW-2011-0880;
Submitted electronically to ow-docket@epa.gov
Link: [2014 LO-USEPA WOUS Opposed](#)
Date: 2014 Nov 12 Wednesday 17:00 U (BH time designation – close of business)
File LOMY: EPA-HQ-OW-2011-0880 City of Lake Oswego 111314.pdf
Size: 185 kb, Page(s): 2
Page BH: [2015 Jun DG TMDL Codify Rept](#), within site: [2015 Jun BH Digest](#)

4. 0 – Cross Referenced Documents (CRnn) Numerous: See links above



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF

CECW-CEO

27 April, 2015

MEMORANDUM FOR Assistant Secretary of the Army for Civil Works

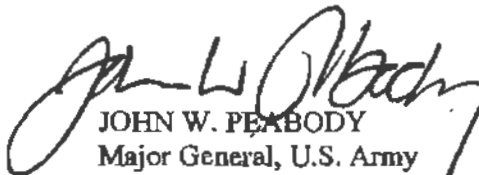
SUBJECT: Draft Final Rule on Definition of "Waters of the United States"

1. As we have discussed throughout the rule-making process for "Waters of the United States" over the last several months, the Corps of Engineers has serious concerns about certain aspects of the draft final rule. On 3 April 2015, the Environmental Protection Agency delivered the draft final rule to the Office of Management and Budget to initiate the inter-agency review process by our federal partners. Once we obtained a copy of the draft final rule, I asked USACE legal and regulatory staff to review it to ascertain the extent to which Corps' concerns had been incorporated, and to conduct an analysis of the legal and technical impacts of its language. That just-completed review reveals that the draft final rule continues to depart significantly from the version provided for public comment, and that the Corps' recommendations related to our most serious concerns have gone unaddressed. Specifically, the current draft final rule contradicts long-standing and well-established legal principles underlying Clean Water Act (CWA) Section 404 regulations and regulatory practices, especially the decisive *Rapanos* Supreme Court decision. The rule's contradictions with legal principles generate multiple legal and technical consequences that, in the view of the Corps, would be fatal to the rule in its current form.

2. The preamble to the proposed rule and the draft preamble to the draft final rule state that the rulemaking has been a joint endeavor of the EPA and the Corps and that both agencies have jointly made significant findings, reached important conclusions, and stand behind the final rule. Those statements are not accurate with respect to the draft final rule, as the process followed to develop it greatly limited Corps input -- a practice that has continued thus far in the inter-agency review process. Within these circumstances however, I believe that the Corps has done all that it could do to assist and support the rulemaking. The critical fact remains that the most important concerns regarding the defensibility and implementability of the draft final rule remain unaddressed, although we continue to believe, as we have previously explained, that a relatively few simple "fixes" that the Corps has offered would resolve the problems with the draft final rule.

3. The analysis of and concerns with the draft final rule developed by the Corps professional staff are respectfully forwarded for your consideration. I have reviewed all of the attached documents and have concluded that unless the draft final rule is changed to adopt the Corps' proposed "fixes," or some reasonably close variant of them, then under the National Environmental Policy Act, the Corps would need to prepare an Environmental Impact Statement (EIS) to address the significant adverse effects on the human environment that would result from the adoption of the rule in its current form. Thank you for your consideration of the Corps' serious concerns and recommendations on this issue.

Building Strong!


JOHN W. PEABODY
Major General, U.S. Army
Deputy Commanding General

for Civil and Emergency Operations



Table of Contents

Tab 1: Legal Analysis of Draft Final Rule on Definition of “Waters of the U.S.”

Tab 2: Technical Analysis of Draft Final Rule on Definition of “Waters of the U.S.”

Tab 3: Appendix A of Technical Analysis (Representative Examples)

Tab 4: Appendix B of Technical Analysis (Implementation Challenges)

**House Oversight and Govt Reform
For Committee Use Only
Litigation Sensitive**



November 12, 2014

Donna Downing
Jurisdiction Team Leader, Wetlands Division
Water Docket, Room 2822T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Stacey Jensen
Regulatory Community of Practice
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314

RE: Proposed Rule on "Definition of 'Waters of the United States' Under the Clean Water Act, "
Docket No. EPA-HQ-OW-2011-0880; Submitted electronically to ow-docket@epa.gov

Dear Ms. Downing and Ms. Jensen:

The City of Lake Oswego, Oregon appreciates the opportunity to submit comments regarding the U.S. Environmental Protection Agency's (EPA) and U.S. Army Corps of Engineers' (USACE) proposed rule defining "Waters of the United States" under the Clean Water Act (CWA). The City respectfully opposes adoption of the proposed new rule.

We are concerned that the rule will expand the scope of CWA jurisdiction, and will result in more waters becoming protected and subject to new rules or standards, increasing the regulatory burden on the City and other local jurisdictions.

The proposed rule will potentially increase the number of ditches that are subject to federal regulation, causing the relating permitting processes to become time-consuming and expensive.

Definitions of a number of terms in the proposed rule, including tributary, neighboring waters, riparian areas and flood plains, are not clear and could lead to litigation.

The proposed rule fails to categorically exclude MS-4 activities and facilities from the definition of "waters of the United States." Adequate regulatory oversight already exists for these discharges, which are subject to NPDES permits.

We also understand that that the Environmental Protection Agency and the U.S. Army Corps of Engineers have acknowledged that there may be flaws in the data and assumptions used as bases for the 2013 economic analysis of the proposed rule change. It is extremely important that the potential costs to local governments be clearly understood before any such rule change is proposed or considered.

For all of these reasons, the City of Lake Oswego urges that the proposed rule not be adopted.

Sincerely,

A handwritten signature in cursive script that reads "Kent Studebaker".

Kent Studebaker, Mayor