

RESOLUTION
OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
Regarding Waters of the U.S. (WOTUS)

WHEREAS, The United States Environmental Protection Agency (USEPA) and the United States Army Corps of Engineers (USACE) of the Federal Government have jointly issued a proposal to redefine "Waters of the United States" (WOTUS); and

WHEREAS, this proposal to redefine WOTUS is also known as the "Proposed Rule on "Definition of 'Waters of the United States' Under the Clean Water Act, Docket No. EPA-HQ-OW-2011-0880"; and

WHEREAS, County governments, including Colorado Counties, are responsible for the construction and maintenance of roads, bridges, water quality systems and other infrastructure like roadside ditches, storm water systems, green infrastructure and drinking water facilities; and

WHEREAS, local governments, including Counties, and other local government associated agencies are charged with protecting the environment and protecting public safety; and

WHEREAS, local governments, including Counties, and other local government associated agencies play a strong role in Clean Water Act (CWA) implementation, are key partners in its enactment, and take our responsibilities seriously; and

WHEREAS, NACo supports "common-sense environmental protection" and believes that there is a need for a clear, concise and workable definition for "Waters of the U.S." to reduce confusion and costs within the federal permitting process; and

WHEREAS, NACo has communicated to the USEPA and USACE 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

WHEREAS, NACo has communicated to USEPA and USACE the essential need for state and local governments to have a clear understanding of the vast impact the federal proposal to redefine WOTUS will have on our local communities; and

WHEREAS, The National Association of Counties (NACo) has voiced serious concerns, has requested more clarity, and has communicated that the federal proposal to redefine WOTUS has had a flawed consultation process with Counties, an incomplete analysis of economic impacts, and falls short of the goal of reducing confusion and costs; and

WHEREAS, expanded federal oversight and increased ambiguity on the definition of WOTUS and/or implementation of regulations would create delays in critical work, drain local budgets, and not have any increased environmental benefit; and

WHEREAS, NACo submitted joint comments in a joint letter dated November 14, 2014 (*attached here as Exhibit A*) to the Federal Registry with the American Public Works Association, National Association of County Engineers, National Association of Flood & Storm water Management Agencies, National Association of Regional Councils, National League of Cities, and the U.S. Conference of Mayors; and

WHEREAS, at least one Colorado County having natural hot springs that have been developed for recreational use at municipal pool complexes, vapor caves, and soaking pools at a number of lodging and recreational establishments, has identified that these natural hot springs whose waters are mineral rich and unaltered from their natural water quality should be exempt from additional water quality regulations imposed by the proposed redefinition of Waters of the U.S.; and

WHEREAS, the Colorado Counties, Inc. 2014-2015 policy statement , which Ouray County supports, regarding water states, " OURAY COUNTY recognizes adequate supplies of water are critical to the agricultural industry and that water is one of Colorado's most precious natural resources," and " OURAY COUNTY supports efforts to maintain and seek state primacy of federal water quality programs and believes provision of adequate funding to counties is essential to ensure compliance with the federal Clean Water Act".

NOW THEREFORE, BE IT RESOLVED by the Board of Ouray County Commissioners as follows:

OURAY COUNTY adopts the concerns and recommendations expressed in the NACo November 14, 2014 joint letter (Exhibit A) and listed below:

1. We strongly urge USEPA and the USACE to modify the proposed rule by addressing concerns and suggestions below to provide greater certainty and clarity for local governments:
 - a) Conduct an analysis to examine if the proposed rule imposes a significant economic impact on a substantial number of small entities per the Regulatory Flexibility Act; and
 - b) Initiate a formal state and local government federalism consultation process per Executive Order 13132: Federalism, which allows state and local governments to weigh in on draft rules before they are developed or publicly proposed in order to address intergovernmental concerns was not performed, so as to address local government concerns and issues of clarity and certainty; and
 - c) Perform a thorough economic analysis inclusive of an examination of impacts of the proposed rule on all CWA programs using deeper and more relevant data, not just on the CWA 404 program. We urge the agencies to interact with issue-specific national associations to collect these data sets; and
 - d) Reopen the comment period for the proposed rule once the connectivity report is finalized for a minimum of 60 days; and
 - e) Provide more specificity for proposed definitions such as "uplands," "tributary," "floodplain," "significant nexus," "adjacent," "neighboring," and other such words that could be subject to different interpretations; and
 - f) Provide a specific exemption for public safety ditches from the "Waters of the U.S." definition; and
 - g) Provide a specific exemption for water conveyances including but not limited to MS4s that are purposed for and servicing public use from the "Waters of the U.S." definition; and
 - h) Clarify the waste treatment exemption by stating that green infrastructure practices and water delivery and reuse facilities meet the requirements of the exemption; and
 - i) Expand the waste treatment exemption to included systems that are designed to meet *any* water quality requirements, not just the requirements of the CWA; and
 - j) Provide a specific exemption for green infrastructure and water delivery and reuse facilities from the "Waters of the U.S." definition; and
 - k) Examine the acreage limit of 6,400 acres that can be impacted in a calendar year as local governments often have huge swathes of land and can quickly trigger the acreage limit, especially if more water bodies are designated as a "Waters of the U.S."; and
 - l) Institute a straight-forward and transparent process for entities to appeal agency jurisdictional determinations; and
 - m) Set clear national guidance for quick approval of emergency exemptions.
2. We ask that the USEPA and the USACE issue a revised proposed rule with an additional comment period, so that we can be certain these concerns are adequately addressed; or
3. Alternatively, if an additional comment period is not granted, we respectfully call for the withdrawal of this proposed rule and ask the agencies to resubmit a proposed rule at a later date that addresses our concerns; finally,

4. OURAY COUNTY shares the concern that Colorado's developed and undeveloped hot springs whose mineral-rich thermal waters have been flowing into Colorado water bodies, including those currently designated as "Waters of the U.S." should be made exempt to water quality regulations that would require treatment of these natural waters.

Adopted this 9 day of December, 2014.

Voting for: Commissioners Padgett, Fedel, and Batchelder
Voting against: None

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:



Hannah Hollenbeck
Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

Lynn M. Padgett

Lynn M. Padgett, Chair

F. Mike Fedel

F. Mike Fedel, Vice Chair

Don Batchelder

Don Batchelder, Commissioner Member