



March 11, 2011

Jacob J. Lew, Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Lew,

We the undersigned organizations representing the nations' state legislators, mayors, cities, counties, and other state elected and appointed officials are writing to thank your staff for meeting with us to discuss our concerns regarding the Clean Water Protection Guidance submission (RIN: 2040-ZA11) from the U.S. Environmental Protection Agency (EPA) that is currently under review by the Office of Management and Budget (OMB).

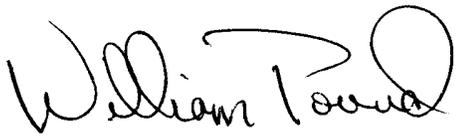
As expressed during our February 11, 2011 meeting, there has been little to no communication with state and local governments during the drafting of the guidance document. To date, EPA has not provided a briefing to state and local government groups despite the potential implications the guidance could have on both public and private sector activity at the state and local level. In addition, expected provisions of the guidance could have the practical effect of expanding federal jurisdiction under the Clean Water Act effectively preempting existing state authority.

If the EPA had promulgated this guidance as a regulation, such preemption implications would have triggered the federalism consultation requirement under Executive Order 13132. Introducing this proposal as guidance, rather than a regulation, could be viewed as a way to circumvent E.O. 13132, especially knowing the impact the guidance will have on state and local governments. The information that we have been able to garner from staff level conversations indicates that the guidance document may be the pre-cursor to future regulatory activity by the agency and in theory provides clarification on the program implementation consistent with the 2006 Supreme Court decision in *Rapanos v. United States* (547 U.S. 715). The potential breadth of economic and federalism impacts that could result from this guidance document are of particular concern to us given that, in our experience, guidance documents are often treated with the same weight as a regulation.

We strongly believe that early consultation can lead to better results, while strengthening the federal, state, and local government partnership. Consultation with state and local elected officials should be applied in a consistent

manner by the agency regardless of the vehicle chosen for enacting or clarifying changes in agency policy. We urge OMB to remand the guidance document back to EPA for consultation with state and local governments.

Sincerely,



William T. Pound
Executive Director
National Conference of State Legislatures



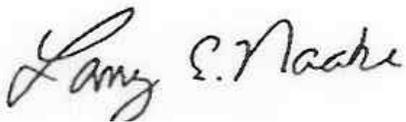
David Adkins
Executive Director/CEO
The Council of State Governments



Tom Cochran
CEO & Executive Director
The United States Conference of Mayors



Donald Borut
Executive Director
National League of Cities



Larry Naake
Executive Director
National Association of Counties



Robert J. O'Neill
Executive Director
International City/County Management Association