



April 13, 2015

The Honorable Bill Shuster  
Chairman  
House Committee on Transportation  
and Infrastructure  
Washington, D.C. 20515

The Honorable Peter DeFazio  
Ranking Member  
House Committee on Transportation  
and Infrastructure  
Washington, DC 20515

Dear Chairman Shuster and Ranking Member DeFazio:

On behalf of the National Association of Counties (NACo), we are pleased to offer our support for the Regulatory Integrity Protection Act of 2015 which would reaffirm the federal-state-local partnership in protecting water resources.

The Regulatory Integrity Protection Act addresses 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). While the agencies state their goal was to craft a clear, concise and workable definition for “waters of the U.S.” to reduce confusion and costs within the federal Section 404 permitting program, we believe the proposed rule falls short of that goal. **Since its publication, NACo has expressed significant concerns about the potential impacts of the proposed rule on counties and urged the agencies to withdraw it until further analysis has been completed.**

For the past decade, NACo members have been concerned about the scope of waters that fall under federal regulation since many counties own and maintain public safety infrastructure ditch systems—roadside, flood control channels, stormwater, and drainage—which are used to funnel water away from low-lying roads, properties and businesses to prevent accidents and flooding. Counties are responsible for building and maintaining 45 percent of public roads in 43 states. These responsibilities can range from intermittent maintenance, such as snow plowing, debris cleanup, short term paving and surface repairs to maintenance of traffic safety and road signage and major long-term construction projects. Many of these road systems are in very rural areas. Of the nation’s 3,069 counties, 70 percent of counties serve populations below 50,000 residents. Any additional cost burdens are challenging to these smaller governments, especially since more rural counties have the most road miles and corresponding ditches. **Defining what waters and their conveyances fall under federal jurisdiction has a direct impact on counties who are legally responsible for maintaining their public safety ditches and infrastructure.**

Additionally, the proposed rule could have a cascading negative consequence on all state and local CWA programs, not just the Section 404 program. **NACo has asked for clarification from the agencies and has yet to receive a direct answer on the potential reach and implication of a new definition of “waters of the U.S.” on all CWA programs, including those implemented by local governments.**

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, since they are partners with the federal government in implementing and enforcing Clean Water Act programs. NACo believes that states and local governments should be given the opportunity to provide meaningful consultation on rules before they are



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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 do not hesitate to contact NACo Associate Legislative Director Julie Ufner at 202.942.4269.

Sincerely,



Matthew D. Chase  
Executive Director  
National Association of Counties