Local Government Advisory Committee

November 5, 2014

Dear Administrator McCarthy:

Thank you for your continuing emphasis on partnership as the EPA and US Army Corps of Engineers evaluate the public comments on the proposed rule regarding Waters of the United States. We are especially appreciative that you have engaged the Local Government Advisory Committee's (LGAC) Protecting America's Waters Workgroup to facilitate outreach to local, state and tribal agencies in the spirit of collaborative partnership. We are hopeful that these face-to-face community conversations will make an impactful contribution towards creating a rule that is embraced throughout the country.

The Workgroup has completed a series of public outreach meetings regarding the proposed rule. The regional meetings, held in St. Paul, Minnesota; Atlanta, Georgia; Tacoma, Washington and Worcester, Massachusetts, provided a strong sense of local perspectives and perceptions regarding the proposed rule.

In summary, there was strong agreement that clean water is an essential foundation for public health, recreation and commerce. However, the Workgroup heard strong sentiments in these areas:

Permitting: While the outreach effort focused on the proposed rule, the preponderance of discussion focused on the permitting process. It became clear that many local agencies are frustrated with the uncertainties and challenges of trying to permit good projects in their communities. Introducing the proposed rule brought all of these concerns to the forefront. A clear and predictable permitting process is an essential foundation upon which any new regulatory proposal would be built.

Clarity: There is also a strong sentiment that the proposed rule does not, as written, provide clear definitions nor achieve the objective of clarifying the extent of federal jurisdiction over local water bodies. Lack of clarity is especially problematic because, in many cases, permitting occurs at the local level and is under the jurisdiction of the U.S. Army Corps of Engineers (USACE). Interpretation of jurisdictional authority by the USACE can be a locally frustrating experience and many local agencies are fearful that the

proposed rule will add to the confusion and/or increase the jurisdictional assertion by the USACE.

Exemptions: The question as to what is and what is not a Water of the United States was a common theme among speakers. Questions arose regarding agricultural exemptions as well as the status of MS4 permittees. These are critical questions that must be easily answered in order for the rule and the permitting process to be effective.

The LGAC report provides several recommendations to the Administrator that can be summarized as follows:

- The permitting process deficiencies must be addressed. Any proposed rule, regardless of its merits, will likely be poorly received until the permitting process becomes more streamlined, effective and predictable.

- The rule must be written so that local agencies, states, EPA and the USACE all clearly understand key definitions and the scope of federal jurisdiction so that implementation is predictable. Whether a water body is or is not under federal jurisdiction must be clear to all parties.

- Agricultural exemptions must be explicitly and clearly stated

- Cost remains a concern, especially in the context of uncertain jurisdictional assertion and an unpredictable permitting process.

- There are significant regional differences which must be considered and addressed in the rule. Regional differences and/or unique circumstances strongly justify the need for flexibility in permitting/implementation.

- There are many local, state and federal (specifically MS4) programs and regulations that protect the nation's water quality. The rule should acknowledge and incentivize best management practices already underway.

The development of a rule that is both clear from a nationwide perspective and adaptable to local conditions is challenging. The rule clarifying the Waters of the United States has such significance, the LGAC would encourage additional collaboration to address the issues raised throughout the public outreach process. There is no doubt that the proposed rule, as written, should be modified to reflect the comments received through the public outreach process as enumerated in our attached report.

Consequently, the LGAC recommends that the EPA continue to engage state, local and tribal agencies in the rule development process. The LGAC has been encouraged by the extensive

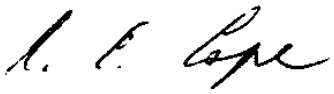
level of local participation and the strong concurrence that clean water is a national asset that must be respected and preserved.

Thank you for engaging the LGAC and the Water Workgroup in your outreach efforts. We will continue our work as needed throughout the rule development process.

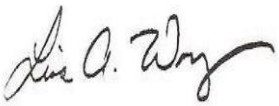
Sincerely,

Mayor Robert Dixson
Chair

Susan Hann
Chairwoman, Protecting America's Waters Workgroup



Commissioner Robert Cope
Chair, Small Community Advisory Subcommittee (SCAS)



Mayor Lisa Wong
Chairwoman, Environmental Justice Workgroup