

WHEREAS, the United States Environmental Protection Agency (USEPA) and the United States Army Corps of Engineers (USACE) have drafted guidance to vastly expand the jurisdictional authority of the federal Clean Water Act (CWA), entitled "Draft Guidance on Identifying Waters Protected by the Clean Water Act" (Draft Guidance);

WHEREAS, USEPA and USACE have chosen to selectively interpret various Supreme Court decisions related to the jurisdictional authority of the Clean Water Act (CWA) in order develop the Draft Guidance which expands their own jurisdictional authority under the CWA to include waters of the state(s) and other waters previously not regulated under either the CWA or judicial proclamation, including some ditches, farm ponds, dry water ways and isolated wetlands;

WHEREAS, the Draft Guidance will infringe upon the sovereignty of state(s) to appropriately regulate waters of the state(s);

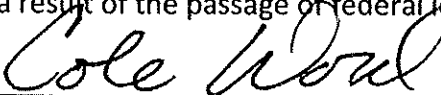
WHEREAS, the Draft Guidance would require counties and special districts to obtain costly and burdensome Section 404 Permits from the USACE for the construction of small bridges and culverts, and routine maintenance of some ditches, canals, and other such water conveyances;

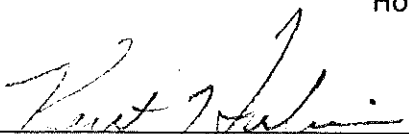
WHEREAS, the Draft Guidance would infringe on private property rights, impairing land management activities such as urban development and agricultural production; and

WHEREAS, the USEPA has been criticized by members of both the U.S. Senate and House of Representatives for broadening the scope of regulatory programs without congressional oversight or authorization, and legislation similar to the Draft Guidance has failed in the U.S. Senate;

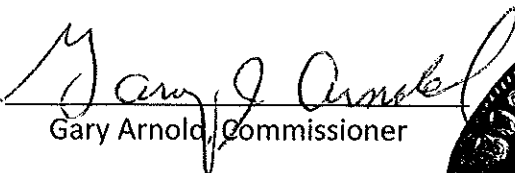
BE IT HEREBY RESOLVED THAT Bosque County strongly opposes the Draft Guidance in that it increases the need for burdensome and costly permitting requirements, infringes on private property rights, and circumvents the legislative process, thus, the will of the people.

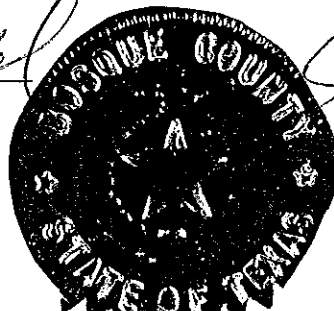
BE IT FURTHER RESOLVED THAT any such change in jurisdictional power of the federal government should only occur as a result of the passage of federal legislation.

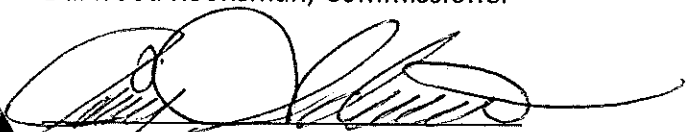
  
Honorable Cole Word, County Judge

  
Kent Harbison, Commissioner

  
Durwood Koonsman, Commissioner

  
Gary Arnold, Commissioner



  
Jimmy Schmidt, Commissioner

At the May 23, 2011 Bosque County Commissioners' Court meeting members of the Bosque County Farm Bureau and Texas Farm Bureau staff briefed the Commissioner' Court on the "Draft Guidance on Identifying Waters Protected by the Clean Water Act" (*Guidance*) released May 2, 2011 by the United State Environmental Protection Agency (USEPA) and United State Army Corps of Engineers (USACE).

The *Guidance* vastly expands the Agencies' jurisdictional authority under the federal Clean Water Act (CWA) ignoring or distorting Supreme Court decisions explicitly limiting federal jurisdiction. Under the *Guidance*, small streams, road ditches, and drainage canals (currently regulated only by the state) would be subject to USEPA and USACE regulations. The *Guidance* would apply to all CWA programs including Sections 404 (wetlands), 402 (water quality permitting), 311 (oil spills and prevention plans), 401 (state water quality certifications) and 303 (water quality standards and pollution abatement).

The Agencies claim that the *Guidance* is needed to improve CWA program predictability and clarity, but in fact, the *Guidance* reduces clarity and creates greater uncertainty by expanding jurisdiction beyond the intent of the CWA and views expressed in Supreme Court decisions.

In addition, by issuing *Guidance* instead of initiating formal rulemaking the Agencies are circumventing the requirements set forth in the Administrative Procedures Act which was signed into law in 1946 to provide legislative and judicial oversight of executive agencies.

The USEPA has estimated that the annual cost for implementing the *Guidance* will be between \$87 million to \$171 million nationally; however, these figures do not include the aggregate effect to affected parties. These aggregate effects include increased costs due to new land use restrictions, permitting requirements, delays associated with federal bureaucracy, and an increased number of citizens lawsuits filed under the CWA.

It is clear that the Agencies are attempting to expand federal regulatory jurisdiction without legislative or judicial oversight and this expanded authority will financially impact counties throughout the State of Texas.

As such, the Commissioners' Court adopted a Resolution opposing the "Draft Guidance on Identifying Waters Protected by the Clean Water Act" and will be submitting formal comments to the EPA regarding this matter. The Commissioners' Court encourages all other counties in the state to take similar action opposing the *Guidance*. The complete 39-page *Guidance* can be found at [http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/cwa\\_wous\\_guide.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/cwa_wous_guide.pdf).

Comments must be received by USEPA by July 1, 2011 and should be submitted using one of the following formats:

**E-mail:** [owdocket@epa.gov](mailto:owdocket@epa.gov)

(The **Subject** line of the e-mail should be: EPA-HQ-OW-2011-0409)

**Mail:** (If by mail, you must submit the **original and three copies** of your comment letter)

Water Docket, Environmental Protection Agency, Mail Code 2822T,

1200 Pennsylvania Avenue, NW

Washington, DC 20460,

Attention: Docket ID No. EPA-HQ-OW-2011-0409

Attachments: Bosque County Commissioners' Court Resolution