

Warren County Board of Supervisors

RESOLUTION NO. 513 OF 2015

Resolution introduced by Supervisors Monroe, Girard, Sokol, Wood, Frasier, Westcott and Strough

RESOLUTION OPPOSING THE US ENVIRONMENTAL PROTECTION AGENCY'S AND US ARMY CORPS OF ENGINEERS EXPANDED "DEFINITION OF WATERS OF THE US (WOTUS) UNDER THE CLEAN WATER ACT" AND SUPPORTING THE UNITED STATES HOUSE OF REPRESENTATIVES BILL NO. H.R. 1732

WHEREAS, on or about May 27, 2015, the US Environmental Protection Agency (EPA) and the US Army Corps of Engineers (CORPS) released a version of their final regulatory ruling to amend and expand the definition of "waters of the US" (WOTUS), subject to federal regulation (and permitting obligations) under the Clean Water Act (CWA). The aforementioned Agencies included definitions of "tributary" and "adjacent" which could expand the scope of CWA Federal jurisdiction over streams, municipal and private ditches, and even seasonal drainage areas which cut through farmer's fields. The Agencies' final rule defines "waters of the US" to include "tributaries" to mean any property having a "bed, bank and ordinary water mark where water sometimes flows and eventually reaches navigable water", no matter how far away. This means that small, periodic wetlands or drainage ditches (county owned and privately owned), and small seasonal drainage areas on farmer's fields in Warren County will be regulated by the Federal Government, even though they may be geographically isolated from any navigable or interstate water or territorial sea, and

WHEREAS, clean water has always been a priority and essential to our county government in protecting our resources for our citizens and businesses, in preserving local resources and maintaining public safety infrastructure. The County may be negatively impacted by the EPA and CORPS changes to WOTUS, by requiring Counties to now include Section 404 permits and other CWA programs in maintenance of the County's roadside ditches, flood control channels, drainage and storm water culverts, and other infrastructure used and maintained by the County to funnel water away from low-lying roads, properties, and businesses in an effort to prevent accidents and flooding incidences for its citizens. Further, these amended definitions may strip property owners (municipal and private) of long held land rights. This is a substantial change from current law and U.S. Supreme Court decisions, and an onerous burden on local municipalities, small businesses and farming communities, and

WHEREAS, the EPA and CORPS initiated this rule without properly involving, consulting or soliciting the advice and recommendations of state and local officials, stakeholders, small businesses and other interested parties, on how each may be impacted and affected by the definition of WOTUS under the new rule, in direct disregard of FEDERALISM CONSULTATION REQUIREMENTS. It is apparent that the EPA and CORPS failed to take into account thousands of comments from farmers, small business owners and property owners, who know this rule adds unnecessary burdens. The National Association of Counties (NACo) submitted a nineteen (19) page letter to the EPA and CORPS that emphasized the importance of the local, state and federal partnership in crafting practical rules to ensure clean water without impeding counties' fundamental infrastructure and public safety functions, and called for the proposed rule to be withdrawn until further in-depth consultation with state and local governments took place, and

WHEREAS, in July, 2015, in an article by Elizabeth Wolters, the New York Farm Bureau indicated that these Agencies' new rule and definitions are "all about regulating land use, and could drastically change farm practices and permitting requirements for agriculture". What farmers in the North Country experience as typical drainage for part of a season or after significant rainfall on their fields could become subject to

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federal control, permitting and regulation, and

WHEREAS, the 114th Congress has taken up action on this matter through H.R. 1732, entitled, “An act to preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes”, cited as the “Regulatory Integrity Protection Act of 2015”. The House of Representatives passed H.R. 1732 on May 12, 2015 and sent it to the Senate on May 13, 2015. [A similar bill is pending in the Senate under S1140], and

WHEREAS, H.R. 1732 calls for the Secretary of the Army and the Administrator of the Environmental Protection Agency to withdraw the proposed rule published in the Federal Register entitled “Definition of ‘Waters of the United States’ under the Clean Water Act” (79 Fed. Reg. 22188). This Bill further requires that these Agencies develop a new proposed rule to define WOTUS after taking into consideration public comments, reports, and the all-important joint consultation with and solicited advice and recommendations from representative state and local officials, stakeholders and other interested parties on how to so define WOTUS, to seek out and to reach consensus with state and local officials; to be ever mindful to protect the authorities of state and local governments and the rights of private property owners over natural and man-made water features, “including the continued recognition of Federal deference to State primacy in the development of water law, the governance of water rights, and the establishment of the legal system by which States mediate disputes over water use”. H.R. 1732 goes on to develop a time frame for the Agencies to initiate the consultations with state and local stakeholders, to require a Report from the Agencies to describe in detail the advice, concerns and recommendations obtained from all state and local officials, to identify where consensus was reached and where it was not, and how definitional changes in the new proposed rule will impact, directly and indirectly, the public and private stakeholders and others, including small entities such as farmers, and

WHEREAS, the Board of Supervisors seeks to have the EPA and CORPS immediately withdraw the proposed definition of “Waters of the United States” as they are currently published in the Federal Register, and to have H.R. 1732 become law and followed by the EPA and CORPS in order to protect the economic livelihood of all landowners in Warren County, to protect the rights of the County to maintain the public infrastructure and land use regulation, and to ensure the protection and rights of the Warren County farming community in particular, now, therefore, be it

RESOLVED, that:

- Section 1. The Warren County Board of Supervisors calls for the immediate withdrawal of the proposed rule published in the Federal Register entitled “Definition of ‘Waters of the United States’ under the Clean Water Act” (79 Fed. Reg.22188), released and devised by the US Environmental Protection Agency and the U.S. Army Corps of Engineers.
- Section 2. The Warren County Board of Supervisors calls on the EPA and CORPS to have further analysis and more in-depth consultation with state and local governments in any proposed changes to WOTUS, including clarification that local streets, gutters, and manmade ditches be excluded from the definition of “waters of the U.S.”.
- Section 3. The Warren County Board of Supervisors supports H.R. 1732, cited as the “Regulatory Integrity Protection Act of 2015”, passed by the House of Representatives on May 12, 2015, and urge the US Senate do the same, and be signed into law by the President of the United States.

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- Section 4. The Warren County Board of Supervisors seeks to provide important consultative advice and recommendations to the named Agencies as to the practical and economic effects of changes to WOTUS upon local land use development and control, and in particular, the effects of same on the farmers, private landowners and small businesses in Warren County, New York.
- Section 5. The Clerk of the Warren County Board of Supervisors is hereby authorized and directed to forward copies of this resolution to the New York State Association of Counties; Governor Andrew M. Cuomo; Senator Charles E. Schumer; Senator Kirsten E. Gillibrand; Congresswoman Elise Stefanik; Senator Elizabeth O’C. Little; and Assemblyman Daniel G. Stec.
- Section 6. The within resolution shall take effect immediately.