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Executive Director & General Counsel
Julia Anastasio

October 26, 2017

Donald J. Trump
President, United States of America
1600 Pennsylvania Ave, NW
Washington, DC 20500

Dear President Trump:

The Association of Clean Water Administrators (ACWA) welcomes this opportunity to provide you and your administration with feedback on ways to streamline the federal permitting process for infrastructure projects and thank you for inviting us to the recent White House Conversations on Infrastructure.

Founded in 1961, the ACWA is the independent, non-partisan, 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. ACWA members agree that there is tremendous need for additional and innovative funding and financing of infrastructure projects and support your efforts to reform and streamline the federal permitting process and offer the following recommendations for your consideration.

As you and your staff work to implement Executive Order *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* the members of the ACWA encourage you to consider the following three key recommendations and principles which are summarized in more detail in this letter:

1. Addressing critical water and wastewater infrastructure as part of any infrastructure package, including ensuring states continue their ability to be a strong and stable state partner to ensure projects can proceed unencumbered, including timely issuance of necessary permits.
2. Funding that builds upon existing water and wastewater infrastructure programs at the state and federal level that provide low cost, critical funding for large and small communities.
3. Clarify process for states to assume the 404 permitting program to enable local and efficient permitting at the local level.

State & Tribal Assistance Grants; §106 Funding

The 2017 American Society of Civil Engineers' Infrastructure Report Card and updated Failure to Act Report estimates that the gap in needed new capital investments in water and wastewater projects could lead to cumulative costs for businesses and households of \$105 billion by 2025, as well as a potential loss of up to 500,000 jobs, and by 2040 to costs of \$152 billion with 956,000 jobs at risk; so our members applaud the desire to provide additional needed funding for infrastructure development. It is critical that any infrastructure funding include additional wastewater and drinking water infrastructure investment. However, for any infrastructure push to be successful there must be a strong and stable state partner to administer these programs efficiently and effectively. States must have the capacity to capably and expeditiously administer these funds, ensuring that infrastructure projects are able to proceed unencumbered, including the issuance of timely permits to those facilities.

There is broad concurrence that the nation's critical 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. Your Administration has proposed \$200 billion in federal incentives to drive private investment in large scale infrastructure projects, but relying primarily on private investment will not be sufficient to meet the infrastructure funding gap, especially in rural America. For any infrastructure push to be successful, a full range of funding and financing opportunities need to be implemented. Private investment alone will not solve the funding and financing crisis. Private investment along with reliance on well-established and successful water and wastewater infrastructure funding programs, like the state revolving fund programs, will be necessary for any infrastructure push to be successful. Moreover, states play a critical role in promoting water and wastewater infrastructure development through their administration of the Clean Water State Revolving Fund and through the § 401 certification process which requires that an applicant for a federal license or permit provide a certification that any discharges from the facility will comply with the CWA, including state-established water quality standard requirements.

ACWA believes that it is essential that the federal government maintain its commitment to supporting delegated state programs under the CWA. States rely on federal funding through the State Tribal Assistance Grants (STAG) §106 program to support state water programs and ensure that public health and the environment are protected while also supporting economic growth. Reductions in this funding will have devastating impacts on state water programs' ability to implement core water protection programs as required by CWA including supporting efficient permitting processes. Absent these dollars, states will face significant resource shortfalls which will directly impact states abilities to perform these duties and impede states' ability to support the necessary and long overdue improvements in infrastructure.

Robust Support for Clean Water State Revolving Fund

ACWA appreciates the desire for a national program that more adequately supports water and wastewater system infrastructure needs. Notwithstanding, ACWA firmly believes the most appropriate response to the current challenge is to build upon the existing and successful funding

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models, including the State Revolving Fund (SRF) model by adequately supporting, improving, and enhancing this funding mechanism and by continuing to move forward with the new Water Infrastructure Finance and Innovation Act (WIFIA) program to leverage federal investment in critical water and wastewater infrastructure projects. ACWA's members urge the Administration to advocate for robust funding for the CWSRF program to address the ever-growing funding gap. 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. 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. The funding assistance provided to both small and large communities through this Federal-state partnership has achieved a remarkable record and been instrumental in delivering safe and clean water for the American public. 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. The "revolving" nature of the loan programs and states' efforts to maximize Federal capitalization grants assure a continuing, exponential return on Federal investments. This successful history, however, is paralleled by a growing national water and wastewater infrastructure *need*. Cities and towns across the country face aging and decaying water and wastewater systems sorely in need of investment. 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.

Clarify Process for States to Assume the 404 Permitting Program

A CWA §404 permit is required for most, if not all, infrastructure development projects meaning the activity will result in a discharge of dredged or fill material. Activities regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. An individual permit is required for potentially significant impacts. Individual permits are reviewed by the U.S. Army Corps of Engineers, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA. Section 404(g) of the CWA authorizes states and tribes, with approval from the EPA, to assume authority to administer the 404 program in their states. The remaining waters are retained administratively by USACE. However, the process for assumption is ambiguous on what waters, exactly, are to be retained by USACE when a state assumes authority.

Since §404(g)'s enactment in 1977, only two states, Michigan and New Jersey, have sought 404 authority. ACWA, and its partners ECOS and ASWM, encourage your Administration to adopt the majority recommendations included in the Assumable Waters Subcommittee under the NACEPT undertake an effort to clarify this process. Even in the absence of clear federal rules or guidance on state assumption of the 404 program, many states already play a major role, including through State program general permits and §401 water quality certification. State assumption of the 404 permit program will result in better regulatory integration, increased efficiency,

consistency, timeliness and flexibility, improved resource protection and no need for National Environmental Policy Act reviews or Endangered Species Act consultations.

Thank you for making infrastructure investment a priority for your Administration and we hope that you will consider these recommendations as you work to streamline the federal infrastructure permitting process. Should you have any questions or if you would like to discuss these recommendations further, please feel free to reach out to ACWA's Executive Director and General Counsel, Julia Anastasio, at janastasio@acwa-us.org.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Wigal". The signature is written in a cursive, flowing style.

Jennifer Wigal

Cc: DJ Gribbin, Special Assistant to the President
Alex Hergott, Associate Director, Council on Environmental Quality
Administrator S. Pruitt, US. Environmental Protection Agency
Lee Forsgren, Deputy Assistant Administrator, U.S. EPA, Office of Water