



ANTRIM COUNTY
BOARD OF COMMISSIONERS
P.O. Box 520
Bellaire, Michigan 49615
Phone (231) 533-6353
Fax (231) 533-6935
Chairman: MICHAEL CRAWFORD

November 14, 2014

At the November 13, 2014 meeting of the Antrim County Board of Commissioners, the following Resolution was offered:

CLEAN WATER ACT PROPOSED RULE FOR DEFINITION OF WATERS OF THE U.S.

RESOLUTION #27-14 by Karen Bargy, seconded by Ed Boettcher

We, the LEGISLATIVE COMMITTEE, respectfully submit the following resolution for your consideration: supporting the Waters of the United States Regulatory Overreach Protection Act of 2014, H.R. 5078. By necessary public infrastructure projects' budgets and timelines.

The proposed rule that prompted the introduction of H.R. 5078 – Definition of Waters of the U.S. Under the Clean Water Act – was released by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) on April 21. This rule amends the definition of Waters of the U.S. within the Clean Water Act (CWA) and expands the range of waters (and their conveyances) that would fall under federal regulatory authority.

WHEREAS, "The cost of operations and maintenance for public infrastructure, such as existing flood damage-reduction systems, will also be increased and will take more time to accomplish than it should for an existing facility – potentially putting public safety at risk and increasing flood damages."

WHEREAS, federal officials will more control over how farmers, ranchers, manufactures, home builders, and local governments can use their property and subject it to new layers of costly reviews and permitting; and

WHEREAS, the proposed definition also applies to all CWA programs, not just to the Section 404, permit program, and impacts nine different regulatory programs, including Section 402, which establishes the nation's stormwater management program, and Section 401, which governs water quality certifications; and

WHEREAS, "waters of the U.S." definition-tributary, adjacent waters, riparian areas, flood plains, and the exemptions listed-also raise important questions. It is uncertain how they will be used to effectively implement the Section 404 permit program; and

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Carol A. Vernon
GRATIOT COUNTY CLERK

WHEREAS, Expanding the number of ditches that are regulated will increase necessary public infrastructure projects; budgets and timelines; and

WHEREAS, determining whether a project is jurisdictional can be very difficult, and if a project is deemed jurisdictional, it is then subjected to a multitude of regulatory requirements under CWA. Other federal laws are triggered, such as environmental impact statements, National Environmental Policy Act (NEPA) and impacts on the Endangered Species Act (ESA); and

WHEREAS, the cost of operations and maintenance for public infrastructure, such as existing flood damages reduction systems, will also be increased; and

WHEREAS, studies and public comment periods, all of which can cost both time and money, often as part of the approval process, the permit requires the applicant to "mitigate" the environmental impacts of the proposed project, sometimes at considerable expense; and

WHEREAS, Counties are responsible for building and maintaining 45 percent of public roads in 43 states. These responsibilities can range from intermittent maintenance, such as snow plowing, debris cleanup, short term paving and surface repairs to maintenance of traffic safety and road signage and major long-term construction projects. Many of these road systems are in very rural areas. Of the nation's 3,069 counties, 50 percent (1,542) serve counties with populations below 25,000 residents; and

WHEREAS, any additional cost burdens are challenging to these smaller governments, especially since more rural counties have the most road miles and corresponding ditches. Stormwater management is often not funded as a water utility, but rather through a county or city general fund; and

WHEREAS, if stormwater costs significantly increase due to the proposed rule, not only will it potentially impact our ability to focus available resources on real, priority water quality issues, but it may also require that funds be diverted from other government services such as education, police, fire, etc; and

WHEREAS, Our County cannot assume additional unnecessary or unintended costs.

WHEREAS, this rule would impose a blanket jurisdictional determination over thousands of acres of private property. The effect would be to impose unnecessary property restrictions and uncertainty; and

WHEREAS, our County believes that more roadside ditches, flood control channels and stormwater management conveyances and treatment approaches will be federally regulated under this proposal is problematic because, our county is ultimately liable for maintaining the integrity of these ditches, channels, conveyances and treatment approaches, even if federal permits are not issued by the federal agencies in a timely manner; and

WHEREAS, much of the anticipated cost of this rule would be financed from municipal resources, and thus divert resources from other essential public services.

THEREFORE, BE IT RESOLVED, that the rule, include the following provisions that are priority concerns for local governments:

- Separate municipal storm sewers will continue to be regulated and permitted under Section 402 of the Clean Water Act, and shall not be considered, either in their entirety or any individual feature thereof, Waters of the U.S.; and
- Green infrastructure developed to improve water quality or achieve multiple public benefits shall be encouraged and given priority consideration that does not impose additional financial and regulatory burdens of permitted and shall not be considered Waters of the United States; and
- Water delivery, reuse , and reclamation systems and facilities shall not be considered waters of the U.S.; and
- Ditches and other drainage features that protect and ensure the operation of public infrastructure shall not be considered waters of the U.S.; and
- Wastewater treatment systems and all associated infrastructure shall not be considered waters of the U.S.; and
- Any proposal to regulate waters within a floodplain, riparian, or any other general area must include a specific definition, including the specific boundaries, of the floodplain, riparian or other area subject to the rule; and
- The rule must include sufficient clarity and specificity to better inform regulators and permitted and to minimize the potential for litigation; and

BE IT FURTHER RESOLVED, that failure to address any one or all of these concerns shall be considered an unfunded mandate and the Federal government shall provide funding to local governments to address the cost of implementation.

Requiring that EPA and the USACE engage local governments and other stakeholders in drafting a rule that addresses to the satisfaction of local governments and other stakeholders the full economic impact for all sections of the Clean Water Act beyond Section 404 (e.g. Sections 301,311,401,402); incorporates the conclusions of the Science Advisory Board; and All concerns of Antrim County and counties with in the state of Michigan.

H.R. 5078 requires the EPA and the Corps to work closely with states and local governments to develop a “waters of the U.S.” rule, especially since we are partners with the federal government in implementing and enforcing Clean Water Act programs. Antrim County believes that states and local governments should be given the opportunity to provide meaningful consultation on rules before rules are formally proposed, especially if the rule will have a significant impact on capital costs, operations and mandates on the people we serve as required under Executive Order 13132: Federalism.

BE IT FUTHER RESOLVED, that copies of this Resolution be forwarded to all Michigan counties, Governor Rick Snyder, Michigan congressmen and women, US Senators, Michigan State Senator, the Michigan Association of Counties, and the National Association of Counties.

Yes – David Heeres, Eugene Dawson, Karen Bargy, Ed Boettcher, David Howelman, Michael Crawford, Laura Stanek, Christian Marcus;

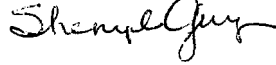
No – None;

Absent – Bernard Blackmore.

RESOLUTION #27-14 DECLARED ADOPTED.

ANTRIM COUNTY CLERK, BELLAIRE, MI
STATE OF MICHIGAN, COUNTY OF ANTRIM, ss

I, Sheryl Guy, Clerk of Antrim, do Certify the
above is a true and exact copy of the original
record remaining in this office. IN TESTIMONY
WHEREOF, I have set my hand and Official
seal at the Village of Bellaire in said county this

14th day of November, 2014. 
Sheryl Guy County Clerk