

# LEE COUNTY

NORTH CAROLINA

*Committed Today for a Better Tomorrow*

## RESOLUTION OPPOSING THE PROPOSED CHANGES TO THE RULE DEFINING “WATERS OF THE U.S.”

**WHEREAS**, the Clean Water Act (the “Act”) defines and regulates waters that fall under federal jurisdiction, which are known as “Waters of the U.S.,” and

**WHEREAS**, the Act requires a partnership between federal, state, and local governments to achieve the objectives of the Act, improving and maintaining water quality; and

**WHEREAS**, local governments, as a regulator and permittee, have assumed an ever-increasing share of the costs towards achieving those objectives; and

**WHEREAS**, the U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers (“Corps”) have proposed changes to the rule defining Waters of the U.S. that could significantly increase the cost and regulatory requirements for local governments and, ultimately, the costs for local residents and businesses; and

**WHEREAS**, the proposed rule has no prescribed limits to federal jurisdiction and does not clearly define what waters are to be regulated by the federal government; and

**WHEREAS**, the proposed changes effectively remove the case-by-case determinations of Waters of the U.S. using the “significant nexus” test and replace the test with physical characteristics, such as the presence of water marks, and connectivity to current Waters of the U.S. By merely meeting the requirements of the new definition, a significant nexus is found and the body of water become subject to the Act; and

**WHEREAS**, the proposed rule modifies the current definition of “other waters” and “adjacent waters” in such a way that there is uncertainty as to how these proposed definitions would impact local governments; and

**WHEREAS**, the changes to the rule could cause manmade ditches and storm water runoffs to be considered Waters of the U.S., which once defined as a Water of the U.S., would subject them to the Act and could increase costs to local governments; and

**WHEREAS**, the proposed changes do not include the provision of federal funds to offset the additional costs to local governments and, thus, would divert resources from other essential public services; and

**WHEREAS**, the United States Congress has written a letter to the EPA and Corps requesting that the proposed changes to the rule be withdrawn until further analysis can be completed; and

**WHEREAS**, the National Association of Counties has produced a policy brief on this issue and has encouraged local governments to publicly make comments concerning the proposed changes to the rule; and

**WHEREAS**, the U.S. Conference of Mayors has publicly opposed legislation to expand federal jurisdiction under the Act if it is not accompanied by federal funding.

**NOW, THEREFORE, BE IT RESOLVED**, that Lee County opposes legislation or changes that would further expand federal jurisdiction under the Act; and

**BE IT FURTHER RESOLVED**, that the U.S. Conference of Mayors, in its Resolution to Ensure that Municipal Concerns are Addressed in Clean Water Act Regulations, including the definition of "Waters of the U.S.," requested certain provisions be made if any changes to the rule were made. And, that the Lee County Board of Commissioners agrees that any changes to the rule should include the following provisions, which are sincere concerns for local governments:

- Separate municipal storm sewers will continue to be regulated and permitted under Section 402 of the Act and will not be considered Waters of the U.S.; and
- Water delivery, reuse, and reclamation systems and facilities will not be considered Waters of the U.S.; and
- Ditches, streams and other drainage features that protect and ensure the operation of public infrastructure will not be considered Waters of the U.S.; and
- Wastewater treatment systems and all associate infrastructure will 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 permittees, and to minimize the potential for litigation.

**BE IT FURTHER RESOLVED**, in opposition to the proposed change to the rule defining "Waters of the U.S.," the Lee County Board of Commissioners encourages citizens to write letters to the EPA, e-mail the EPA, or post comments to the Federal eRulemaking Portal, in the manner described below:

Letters, including the original and three copies, may be sent to:

Water Docket, Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
Attention: Docket ID No. EPA-HQ-OW-2011-0880

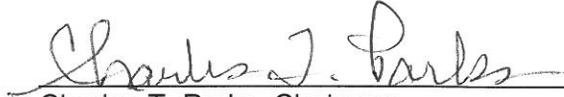
E-mails may be sent to [ow-docket@epa.gov](mailto:ow-docket@epa.gov). Please include EPA-HQ-OW-2011-0880 in the subject line of the message.

Comments may be posted online at [www.regulations.gov](http://www.regulations.gov). Simply follow the instructions for submitting comments.

**BE IT FURTHER RESOLVED** that the Lee County Board of Commissioners encourages other local governments to pass similar resolutions.

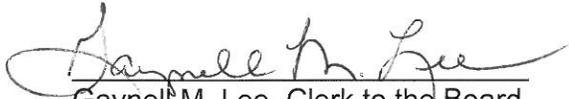
**BE IT FURTHER RESOLVED** that copies of this Resolution be sent to elected officials that represent Lee County.

Adopted this the 6<sup>th</sup> day of October 2014.



Charles T. Parks, Chairman  
Lee County Board of Commissioners

ATTEST:

  
Gaynell M. Lee, Clerk to the Board