

ST. TAMMANY PARISH COUNCIL

RESOLUTION

RESOLUTION COUNCIL SERIES NO: C-4206

COUNCIL SPONSOR: FALCONER/BRISTER PROVIDED BY: CAO

RESOLUTION TO URGE CONGRESS TO EXCLUDE MAN-MADE DITCHES FROM THE DEFINITION OF 'WATERS OF THE U.S.' AND TO FORWARD A CERTIFIED COPY OF THIS RESOLUTION TO THE ST. TAMMANY CONGRESSIONAL DELEGATION, LOUISIANA POLICE JURY ASSOCIATION, ENVIRONMENTAL PROTECTION AGENCY, AND THE U.S. ARMY CORPS OF ENGINEERS FOR SUPPORT IN THIS MATTER.

WHEREAS, a proposed regulation to expand the "Waters of the U.S." definition in the Clean Water Act ("CWA") has been filed; and

WHEREAS, this proposal will impact parish/county-owned and maintained public safety infrastructure such as roadside ditches and flood control channels. The St. Tammany Parish Council would like to see the standards identified in HR 5078 adopted to: 1) prevent this proposed rule from moving forward; 2) mandate that all local and state governments should be consulted prior to implementation if said rule is passed; 3) document every interaction with state and local governments and prepare a report; and 4) set specific maintenance standards; and

WHEREAS, the proposed "Waters of the U.S." regulation stems from the 2001 U.S. Supreme Court decision, Solid Waste Agency of Northern Cook County (SWANCC) vs. U.S. Army Corps of Engineers, 531 U.S. 159 (2001); and

WHEREAS, the U.S. Supreme Court has stated that an applicant spends an average of 788 days of time and \$ 271,596 to obtain an individual 404 U.S. Corps permit. The Supreme Court chastised these agencies in the 2001 SWANCC case and the 2006 Rapanos case for regulatory overreaching, and these agencies have refused to adapt to the strong concerns they continue to receive from taxpaying landowners; and

WHEREAS, the proposed rule, should it become effective, will drain local budgets, hamper business development, increase cost of infrastructure construction and maintenance, and continue an unacceptable level of uncertainty in the permitting processes; and

WHEREAS, under the proposed rule the St. Tammany Parish Council will remain responsible for ensuring that public safety infrastructure ditches are maintained; however, extensive permitting procedures will result in delays, thus exposing St. Tammany Parish to increased liability from suits arising from a failure to properly maintain a public safety area, which could ultimately be the result of delays from an extensive Federal permitting process, rather than a local action or lack thereof; and

WHEREAS, broadening the "Waters of the U.S." definition would adversely impact local farmers, governments, businesses, and property owners. The St. Tammany Parish Council would like the U.S. Army Corp of Engineers to define navigable waterways as any waterway that can be navigated by a multi-person vessel with a berth of ten (10) feet or greater and in its original condition used for interstate and/or foreign commerce; all other waterways will be left out of this proposed rule; and

WHEREAS, not only would these definitional changes impact parish/county-owned and maintained ditches, they would also affect every existing CWA program, because there is only one "Waters of the U.S." and thereby adding another level of review and permitting to Section 402 National Pollutant Discharge Eliminating System permits for Storm Water discharges; and

WHEREAS, if more waters fall under federal jurisdiction, parishes/counties will be forced to submit more Section 404 permits and will face longer delays in the jurisdictional determination and permitting process. Under this new proposed rule, St. Tammany Parish will be burdened by an abundance of Section 404 permits due to the fact that thirty-eight percent (38%) of the Parish is located in a Special Flood Hazard Area whereby those properties would be greatly affected; and

WHEREAS, the permit itself is not a problem, but the process used can be challenging for local governments, as 404 permits can be time-consuming and expensive to obtain, causing delays of up to three to five years, with significant overhead costs associated with consultants, lawyers, engineers and special conditions attached to the permit. These additional delays and costs could significantly alter the benefit cost ratio on some vital restoration and protection projects in Southeast Louisiana. The State of Louisiana loses the size of Delaware each year, and we simply cannot afford to add delays to coastal restoration projects at this critical stage; and

WHEREAS, prior to implementation of the proposed rule, the St. Tammany Parish Council respectfully requests that an economic study be commissioned to determine the following: 1) the estimated loss of revenues by local government resulting from the proposed rule; 2) the estimated increase in Federal revenues resulting from the proposed rule; and 3) the total estimated economic impact that the proposed rule would have on each state; and that the results of the study be submitted to Congress for review; and

WHEREAS, should this new proposed rule be implemented resulting in increased federal oversight, the St. Tammany Parish Council respectfully requests funding assistance from the Federal Agencies to assist with any new permitting costs at a minimum of twenty-five percent (25%) in order to decrease or offset any undue financial burdens incurred by local government from the effects of the new proposal; and

WHEREAS, should this new proposed rule be implemented resulting in Federal control of a newly defined waterway that previously would fall under local jurisdiction, the St. Tammany Parish Council would respectfully request significant funding assistance up to full funding, for these waters, in accordance with the level of control which would be transferred from local jurisdictions to Federal jurisdiction under this proposed rule.

THE PARISH OF ST. TAMMANY HEREBY RESOLVES that it does hereby respectfully urge Congress to exclude man-made ditches from the definition of "Waters of the U.S."

BE IT FURTHER AND FINALLY RESOLVED that a certified copy of this resolution be forwarded to members of the St. Tammany Congressional Delegation, Louisiana Police Jury Association, Environmental Protection Agency, and the U.S. Army Corp of Engineers for support in this matter.

THIS RESOLUTION HAVING BEEN SUBMITTED TO A VOTE, THE VOTE THEREON WAS AS FOLLOWS:

MOVED FOR ADOPTION BY: _____ SECONDED BY: _____

YEAS: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

THIS RESOLUTION WAS DECLARED ADOPTED ON THE 6 DAY OF NOVEMBER, 2014, AT A REGULAR MEETING OF THE PARISH COUNCIL, A QUORUM OF THE MEMBERS BEING PRESENT AND VOTING.

R. REID FALCONER, AIA, COUNCIL CHAIRMAN

ATTEST:

THERESA L. FORD, COUNCIL CLERK

Resolution Administrative Comment

RESOLUTION TO URGE CONGRESS TO EXCLUDE MAN-MADE DITCHES FROM THE DEFINITION OF "WATERS OF THE U.S." AND TO FORWARD A CERTIFIED COPY OF THIS RESOLUTION TO THE ST. TAMMANY CONGRESSIONAL DELEGATION, LOUISIANA POLICE JURY ASSOCIATION, ENVIRONMENTAL PROTECTION AGENCY, AND THE U.S. ARMY CORP OF ENGINEERS FOR SUPPORT IN THIS MATTER.

The Parish is asking Congress to define "Waters of the U.S." for purposes of the Clean Water Act as only those waterways which are navigable, due to the regulatory burden that would befall St. Tammany Parish under proposed Environmental Protection Agency regulations.