

ORIGINAL

RESOLUTION NO. 2014- 037

**RESOLUTION OPPOSING THE EXPANSION OF  
FEDERAL CONTROL UNDER THE CLEAN WATER ACT**

**WHEREAS**, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (Corps), and other agencies in the Federal Government ("Regulatory Bodies") have invited public comment on a proposal rule ("Rule") defining the scope of waters protected under the Clean Water Act (CWA), in light of the U.S. Supreme Court cases in U.S. v. Riverside Bayview, Rapanos v. United States (Rapanos) and Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC), and Rapanos v. United States (Rapanos).

**WHEREAS**, the Delaware County Board of Commissioners (the "Commissioners") agree with the general purpose of the CWA to the degree that it was established to maintain the integrity of the nation's waters by preventing pollution and other hazards, but disagree with the proposed changes to the CWA that would make it significantly more onerous to administer in Delaware County, without achieving marginal benefit to citizens.

**NOW, THEREFORE, BE IT RESOLVED** that the Commissioners hereby oppose the present wording of the Rule and submit the following comments:

1. The Rule greatly expands the jurisdiction of the Federal Government and Regulatory Bodies to include the traditional waters of the U.S. along with their tributaries. Tributaries are now defined to include, man-altered and man-made water bodies, including ditches, and based on the rule, anything with flow will be considered a tributary with no examination of frequency or duration of flow. The Rule also claims jurisdiction over waters neighboring or adjacent to navigable waters and their tributaries. This authority includes any water in the floodplain (which is undefined and potentially unlimited) or riparian areas. If there is any other water left that is not otherwise considered a tributary or adjacent/neighboring water, Regulatory Bodies can aggregate "other waters" within a "single landscape unit" to find a signification nexus. The reach of the Regulatory Bodies to this end appears to have no limit in scope.
2. The expanded jurisdiction will include roadside ditches that are currently maintained by the Delaware County Highway Department ("County Highway"), and Legal Drains maintained by the Delaware County Drainage Board. The inclusion of Legal Drains and roadside ditches into the Rule will increase costs, create delays, and require permitting efforts for many of the routine maintenance activities performed by the County Drainage Board and Highway Department. The routine activities include tasks such as ditch maintenance, cleaning, debrising, maintenance of bridges, replacement of roadway drainage pipes, installation of new driveways, maintenance of roadside ditches, and maintenance of subsurface roadway drainage tiles. These changes will significantly affect the timeliness of future projects.
3. The proposed rule change, if adopted, will require permits that in the past only applied to navigable waters. Under the Rule, these permits would also apply to work on ditches (any feature with a defined bed and bank and ordinary high water mark), small ponds and even depressions in fields and pastures. The increased regulations on private property owners,

home builders, potential developers, farmers and county municipalities will delay projects and increased costs.

**BE IT FURTHER RESOLVED**, that the Delaware County Board of Commissioners considers the Rule a prime example of regulatory overreach by the Federal Government and Regulatory Bodies and urges the Regulatory Bodies to withdraw the Rule and maintain the current language and requirements of the CWA for the foreseeable future, and at least the next sixty (60) months.

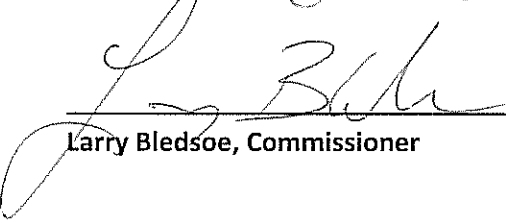
**BE IT FURTHER RESOLVED**, that the Auditor of Delaware County shall hereby submit a certified copy of this Resolution as directed in the Rule and submit a certified copy to Governor Michael Pence, U.S. Senators Daniel Coats and Joe Donnelly, and Congressman Luke Messer.

Passed and adopted by the Board of Commissioners of Delaware County, Indiana, this 2 day of September, 2014.

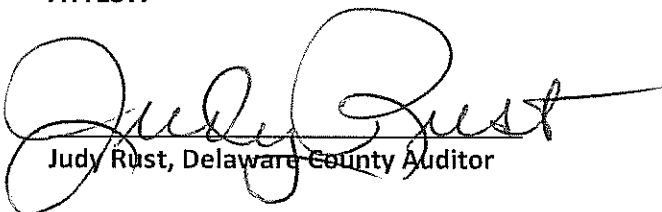
**DELAWARE COUNTY BOARD OF COMMISSIONERS**

  
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Judy Rust, Delaware County Auditor