

RESOLUTION

Kittson County Board of Commissioners
Hallock, Minnesota 56728

Date April 15, 2014 Resolution No. #14-11
Motion by Commissioner Spilde Seconded by Commissioner Olson

OPPOSITION TO NEW EPA REGULATIONS

WHEREAS, Kittson County, Minnesota has experienced long term and costly delays to its road construction projects and also to private projects located in this county due to the EPA and Army Corps definitions for "Waters of the U.S.

WHEREAS, the U.S. Supreme court has stated that an applicant spends an average of 788 days of time and \$271,596 to obtain an individual 404 U.S. Corps permit. The Supreme Court chastised these agencies in the 2001 SWANCC case and the 2006 Rapanos case for regulatory overreaching and these agencies have refused to adapt to the push back they continue to receive from taxpaying landowners.

WHEREAS, these agencies are currently using interpretive guidelines established by the EPA in 2011 and these guidelines do not grant them final authority.

WHEREAS, the EPA now wishes to adopt new regulations which will indeed grant them final authority in matters dealing with waters of the U.S. and will include regulation of man-made ditches, public drains, tributaries, adjacent & neighboring wetlands, ecoregion, significant nexus, surface connection, ground water connection, discharge and possibly much more. Regulation of these latter items has currently resulted in high levels of confusion, delays and increased permitting costs for the applicants. It has also allowed the EPA and the Corps to far exceed their applicable regulatory, statutory and constitutional limits. In addition, this regulation is redundant to State wetland regulations that are already in place and mitigate wetland impacts from a prepaid wetland bank of credits for road projects.

NOW, THEREFORE, BE IT RESOLVED That Kittson County, Minnesota hereby opposes the new EPA proposed regulations that would replace the 2011 interpretive guidelines they are currently following concerning the Clean Waters Act definition for "Waters of the United States".

BE IT ALSO RESOLVED That Kittson County, Minnesota will support EPA and Corps regulation of traditional navigable waters only.

VOTING AYE

Commissioners Spilde __x__ Anderson __x__ Bouvette __x__ Olson __x__ Younggren __x__

VOTING NAY

Commissioners Spilde _____ Anderson _____ Bouvette _____ Olson _____ Younggren _____

ABSTAINING

Commissioners Spilde _____ Anderson _____ Bouvette _____ Olson _____ Younggren _____

State of Minnesota
County of Kittson

I, Eric Christensen, County Administrator for the County of Kittson, State of Minnesota, do hereby certify that the foregoing resolution is a true and correct copy of a resolution duly passed at a meeting of the Kittson County Board of Commissioners held on the 15th day of April, 2014.

Witness my hand and official seal at Hallock, Minnesota the 17th day of April, 20 14.

(Seal)

Eric Christensen, Debra Costin, Deputy
Eric Christensen, Kittson County Administrator
Debra Costin, Deputy

by Mr. Sprague
and Ms. Edstrom, Mr. Edwards, Mr. Felton, Mr. Klancer, Mr. Marsh, Mr. McElfresh,
Mr. Snyder, Sr., Mr. Snyder, Jr., Mrs. Stockman, Mr. Teachman, Mr. VanRensselaer,
Ms. Vickman, Mr. Weller, Mr. Boser, Mr. Koch, Mrs. Labuhn, Mr. Lamberson and Mr. Padlo

OPPOSING EXPANSION OF FEDERAL CONTROL UNDER CLEAN WATER ACT

Pursuant to Section 153 of the County Law.


- I. WHEREAS, the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have released a 371 page draft regulation for Definition of Waters of the U.S. under the Clean Water Act, and
- II. WHEREAS, both agencies are seeking a rule change to give the federal government more authority by expanding the definition of "navigable waters" in the Clean Water Act, and
- III. WHEREAS, the rule change proposed by the EPA and the Corps would subject almost all physical areas with a connection to downstream navigable waters, including features such as ditches, natural or man-made ponds, and flood plains, to the jurisdiction of the Clean Water Act, and
- IV. WHEREAS, the proposed rule change, if adopted, will cause significant harm to local farmers, stall the development of businesses, take control of land use for sustainable food production out of our local providers' hands, and negatively impact County-owned and maintained infrastructure such as roadside ditches and flood-control channels, and
- V. WHEREAS, the cost to our farms, municipalities and taxpayers will be enormous, and
- VI. WHEREAS, the New York Farm Bureau opposes the proposed rule change, and
- VII. WHEREAS, it is impractical for the federal government to regulate every ditch, pond and rain puddle that may have some tenuous connection, miles away, to a body of water currently defined as "navigable", now, therefore, be it
- I. RESOLVED, that the Cattaraugus County Legislature hereby strongly opposes the EPA and Corps expansion of the Clean Water Act, as proposed, and be it further
- II. RESOLVED, that the Clerk of the Legislature is hereby directed to forward a certified copy of this resolution to Governor Cuomo, the Environmental Protection Agency, the Army Corps of Engineers, the National Association of Counties, Senator Young, Assembly Member Giglio, the New York State Association of Counties, and the Western New York Inter-County Association.

STATE OF NEW YORK)
COUNTY OF CATTARAUGUS)

I, Lori A. Pangborn, Deputy Clerk of the Legislature of the County of Cattaraugus, New York, do hereby certify that I have compared the foregoing resolution with the original thereof on file in my office and duly adopted by said Legislature at a meeting of said Legislature on the 23rd day of April, 2014, and that the same is a true and correct copy of such resolution and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County this 29th day of April, 2014.




Deputy Clerk Cattaraugus County Legislature

Motion by Supervisor _____ and seconded by
Supervisor _____ to approve the following
Resolution:

RESOLUTION 2014-0052

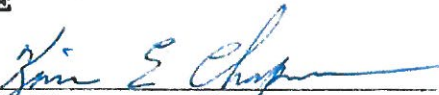
WHEREAS, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) are seeking to extend control over additional 'Waters of the United States'; and

WHEREAS, the agencies have expanded their authority under the Clean Water Act to implement an onerous permit system that has forced delays as well as caused unnecessary additional expense to projects on the local level; and

WHEREAS, the U.S. Supreme Court previously reprimanded the agencies for over-reaching their authority and Congress has recently documented concern with this effort to re-define ~~the~~ scope of federal power under the Clean Water Act;

NOW THEREFORE BE IT RESOLVED that the Dallas County Board of Supervisors opposes additional regulations that have been proposed by EPA to re-define the current definition as well as implement additional enforcement with respect to the Clean Waters Act and the Waters of the United States.

AYE



Kim Chapman, Chairman



Brad Golightly, Member



Mark A. Hanson, Member


NAY

Kim Chapman, Chairman

Brad Golightly, Member

Mark A. Hanson, Member

Dated this 13th day of May, 2014

ATTEST: 

Gene Krumm, Dallas County Auditor

RESOLUTION NO. 14-208
(May 13, 2014)

By Mr. Berwanger, Chairman of the Committee of the Whole:

OPPOSING EXPANSION OF FEDERAL CONTROL UNDER CLEAN WATER ACT

WHEREAS, The U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have released a 371 page draft regulation for Definition of Waters of the U. S. under the Clean Water Act; and

WHEREAS, Both agencies are seeking a rule change to give the federal government more authority by expanding the definition of "navigable waters" in the Clean Water Act; and

WHEREAS, The rule change proposed by the EPA and the Corps would subject almost all physical areas with a connection to downstream navigable waters, including features such as ditches, natural or man-made ponds, and flood plains, to the jurisdiction of the Clean Water Act; and

WHEREAS, The proposed rule change, if adopted, will cause significant harm to local farmers, stall the development of businesses, take control of land use for sustainable food production out of our local providers' hands, and negatively impact County-owned and maintained infrastructure such as roadside ditches and flood-control channels; and

WHEREAS, The cost to our farms, municipalities and taxpayers will be enormous; and

WHEREAS, The New York Farm Bureau opposes the proposed rule change; and

WHEREAS, It is impractical for the federal government to regulate every ditch, pond and rain puddle that may have some tenuous connection, miles away, to a body of water currently defined as "navigable;" now therefore

BE IT RESOLVED, That the Wyoming County Board of Supervisors hereby strongly opposes the EPA and Corps expansion of the Clean Water Act, as proposed; and be it

FURTHER RESOLVED, That the Clerk of this Board is hereby directed to forward a certified copy of this resolution to Governor Cuomo, the Environmental Protection Agency, the Army Corps of Engineers, U.S. Senators Charles Schumer and Kirsten Gilliland, Congressman Chris Collins, the New York State Association of Counties and the Inter County Association of Western New York.

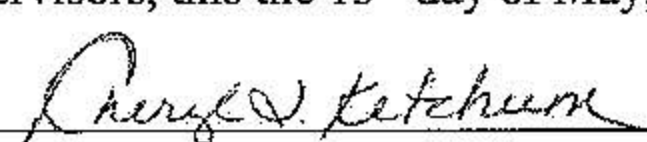
Carried: XXX Ayes: 1599 Noes: Absent: Abstain:

WYOMING COUNTY]
 BOARD OF SUPERVISORS]
 Warsaw, N.Y.]



This is to Certify, that I, the undersigned Clerk to the Board of Supervisors of the County of Wyoming, have compared the foregoing copy of resolution with the original resolution now on file in the office and which was passed by the Board of Supervisors of the said County, on the 13th day of May, 2014, a majority of all the members elected to the Board voted in favor thereof, and that the same is correct and true of such original resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the Board of Supervisors, this the 13th day of May, 2014.


 Clerk to the Board of Supervisors



LEE R. KELLY
County Coordinator

COUNTY OF WRIGHT

10 2nd Street NW, RM 235
Buffalo, Minnesota 55313-1188
www.co.wright.mn.us

Tel: (763) 682-7378
1-800-362-3667
Fax: (763) 682-6178

COMMISSIONERS

CHRISTINE HUSOM

First District

PAT SAWATZKE

Second District

MARK DALEIDEN

Third District

MICHAEL POTTER

Fourth District

CHARLIE BORRELL

Fifth District

June 18, 2014

Water Docket
Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, NW
Washington DC 20460

Attn: Docket ID No. EPA-HQ-OW-2011-0880

The Wright County Board of Commissioners, representing a population of 127,336 constituents, unanimously voted to adopt Resolution #14-42 opposing the EPA's and Army Corp of Engineer's proposed change to the definition of the Waters of the U.S. under the Clean Water Act. A copy of the Resolution is attached.

Sincerely,

Christine Husom
Wright County Board Chair

srb

Enclosure

BOARD OF COUNTY COMMISSIONERS
WRIGHT COUNTY, MINNESOTA

Date June 17, 2014
Motion by Commissioner Borrell

Resolution No. 14-42
Seconded by Commissioner Daleiden

RESOLUTION

OPPOSITION TO NEW EPA REGULATIONS

(see attached)

	YES
HUSOM	<u>X</u>
SAWATZKE	<u>X</u>
DALEIDEN	<u>X</u>
POTTER	<u>Absent</u>
BORRELL	<u>X</u>

	NO
HUSOM	<u> </u>
SAWATZKE	<u> </u>
DALEIDEN	<u> </u>
POTTER	<u> </u>
BORRELL	<u> </u>

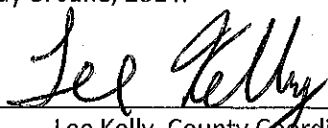
STATE OF MINNESOTA)

ss.

County of Wright)

I, Lee Kelly, duly appointed, qualified, and acting Clerk to the County Board for the County of Wright, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution or motion with the original minutes of the proceedings of the Board of County Commissioners, Wright County, Minnesota, at their session held on the 17th day of June, 2014 on file in my office, and have found the same to be true and correct copy thereof.

Witness my hand and official seal at Buffalo, Minnesota, this 17th day of June, 2014.



Lee Kelly, County Coordinator

RESOLUTION 14-42

WHEREAS, the U.S. Supreme Court has stated that an applicant spends an average of 788 days of time and \$271,596 to obtain an individual 404 U.S. Army Corps permit. The Supreme Court chastised the EPA and the Army Corps in the 2001 SWANCC case and the 2006 Rapanos case for regulatory overreaching and these agencies have refused to adapt to the push back they continue to receive from taxpaying landowners.

WHEREAS, Wright County Minnesota has experienced long term and costly delays to its road construction projects and also to private projects located in this county due to the EPA and the Army Corps definitions for "Waters of the U.S."

WHEREAS, the Wright County Board of Commissioners serves as the drainage authority for the County Ditches in Wright County and the Board believes that the EPA and the Army Corps are attempting to expand their regulatory authority beyond the scope originally intended by Congress and ruled on by the Courts.

WHEREAS, these agencies currently do not have final authority regarding all Waters of the United States.

WHEREAS, the EPA and Army Corps now wishes to adopt new regulations which will indeed grant them final authority in almost all matters dealing with waters of the U.S. and will include regulation of manmade ditches, public drains, tributaries, adjacent & neighboring wetlands, ecoregion, significant nexus, surface connection, ground water connection, discharge and possibly much more. Regulation of these latter items has currently resulted in high levels of confusion, delays and increased permitting costs for the applicants. It has also allowed the EPA and the Army Corps to far exceed their applicable regulatory, statutory and constitutional limits. In addition, this regulation is redundant to State wetland regulations that are already in place and mitigate wetland impacts from a prepaid wetland bank of credits.

NOW, THEREFORE, BE IT RESOLVED that Wright County, Minnesota hereby opposes the new EPA proposed regulations that would expand the Clean Waters Act definition for "Waters of the United States."

BE IT ALSO RESOLVED that Wright County, Minnesota will support EPA and Corps regulation of traditional navigable waters only.

BE IT ALSO RESOLVED that Wright County Board of Commissioners encourages private citizens and public entities including the Wright Soil and Water Board to write letters and draft resolutions in opposition to this proposed EPA regulation.

RESOLUTION NO. 2014-069

A RESOLUTION SETTING FORTH THE BOARD OF SUPERVISOR COMMENT ON THE PROPOSED DEFINITION OF "WATERS OF THE UNITED STATES", AS PROPOSED BY THE DEPARTMENT OF DEFENSE, U.S. ARMY CORPS OF ENGINEERS AND THE ENVIRONMENTAL PROTECTION AGENCY AND AS PUBLISHED IN THE FEDERAL REGISTER, VOLUME 79, NO. 76, DATED APRIL 21, 2014.

WHEREAS, at the regular meeting of the Mohave County Board of Supervisors held on May 19, 2014, the Board of Supervisors considered the proposed rule changing the definition of "Waters of the United States", as published in the April 21, 2014, Federal Register, Volume 79, Number 76, and

WHEREAS, the proposed rule would modify existing regulations regarding which waters fall under federal jurisdiction through the Federal Water Pollution Control Act (Clean Water Act), which have been in place for twenty-five years, and

WHEREAS, the proposed rule aims to clarify issues raised in decision made by the United States Supreme Court, primarily *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* and *Rapanos v. United States*, that created uncertainty over the Clean Water Act's scope and its application, and

WHEREAS, the proposed rule could expand the scope of Clean Water Act, resulting in greater impacts on local governments, their citizens and businesses, and

WHEREAS, the proposed rule would apply to all programs under the Clean Water Act, not just Section 404 permits, including storm water, water reuse and green infrastructure, and

WHEREAS, the proposed rule potentially increases the number of man-made, county-owned ditches that come under federal jurisdiction as the rule would define the ditches as "waters of the United States" when certain conditions are met, and

WHEREAS, the proposed rule is contrary to the ruling of the United States Supreme Court in *Rapanos v. United States*, and

WHEREAS, the proposed rule appears to rely heavily on a minority opinion of the Court in *Rapanos v. United States*, by using the concept of "significant nexus" as justification and guidance, and

WHEREAS, the term "significant nexus" does not appear in the Clean Water Act and the concept was rejected by the Court's prevailing opinion, and

WHEREAS, the proposed rule appears to grant the agencies authorities not specifically granted to them by the Clean Water Act, and

WHEREAS, rules cannot expand an agency's jurisdiction beyond that authorized in the Act itself, as appears to be the situation, and

WHEREAS, the proposed rule appears to designate most areas in the Country as jurisdictional waters and designates the remainder of the Country as needing jurisdictional determinations on a "case by case" basis, and

WHEREAS, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* stated that use of "case by case" determinations should be the exception, not the rule, and

WHEREAS, broad use of the "case by case" determinations inserts needless uncertainty into the development process, and

WHEREAS, the scientific document that supports the rule is still under review and being vetted, making promulgating a rule based on the scientific document premature, and

WHEREAS, the proposed rule, should it become effective, will hamper beneficial development, increase cost of infrastructure construction and maintenance, and continue an unacceptable level of uncertainty in the permitting processes, and

WHEREAS, the Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* and *Rapanos v. United States* have complicated the administration of the Clean Water Act with regard to "Waters of the United States" and clarification is needed, and

WHEREAS, under the proposed rule, groundwater may be used in making determinations of a "significant nexus", which appears an overreach by the agencies, and

WHEREAS, groundwater systems are under the jurisdiction of the states and should not be broadly used in justifying a determination of jurisdictional water of the United States, and

WHEREAS, some issues with the Clean Water Act and are embedded in the methods which the agencies use to administer and enforce the Act and associated rules, and

WHEREAS, some government agencies and the U.S. Corps of Engineers appear to be relying on the proposed rule, prior to its approval,

NOW THEREFORE BE IT RESOLVED, by the Mohave County Board of Supervisors that the Board opposes the present wording in the proposed rule amending the definition of "Waters of the United States", and

BE IT FURTHER RESOLVED, that the Board of Supervisors recognizes the need for clarification in administration and interpretation, and therefore, provides the following comments on the proposed rule:

1. Since the scientific document supporting the proposed rule is still under review and has yet to be vetted, the Board of Supervisors believes that the review and comment period on this rule should be suspended until the scientific document has been vetted.
2. Application of the proposed rule would significantly delay development permitted, place an undue burden on developers, expose the County to potential liability and would impose an extra burden on maintaining the County's drainage infrastructure.
3. The Classification of all intermittent and ephemeral streams as tributaries is a significant expansion of the agencies' jurisdiction. It is not consistent with the prevailing opinion in *Rapanos v United States* which stated that while dry channels "could constitute waters of the United States, instances where irregular (not seasonal) ephemeral flows qualify as waters of the United States should be the exception rather than the rule."
4. The determination that a significant nexus exists by default in large regions of the country is not consistent with the guidance from the Court and creates a substantial increase in jurisdictional waters of the United States. The "case by case" reliance for the remainder of the Country is also not supported by the Court. The strategy that resulted in the excessive expansion of jurisdictional waters of the United States and the broad use of the "case by case" determinations should be abandoned and a strategy that is fully compliant with the direction from the Court developed as rule.
5. Including irregular ephemeral flows, playa lakes and internal drainage systems that do not directly connect to a water of the United States, or affect interstate or foreign commerce should be categorically considered non-jurisdictional.
6. Inclusion of clear guidelines limiting the consideration of groundwater in determining jurisdiction to those instances where the groundwater is directly an integral part of the system of a navigable waterway, and scientific evidence supporting that finding is published.
7. In administering any adopted rule associated with the "Waters of the United States", the Board of Supervisors has the following comments:
 - a. The permitting of any waters of the United States that are not navigable in the traditional sense, and that do not affect foreign or interstate commerce, should be delegated to state and local governments, following a similar model as other portions of the Clean Water Act, including Section 402.
 - b. The U.S. Army Corps of Engineers is not able to process permits in a timely fashion with the current workload. Emphasis needs to be placed on timely and efficient processing of permit. Increasing the jurisdictional water will exacerbate this problem.

- c. Wetlands mitigation banks are a primary tool used to offset impacts to the waters of the United States. Wetland banks are not common in the arid regions and are less likely to fall within the impacted watershed. Their use in arid regions is not appropriate as they do not provide mitigation. As a result, permitting is significantly delayed in arid regions and undue burden is placed on developers. If mitigation is necessary, the U.S. Army Corps of Engineers should rely on a more appropriate tool in arid regions.

ATTEST

Gunny Anderson
Clerk

Hildy Angius
Hildy Angius, Chairman



RESOLUTION 2014 – 45

(Opposing Expansion of Federal Control under the Clean Water Act)

WHEREAS, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers are seeking to extend control over additional Waters of the United States; and

WHEREAS, the agencies have expanded their authority under the Clean Water Act to implement an onerous permit system that has forced delays as well as caused unnecessary additional expense to projects on the local level; and

WHEREAS, the U.S. Supreme Court previously reprimanded the agencies for over-reaching their authority and Congress has recently documented concern with this effort to re-define the scope of federal power under the Clean Water Act;

NOW THEREFORE BE IT RESOLVED that the Skamania County Board of Commissioners opposes additional regulations that have been proposed by EPA to re-define the current definition, as well as implement additional enforcement, with respect to the Clean Water Act and the Waters of the United States.

APPROVED this 17th day of June 2014.

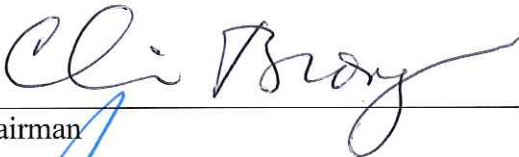


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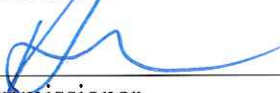


Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
SKAMANIA COUNTY, WASHINGTON**



Chairman



Commissioner



Commissioner

APPROVED AS TO FORM ONLY:



Prosecuting Attorney