



Adopted on September 29, 2014

Sponsored by: Senator Cam Ward of Alabama
Representative Jose Diaz of Florida
Representative Lynn Smith of Georgia
Senator Robert Adley of Louisiana
Senator Gerald Long of Louisiana

Representative Raymond Garofalo of Louisiana
Representative Joe Harrison of Louisiana
Representative Weldon Watson of Oklahoma
Representative Bill Sandifer of South Carolina
Senator Mark Norris of Tennessee

2.2014 – Resolution Concerning Clean Water Act Regulations and EPA's Definitions of "Waters of the U.S."

WHEREAS, the Clean Water Act (CWA) and implementing regulations of the past four decades recognize the partnership between federal, state, and local governments to achieve the objectives of the Act; and

WHEREAS, Section 101(g) of the CWA expressly states that it is “the authority of each state to allocate quantities of water within its jurisdiction [that] shall not be superseded, abrogated, or otherwise impaired by this Act”; and

WHEREAS, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers have proposed a rule to redefine “waters of the U.S.” that could significantly increase the cost and regulatory requirements for state and local governments and ultimately the costs for state and local residents and businesses; and

WHEREAS, the proposed rule has no prescribed limits to federal jurisdiction, impairs state authority and therefore contravenes congressional intent and is not consistent with three distinct rulings by the Supreme Court regarding the limits of federal jurisdiction; and

WHEREAS, the proposed rule will apply to all programs of the CWA and therefore subject more activities to CWA permitting requirements, National Environmental Policy Act (NEPA) analyses, mitigation requirements, and citizen suits challenging local actions based on the applicability and interpretation of new-found authorities; and

WHEREAS, the costs of obtaining Corps wetlands permits are significant: averaging 788 days and \$271,596 for an individual permit; 313 days and \$28,915 for a nationwide permit—not counting costs of mitigation or design changes and the greatest burden will fall on small landowners and small businesses least able to absorb the costs; and

WHEREAS, the proposing agencies’ economic analysis for this rule did not consider impacts of the full range of CWA programs affected or of economic impacts to small businesses and the analysis relies on nearly 20-year old cost data that has not been adjusted for inflation and, in concluding that the proposed rule would increase the waters subject to permitting requirements by only 2.7 percent, the proposing agencies rely on a data base that is incomplete and not representative of those waters that are subject to jurisdiction under current regulation; and

WHEREAS, the justification for the scope of the proposed rule rests on a scientific analysis that is still under review and the proposing agencies decided to proceed with development of a proposed rule addressing issues associated with the connectivity of waters prior to being informed by the Science Advisory Board Review and the implications of its findings; and

WHEREAS, the proposed rule does not provide an explanation or clear understanding about how the proposed expansion of CWA jurisdiction and transfer of ultimate authority might affect other CWA programs, state laws and responsibilities, water rights, land use, governances, and regulated parties; and



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WHEREAS, EPA and the Corps have failed to fully consult with the states thus undermining the cooperative federalism intent at the heart of the CWA.

THEREFORE, BE IT RESOLVED, as co-regulators of water resources, states should be fully consulted and engaged in any process that may affect the management of their waters; and

BE IT FURTHER RESOLVED that the Southern States Energy Board urges member states to engage their congressional delegations as well as introduce resolutions on the EPA and Corps of Engineers' proposed rule on waters of the U.S.; and

BE IT FURTHER RESOLVED that the Southern States Energy Board urges the EPA and the Corps of Engineers to defer adopting any redefinition of the waters of the U.S. rule until:

- a) The Science Advisory Board concludes its review and the EPA and the Corps of Engineers incorporate the conclusions of the Science Advisory Board review; and
- b) An economic analysis is completed that fully identifies impacts of the proposal and any revised proposal on economic development, including the impact on efforts to streamline infrastructure permitting and siting under current executive orders, guidance, and regulations, and it should include a thorough analysis of economic impacts to the economy as a whole; and
- c) The redefinition provides clarity on definitions and federal jurisdiction consistent with previous Supreme Court rulings and should affirm that there is a limit to federal jurisdiction under the CWA.

BE IT FURTHER RESOLVED that when this resolution is approved, copies of it shall be transmitted to the President, all members of Congress, the Administrator of the U.S. EPA, and the leadership of the U.S. Army Corps of Engineers.

¹David Sunding and David Zilberman. The Economics of Environmental Regulation by Licensing: An Assessment of Recent Changes to the Wetland Permitting Process. Available at:
<http://areweb.berkeley.edu/~sunding/Economcs%20of%20Environmental%20Regulation.pdf>.