

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

THE OCCOQUN WATERSHED COALITION

and

THE SPRINGFIELD DISTRICT COUNCIL

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, and  
LISA P. JACKSON, ADMINISTRATOR

and

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION III, and  
JON M. CAPACASA, DIRECTOR  
WATER PROTECTION DIVISION

Defendants.

Civil Action No. 1-12 CV 820

**DECLARATION OF DAVID W. SCHNARE**

I, David W. Schnare, under penalty of perjury and in accordance with 28 U.S.C. § 1746, declare as follows:

1. I reside at 9033 Brook Ford Road, Burke Virginia 22015 and make this Declaration based upon my experience as President of the Occoquan Watershed Coalition (OWC).
2. The Occoquan Watershed Coalition is a nonpartisan, broad-based citizens group organized on December 7, 1994. The Coalition works with many organizations as well as the

Fairfax County Board of Supervisors to address issues confronting a defined area of the Springfield District. The boundaries include Union Mill Road to the west, Route 123 to the east, Braddock Road to the north and south to the Prince William/Fairfax County border. This area is zoned for low impact 5 acre development in order to protect the Occoquan Reservoir, one of the two sources of drinking water for the County. It is generally referred to as the “Downzoned” area. It includes approximately 4813 homes with a population of approximately 16,426.

3. The OWC membership consists of 69 Associations serving approximately 2,200 lot owners. In addition, there are 400 individual members. These 2,600 lot owners constitute approximately 46% of the home owners in the OWC territory.

4. The OWC’s downzoned area contains eight of the county’s 30 watersheds, specifically, Little Rocky Run, Johnny Moor Creek, Old Mill Branch, Popes Head Creek, Sandy Run, Ryans Dam, Occoquan Creek and Mill Branch.

5. Town of Clifton is a member of the OWC sitting in the Popes Head Creek watershed. Among the watershed restoration projects are eight that, if not completed, directly injure the Town. These include a project (PH9885) at the elementary school that is the second highest rated priority project in the watershed. As well, projects PH9800 and PH9400 are needed to prevent undermining a bridge (PH9400) and a road (PH9800) to ensure continued emergency access to Clifton citizens.

6. The OWC-area watershed plans also include dozens of “non-structural” projects that affect every citizen in the Downzoned area, including every individual member of the OWC. In the Popes Head Creek, alone, are projects to support citizen organizations who actively work to prevent stream degradation, projects to educate ATV users and enforce against them if they violate county rules by destroying the stream valleys, walls and watercourses, and projects to

educate landowners and private pond owners on how to prevent stream degradation on and near their properties.

7. The OWC Board of Director include the Chairman of the Fairfax County Board of Supervisors, the Fairfax County Springfield District Supervisor and the House of Delegates and Senators representing the Downzoned area.

8. The OWC has three standing committees, the Executive Committee, the Environmental Committee and the Transportation Committee. The latter two have engaged in multiple projects that protect the Downzoned area's eight watersheds and the Chairman of each committee has routinely been appointed to the Fairfax County Environmental Quality Advisory Council and the Transportation Advisory Council, respectively. The OWC has testified before the House of Delegates regarding protection of Virginia waters, including the Fairfax County watersheds. The OWC is the only organization specifically dedicated to protection of all the Downzoned watersheds. During the public comment period for the challenged action, David W. Schnare, OWC President, provided extensive legal, policy, and technical comments on EPA's Draft Benthic TMDL Development for Accotink Creek (the "Draft Accotink TMDL"), which EPA largely disregarded.

9. Because implementation of the federal unfunded Accotink TMDL mandate would exhaust all funds dedicated to watershed management within Fairfax County, OWC members are directly and imminently threatened with injuries from failure to implement long-standing, high priority watershed projects, due exclusively to loss of long-planned funding of restoration projects in the Downzoned area, projects that would receive funding but for the federal unfunded mandate. The relief sought in this matter would redress the imminent harm by placing decision-making on watershed funding back into county hands that are committed to funding high-priority

projects in the Downzoned area.

10. The OWC asserts its members' rights to local sovereignty over non-point source pollution and their rights to protection of the County's drinking water supply, transportation funding of critical projects and protection of the stream banks on their own lands. These interests fall within the zone of interests protected by the Constitution and the structure of the Constitution, as they deal with direct harm to property and safety and to the citizenship rights of the Commonwealth's citizens.

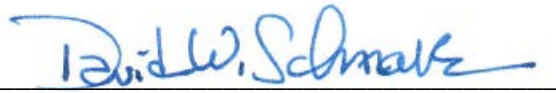
11. The injuries that the federal unfunded mandate would cause are direct and specific, as they relate to specific numbered projects planned for the OWC watersheds. Some of these projects affect only OWC members (*e.g.*, projects PH9885, PH9800 and PH9400). None of the harms are so widely experienced as to constitute generalized grievances.

12. The OWC files its request for declaratory and injunctive relief because it is dedicated to preservation of water quality in the Occoquan Reservoir and in the eight watersheds draining into that drinking water source, because OWC members would be directly injured in fact by the concrete and particularized actual and imminent threat causally related to and fairly traceable to the federal unfunded mandate and because the threat to OWC members would be relieved by the remedy sought in this matter.

13. Despite consultation by the OWC with the Virginia Attorney General's offices and the Fairfax County Attorney, neither has taken steps to protect their clients' sovereignty, specifically choosing instead to leave this task to the OWC. *See*, USDC ED Virginia 1:12CV775 JCC/TRJ Complaint. Because of the cost of litigation to any single individual or town, the OWC is particularly well situated to assert the rights of its members, each of which would otherwise

have standing to sue in their own right.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This declaration was executed on the fifth day of September, 2012.



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David W. Schnare