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Executive Director & General Counsel  
**Julia Anastasio**

October 5, 2016

Governor Chris Christie  
1717 Pennsylvania Ave, NW  
Washington, DC 20006

Dear Governor Christie:

The Association of Clean Water Administrators (“ACWA”) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the Clean Water Act (“CWA”). States are responsible, under the federal CWA and under a state’s own laws and regulations, to advance the attainment of clean and healthy waters and to prevent violations of the water quality standards designed to support these goals.

As the fall campaign season moves into full swing, and the Trump team prepares to navigate the transition process, ACWA urges you to consider a number of critical issues, opportunities and needs.

### **1. Importance of Co-Regulator Relationship**

The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating water quality standards for surface waters. While the United States Environmental Protection Agency (EPA) has oversight, the CWA’s delegation and authorization structure makes states directly responsible for implementation of these programs. Because of this shared responsibility, it is critical that USEPA continues to recognize the State’s unique role as co-regulators.

ACWA is a nationally recognized organization whose agenda and mission are set by a Board of Directors and leadership which are composed entirely of state/interstate water quality program administrators and managers. This uniquely positions ACWA as critical resource to EPA as ACWA can quickly facilitate feedback from its members, the nation’s experts on implementing the CWA. Because the states are implementing CWA regulations and policies, any US EPA proposed changes to those regulations or policies should be developed in collaboration with the states. The complexity of today’s water quality issues requires more collaboration than ever to ensure reasonable, balanced and effective strategies for water quality improvement.

ACWA, as the voice of the states, believes changes must be made in how EPA and the states work together to ensure that the water quality improvements accomplished over the past few decades remain intact, and to facilitate a fair and rational response to current and future environmental challenges. States across the U.S. vary greatly in population density, climate, types and quantities of industry, availability of surface water, land use priorities, state constitutional frameworks, taxing authority, enforcement discretion, and stakeholder group involvement – to name just a few distinctions. States set their CWA priorities based on these differences, as well as on drivers such as population growth, water quality impairments, compliance rates, resources, and competing values. EPA can better understand and consider these individual priorities by collaborating extensively with states.

Increased CWA substantive and administrative requirements paired with stagnant or decreased CWA funding can undermine implementation of the core CWA programs. ACWA encourages your support in facilitating the restoration of an effective, collaborative State-EPA partnership. Consultation with states as partners is different from “public participation” and “stakeholder outreach.” While the public and other stakeholder groups are impacted by regulations, as noted before, the CWA’s delegation and authorization structure makes states directly responsible for implementation of these programs. In order to advance the most focused and results-oriented programs possible, EPA must maintain a priority of involving states early in both the development and implementation of the CWA regulations and policies.

ACWA’s work over the years has consistently furthered the specific interests of the federal/state partnership in developing and implementing water quality protection programs. When the federal government – most importantly EPA – partners directly with states through ACWA, better regulations are drafted, superior policy is created, duplication is reduced, national consistency is improved, flexibility is gained, unintended consequences are avoided, greater certainty is realized, legal challenges are minimized, and, ultimately, the public is better served. We urge you to work more closely with states to understand the full import of this relationship and work with the states to identify areas for improvement. ACWA members look forward to an on-going constructive dialogue with the incoming Administration to facilitate that work.

## **2. Need for Prioritization of Issues with Co-regulators**

As federal and state budgets continue to dwindle, states have fewer resources available to accomplish a growing list of priorities. States and EPA should be working together to maintain the current progress, avoid future declines in water quality, and invest in those program areas where the most meaningful water quality benefits can be achieved. EPA headquarters, regions, and states must jointly plan, evaluate, and better orchestrate federal and state CWA programs to direct resources and expertise towards the most important water quality problems. This coordination is necessary at all levels to ensure that the state and federal monitoring, permitting, enforcement, and compliance systems work together cooperatively, effectively, and efficiently. EPA and states must target resources to “real

world water quality problems.” States and EPA must create more efficient regulatory approaches that will ensure a more focused use of resources to maintain and improve water quality. EPA’s mission is to protect human health and the environment. As states, we share that mission. Unless any new initiative helps us accomplish our common mission, limited resources should not be diverted and attention distracted to less important activities.

Financial support for traditional water quality protection is not likely to increase dramatically over the next few years. At both the federal and state levels, competing priorities will make it difficult to garner additional funding, making thoughtful prioritization critically important. While we have made significant progress in assessing and improving our nation’s water since 1972, the low hanging fruit have been collected and over the next 40 years we face issues that are much more complex technically, economically, politically, and socially, necessitating EPA work with states to be smarter with our collective resources.

### **3. Opportunities to Strengthen the Co-Regulator Relationship**

ACWA’s members believe that one of the best ways to achieve a better co-regulator relationship and strengthen our joint ability to prioritize CWA issues, is to ensure that there is an Office of Water position filled by an individual who has previous experience managing a state water program. This individual should be familiar with all aspects of federal water policy, including groundwater, drinking water and wastewater programs. Dr. Ellen Gilinsky, Associate Deputy Assistant Administrator for Water, currently fills this role at EPA and has been an excellent resource for the members of ACWA as she serves as a voice for the states with EPA staff and often reminds them of the states’ unique co-regulator role. Maintaining such a position will signal to the states that the new Administration believes in the importance of a truly collaborative relationship.

Another opportunity available to strengthen collaboration is the Intergovernmental Personnel Act program (IPA). IPA enables the exchange of personnel between federal, state and local governments and provides an excellent method of trading expertise on a temporary basis. Assignments may be made to or from federal agencies and state and local governments; and qualified non-profit organizations involved in public management. These assignments must be with the consent of the employee and focus on work of mutual benefit to the organizations involved. Agencies may enter into IPA assignments on a reimbursable or non-reimbursable basis. This means they may be cost-neutral to federal agencies. Whether an IPA assignment is reimbursable is determined by the agency and non-federal entity involved in the assignment. Agencies do not need Office of Personnel Management approval to make assignments under the IPA authority. Federal agencies interested in using the authority simply enter into a written agreement. Greater use of the IPA program would speed the transfer of expertise and experience between the states and EPA and, more importantly, foster and strengthen the co-regulator relationship.

#### 4. Fully Fund Critical CWA Programs that Support State Co-Regulator Efforts

- **State and Tribal Assistance Grants, § 106 funding**

Section 106 of the Clean Water Act authorizes funding to the States and Interstate Commissions to assist them in preventing, reducing, and eliminating pollution of the nation's waters. According to Environmental Council of States (ECOS), in 2013, the states implemented approximately 96.5% of federal environmental laws through delegated/authorized programs.<sup>1</sup> State agencies also conduct 90% of all environmental inspections, enforcement actions, and data collection, and they issue the vast bulk of the permits needed to build or operate a facility.<sup>2</sup> Yearly budget data collected by the Congressional Research Service between 2004 and 2015 demonstrate that EPA grants to the states have been flat or, in real terms, steadily declining since 2004.<sup>3</sup> In 2015, categorical grants to the states were about 29% lower in inflation-adjusted dollars than they were in 2004. Section 106 grants provide baseline funding to build and sustain effective water quality programs that ensure the health of our nation's water bodies. ACWA's members administer the core components of the CWA, oversee the quality of their state waters, issue water pollution control permits, restore and protect watersheds and ensure compliance with the CWA. Section 106 funding is key to the implementation of the CWA and the protection of our nation's waters. Without it, permitting, enforcement, setting standards, monitoring and other State water programs will be undermined and we would lose the gains we have made nationally to our critical water resources and public health.

- **§ 319 Non-Point Source Management Program**

Nonpoint source (NPS) pollution is the leading source of water quality impairment in the United States. It is the primary source of impairment in over 33,000 waters -- roughly three-quarters of all assessed impaired waters for which total maximum daily loads (TMDLs) have been calculated. It is also the dominant source of pollutants responsible for impairment of many of our nation's most significant waterbodies, such as the Gulf of Mexico and the Chesapeake Bay. The vast majority of our nation's impaired waters have no possibility of being restored unless the nonpoint sources are effectively managed and/or remediated. Moreover, unless they are more effectively addressed as population and demands on the land increase, the number of NPS-impaired waters will likely continue to grow.

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<sup>1</sup> Testimony of Teresa Marks, Director, Arkansas Department of Environmental Quality, and President, Environmental Council of the States, before the House Energy and Commerce Committee, Subcommittee on Environment and the Economy (Feb. 15, 2013) at 3, available at <http://docs.house.gov/meetings/IF/IF18/20130215/100242/HHRG-113-IF18-Wstate-MarksT-20130215.pdf>.

<sup>2</sup> Id.

<sup>3</sup> GAO, Funding for 10 States' Programs Supported by Four Environmental Protection Agency Categorical Grants, 13-504R Information on EPA Categorical Grants (May 6, 2013).

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Nationally, CWA § 319 funds are used for protection and restoration efforts for waterbodies primarily impaired by nonpoint sources. Under § 319, states, territories and tribes receive grant money that supports a wide variety of activities including technical assistance, financial assistance, education, training, technology transfer, demonstration projects and monitoring to assess the success of specific nonpoint source implementation projects. Effective statewide nonpoint source programs and other § 319-funded activities will be critical to achieving more success in restoring NPS-impaired waters, as well as protecting healthy, unimpaired waters.

Federal funding of the §§ 106 and 319 programs comprises approximately 33 % of the funds states and interstates rely on to carry out the CWA's mandates. The states already absorb over two thirds of the cost of mandated state and delegated federal water quality programs at a time when state budgets remain strained. Additional federal funding cuts to these programs will seriously compromise states' water quality protection activities and ability to carry out the basic requirements of the Clean Water Act.

- **State Revolving Fund Program**

There is no disagreement that the nation's critical water and wastewater infrastructure is in dire need of repair, maintenance and potential replacement, and that these improvements will require significant investments from multiple sources, including federal, state and private institutions. The most recent Clean Watersheds Needs Survey 2012 Report to Congress (CWNS 2012), documents needs of \$271.0 billion as of January 2012. This includes capital needs for publicly owned wastewater pipes and treatment facilities (\$197.8 billion), combined sewer overflow (CSO) correction (\$48.0 billion), stormwater management (\$19.2 billion), and recycled water treatment and distribution (\$6.1 billion).

At the national level, the federal government has played a critical role over the last forty years in supporting water infrastructure investment, especially during the early days of the Clean Water Act, through the federal construction grants program. These grants provided a vital foundation for much of the clean water infrastructure in the United States, and they were followed by federal loan support through the Clean Water State Revolving Fund (CWSRF). However, federal support for water infrastructure has not kept pace with the growing need, and funding for the CWSRF has consistently fallen short in recent years. Moreover, investment in infrastructure creates important job opportunities. According to the American Society of Civil Engineers 18 jobs are created for every \$1,000,000 spent on waste water infrastructure.

ACWA's members urge you to advocate for robust funding for the CWSRF program to address the ever growing funding gap. CWSRF funding levels must, at a minimum, be maintained and any increases in funding must not adversely affect the Drinking Water SRF, as these investments are also essential in order to

advance critically needed and important work to protect the environment and public health in communities across the nation.

Moreover, states believe strongly that the Water Infrastructure Finance and Innovation Act (WIFA) pilot program should not in any way adversely impact or disrupt the very successful SRF programs -- which should be complemented and not compromised by this new program. Furthermore, ACWA's members feel strongly that any funding for WIFA not come at the expense of funding to the SRFs. We appreciate the desire for a national program that more adequately supports water and wastewater system infrastructure needs. Notwithstanding, we firmly believe the most appropriate response to the current challenge is to build upon the existing successful SRF model by adequately supporting, improving, and enhancing the state-administered Clean Water and Drinking Water SRFs. The SRFs are an extremely effective model for addressing local infrastructure needs. State administration of these funds is a long-standing, proven mechanism for moving critical funding to the nation's communities that so desperately need it.

This letter provides a quick overview and summary of information regarding some concerns of the state Clean Water Act administrators. Thank you for your attention to this information and please contact me if you would like to discuss these issues in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter LaFlamme". The signature is fluid and cursive, with a large initial "P" and "L".

Peter LaFlamme  
ACWA President  
Director, Watershed Management Division  
Vermont Department of Environmental Conservation

cc: Shannon Kenny, Principal Deputy Associate Administrator for the Office of Policy  
Joel Beauvais, Deputy Assistant Administrator for the Office of Water