

CITY OF GAUTIER

MEMORANDUM

To: Honorable Gautier Mayor and Council

From: Samantha D. Abell, City Manager

Date: June 25, 2014

Subject: Consideration of Resolution 54; A Resolution To Ensure Municipal Concerns Are Addressed in Clean Water Act Regulations, Including The Definition of “Waters of the U.S.”

REQUEST:

Resolution 54 is a response from municipalities nationwide who are committed to local economic development and sustainability, and who are therefore opposed to the over-reaching proposed new rule of the Environmental Protection Agency placing local drainage ways, wastewater treatment systems and associated infrastructure, and all waters within floodplain, riparian or any other general drainage way under the definition of “Waters of the U.S.” and within the regulatory authority of the U.S. Army Corp of Engineers.

The resolution urges the EPA and Corp of Engineers to suspend consideration of the EPA's proposed rule until meaningful consultation with local governments has occurred and local concerns are addressed. The resolution asks for the full consultation and satisfaction of local government and affected stakeholders before finalizing the proposed rule.

DISCUSSION:

On April 21, 2014, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) jointly released a new proposed rule—Definition of Waters of the U.S. Under the Clean Water Act, the EPA has amended the definition of "Waters of the U.S." to expand the range of waters that fall under federal jurisdiction.

The United States Conference of Mayors has adopted and maintains policy that opposes legislation to expand Federal jurisdiction under the Clean Water Act unless the associated costs are born solely and entirely by the Federal government and its agencies and not levied as an unfunded mandate on the public and private sectors.

Resolution 54 is being promulgated by municipalities who, like the City of Gautier, are members of the International Convention of Shopping Centers (ICSC). Founded in 1957, ICSC is the premier trade association of the shopping center industry. Its more than 63,000 members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, as well as academics and public officials. ICSC municipalities are concerned that the definitional changes contained in the proposed rule would significantly expand federal control of

land and water resources on commercial properties traditionally handled at the state and local level.

If the rule is enacted in its current form, communities undergoing new construction or renovation of commercial properties can expect major project permitting delays, costly resource outlays for new permit applications, and an unprecedented level of regulatory uncertainty and inconsistency in the administration of Corps permitting programs. Municipalities believe the rule should clarify the regulatory requirements, particularly for activities already regulated, as well as minimize the potential for third-party litigation and other unintended consequences.

The Clean Water Act (CWA) was enacted in 1972 to restore and maintain the chemical, physical and biological integrity of our nation's waters and is used to oversee federal water quality programs for areas that have a "water of the U.S." Since then, a number of court cases have further defined navigable "waters of the U.S." to include waters that are not traditionally navigable.

The range of waters that are considered "Waters of the U.S." increase, states are required to expand their current water quality designations to protect those waters. This new rule increases reporting and attainment standards at the state level. Counties, in the role of regulator, have their own watershed/storm water management plans that would have to be modified based on the federal and state changes. Changes at the state level would impact comprehensive land use plans, floodplain regulations, building and/or special codes, watershed and storm water plans.

RECOMMENDATION:

City Manager recommends approval of Resolution 54 to call upon the EPA and Army Corp of Engineers to suspend consideration of EPA's proposed rule until meaningful consultation with local governments has occurred and local concerns are addressed. The resolution asks for the full consultation and satisfaction of local government and affected stakeholders before finalizing the proposed rule.

ATTACHMENTS:

Resolution 54