



April 29, 2015

The Honorable John Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Boehner and Minority Leader Pelosi:

On behalf of the nation's mayors, counties, cities and regions, we are pleased to offer our support for the Regulatory Integrity Protection Act of 2015 (H.R. 1732) that reaffirms the federal-state-local partnership in protecting water resources.

The Regulatory Integrity Protection Act addresses our long-standing concerns with a proposed rule offered by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) last year to redefine the "waters of the U.S." definition under the Clean Water Act (CWA). The proposed rule stems from a draft guidance document on "waters of the U.S." that was originally released in 2011.

Since before the proposed rule's publication, our groups have brought to the attention of EPA and the Corps legitimate concerns about the potential impacts of the proposed rule on localities. In an effort to have our concerns addressed, we have requested an understandable and straight-forward rulemaking process, inclusive of a federalism consultation, and have urged the agencies not to move forward until further analysis has been completed. Most recently, we outlined these concerns with the rulemaking process, as well as identified specific concerns with the impacts of the proposed rules on our members, in joint comments to the agencies. Those concerns are summarized below.

In our view, the rulemaking process was defective on several fronts. First, throughout the rulemaking process, the agencies failed to consult states and localities consistent with the Executive Order 13132: Federalism. As defined by this order, federal agencies are required to consult with state and local governments as early and often as possible before a proposed rule is developed or published in the Federal Register to ensure that federal rules are workable and

obtainable for all levels of government. As key partners in our nation's intergovernmental system who partner with federal and state governments to implement CWA programs, it is important that all the levels of government work together to form practical and workable rules and regulations that achieve our shared goals of protecting water resources, ensuring the safety of our communities and minimizing unnecessary delays and costs. In this case, that has not occurred.

Second, we believe the analysis used to support the proposed rule is faulty. As proposed, the rule would impact all state and local CWA programs, not just the Section 404 program, which is the sole focus of the agencies' *Economic Analysis of Proposed Revised Definition of Waters of the U.S.* that accompanied the proposed rule. Previous Corps guidance documents on "waters of the U.S." clarifications have also been strictly limited to the Section 404 permit program. However, there is only one definition of "waters of the U.S." within the CWA which must be applied consistently for all CWA programs that use the term "waters of the U.S." A change to the "waters of the U.S." definition may have far-reaching and unintended consequences for all CWA programs, including Section 402 National Pollutant Discharge Elimination System (NPDES), total maximum daily load (TMDL) and other water quality standards programs, state water quality certification process and Spill Prevention, Control and Countermeasure (SPCC) programs. We have asked the agencies to conduct a more comprehensive review of the actual costs and consequences of the proposed rule on these programs, which has not been done to date.

Moreover, the agencies' economic analysis relies on incomplete data. The limited scope of this analysis bases its assumptions on a narrow set of CWA data not applicable to other CWA programs. We have repeatedly raised concerns about the potential costs and the data points used in the analysis, which have yet to be addressed.

Finally, mayors, counties, cities and regions have significant concerns with the substance of the proposed rule. While we agree that there needs to be a clear, workable definition of "waters of the U.S.," we do not believe the proposed definition provides the certainty and clarity needed for operations at the local level. The proposed rule includes undefined and confusing new terms with the potential for sweeping impacts across all CWA programs. For example, the proposed rule extends the "waters of the U.S." definition by utilizing new terms—"tributary," "uplands," "significant nexus," "adjacency," "riparian areas," "floodplains" and "neighboring"—that could increase the types of public infrastructure considered jurisdictional under the CWA. Our groups have worked with the agencies to clarify these key terms but have received little assurance about how each EPA or Corps region will interpret and implement the new definition.

To conclude, the Regulatory Integrity Protection Act requires the EPA and the Corps to work closely with states and local governments to develop a new proposed "waters of the U.S." rule as partners with the federal government in implementing and enforcing CWA programs. The Act is consistent with our belief that states and localities should be consulted in meaningful ways on rules before they are formally proposed, especially if the rule will have a significant impact on capital costs, operations and mandates for the people we serve as required under federal law.

We thank you for your leadership on this important piece of legislation. If you have any questions, please contact us: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Joanna Turner (NARC) at 202-618-5689 or Joanna@narc.org.

Sincerely,



Tom Cochran
CEO and Executive Director
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Matthew D. Chase
Executive Director
National Association of Counties



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Joanna L. Turner
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Cc: Representative Bill Shuster, Chairman, House Transportation and Infrastructure Committee
Representative Bob Gibbs, Chairman, Water Resources and Environment Subcommittee