



Pennington County Board of Commissioners

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June 6, 2017

Ms. Sarah Rees, Director
Office of Regulatory Policy and Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket ID EPA-HQ-OA-2017-0190 – Evaluation of Existing Regulations

Dear Ms. Rees:

The Pennington County Board of Commissioners thanks you for the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) implementation of President Trump's Executive Order 13777 on Enforcing the Regulatory Reform Agenda. We appreciate you considering the local government's perspectives.

Local governments are tasked with the heavy responsibility to protect the health, welfare and safety of our citizens. This includes protecting valuable water resources to ensure the nation's waters remain clean and safe. Local governments play a key role in administering the rules and regulations as set forth in the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA).

Background

Pennington County, SD consists of 2,784 square miles of land area that 100,948 people call home. We are proud to have Mount Rushmore and the beautiful Black Hills in our County with nearly 3 million tourists visiting annually. Tourism is vital to our economy and the impacts of having impaired waters would be devastating to our region. Pennington County also has 972,225 acres of agricultural land that is equally vital to our economy who also depend on clean water resources.

Pennington County has 1,650 miles of roadside ditches, 413 inlets and about 38,000 feet of pipe that receive routine (or periodic) maintenance. Pennington County takes clean water very seriously, most recently passing a clean water resolution in 2008 recognizing that the implementation of a county-wide ordinance will help ensure a sustainable source of drinking water and also help to avoid unnecessary costs in the future for failure to take action. The County has implemented various water protection programs such as the Spring Creek 319 Project, on-site wastewater treatment systems inspections, and County wide erosion and sediment control requirements.

In addition to tourism, agriculture is a critical piece of our local economy. We promote conservation practices to the agricultural community through the local 4-H groups, Conservation Districts, etc. Any expansion to the definitions relating to any 'waters' would cause significant hardships to local

farmers and ranchers by taking away local control of the land uses. The costs to the local agricultural community would be enormous. This would lead to food and cattle prices increasing significantly. The effects will continue to magnify from there. The overall costs to the counties, municipalities and ultimately the taxpayers will be detrimental.

Justice Scalia's Approach

Justice Scalia ultimately concluded that Waters of the United States should include only relatively permanent, standing or continuously flowing bodies of water. Pennington County supports using Justice Scalia's definition as stated in *Rapanos*. We have taken a proactive approach to protecting our water resources and are committed to continue to into the future, without the need for additional federal regulation as was proposed in the 2015 Waters of the United States' Rule. We believe implementing the Scalia approach would not be a significant impact to our existing water laws as we are a County who is proactive in protecting water resources while respecting the conservative nature of our residents which is echoed in Justice Scalia's opinion.

Stormwater Challenge

Pennington County has a Municipal Stormwater (MS4) permit area consisting of ditches, swales and underground pipes. There are some curb and gutter systems however, the storm sewer system predominately consists of vegetated swales. The MS4 area comprises of approximately 20 square miles of the total area of the County. The MS4 area could be subject to additional water quality standards (including total maximum daily loads) if our stormwater ditches were to be considered a "water of the U.S.". Not only would the discharge leaving the systems be regulated, but all flows entering the MS4 would be regulated as well. For example, in 2013 Pennington County spent approximately \$500,000 in expenses relating to items needed to meet the current Clean Water Act mandated on MS4's. This includes, street sweeping, debris removal, maintenance and replacement of stormwater culverts, etc. Our stormwater programs are funded thru the County General Fund. If additional regulations are placed on Stormwater quality, not only will it impact our ability to focus our available resources on real, priority water quality issues, but it may also require funds be diverted from other government services that we are required to provide such as law enforcement, fire protection services, etc.

We respectfully request the Federal Government let local governments regulate themselves. We know what our needs are better than the Federal Government. We acknowledge that being proactive in protecting water quality is far more costeffective than remediation. We have taken a proactive approach to protecting our water resources and are committed to continue to into the future, without the need for additional federal regulation.

Thank you for considering our comments and position on this critical issue.

Sincerely,
The Pennington County Board of Commissioners



Deb Hadcock, Chair

DH/hh

cc: The Honorable Kristi Noem
The Honorable John Thune
The Honorable Mike Rounds
The Honorable Governor Dennis Daugaard