

Statement of

The Honorable Michael A. Sesma  
Council Member, Gaithersburg, Maryland

On behalf of the National League of Cities

Before the House Energy and Commerce Committee, Subcommittee on  
Environment and Economy

*“The Role of States in Protecting the Environment Under Current Law”*

February 15, 2013

Good morning, Chairman Shimkus, Ranking Member Tonko and Members of the Subcommittee. I am Michael A. Sesma, Council Member, Gaithersburg, Maryland. I am here today on behalf of the National League of Cities (NLC), the oldest and largest organization representing cities and towns across America. I appreciate the opportunity to share our perspective on the important role local governments play in protecting the environment. Local governments and the U.S. Environmental Protection Agency (EPA) have a long and productive history of working together to improve the environmental quality of life in our communities. As implementers of state and federal environmental policies and programs and with authority over local land use, zoning, and code development decisions, cities and towns are a key partner in ensuring that the health, safety and welfare of the public is protected.

Environmental degradation respects no political boundaries; therefore a coordinated national environmental quality policy is vital to our nation. NLC believes a national environmental quality policy must improve the quality of the total environment while protecting the

environment from further harm. Moreover, such national policy must assess both current and long term environmental impacts, ensuring that the needs of the present are met without compromising the ability of future generations to meet their own needs.

While a national environmental policy is important in ensuring that decisions made by one city do not have a negative impact on neighboring cities, many local governments, including my city of Gaithersburg, are at the forefront of sustainability in planning, taking actions to make our communities vibrant places to live, work, learn and play. From ensuring proper zoning and density, to enforcing local, state and national regulation, America's cities and towns serve as the first line of defense and innovation for environmental protection. I'd like to highlight some of the approaches that Gaithersburg has taken as an example of the role cities and towns—urban and rural, large and small—have in protecting our environment.

While not currently required by the federal or our state government, the City of Gaithersburg has taken several steps to minimize stormwater runoff and encourage residents to be active participants in protecting our watershed. In 2009, Gaithersburg began offering a Rainscapes Rewards program—offering a rain barrel and a conservation landscaping rebate program for city residents. Additionally, the city has also pursued stormwater mitigation through the construction of green streets, which use a natural approach of curb extensions, porous paving materials and native plantings to reduce stormwater flow. Our first two green streets were constructed in 2009 and 2010, and the city will begin construction of three more this spring. These actions reduce the amount of stormwater entering local streams, control flooding, decrease water usage, increase groundwater supply, and reduce chemical and nutrient pollutants entering waterways.

Additionally, Gaithersburg is becoming more urban, and we are mindful that residential and commercial development could result in the loss of healthy trees. Therefore, we have taken steps to maintain and protect our urban tree canopy, which contributes significantly to energy conservation and overall environmental protection. As mandated by the State of Maryland, we require forest conservation at new and redeveloped properties. The city also operates a fee-in-lieu program for those developments where on-site retention of forested areas is not possible. This money is used to fund tree plantings within the public right-of-way and to reforest public lands. I am proud to say that Gaithersburg has earned a Tree City USA designation from the National Arbor Day Foundation every year since 1990.

Moreover, in 2007, the city adopted a resolution requiring LEED Silver certification for all future municipal buildings. The city has also enacted rigorous green building requirements for both residential and commercial development. Gaithersburg's Olde Towne Youth Center achieved LEED Platinum certification in 2010, making it the first youth center in the country and the fourth building in Maryland at the time to achieve this highest level of certification from the U.S. Green Building Council.

Finally, as part of our submission to become a Sustainable Maryland Certified community, the city prepared a three-year Green Team Action Plan. In 2013 we will be tracking our municipal carbon footprint, creating a watershed plan and participating in the Maryland Department of Housing and Community Development Sustainable Communities program. In 2014 we will continue to track our carbon footprint, create a climate action plan, promote the Maryland Green

Registry (of which we are a member), complete a Green Guide to Gaithersburg, and create a watershed plan for the second of our three watersheds.

### **Importance of Intergovernmental Partnership**

The implementation of impactful and sustainable environmental programs is a core responsibility of local government. With every aspect of our environmental health being interrelated, cities are committed to working in partnership with EPA and those who live and work in our communities to develop strategies and enact policies that enhance our environmental resources and create viable communities for future generations. Our efforts to ensure environmental protection are aided and enhanced by several positive steps that EPA has taken in recent years toward renewing and strengthening the federal-state-local partnership. I would like to touch on three.

#### *Federalism Consultation*

As you know, the 1995 Unfunded Mandates Reform Act (UMRA) requires federal agencies to assess the costs and benefits of a final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, of \$100 million or more. Under UMRA, this threshold amount also triggers the required intergovernmental consultation process between regulatory agencies and elected officials.

In 1999, President Clinton issued Executive Order 13132: Federalism (Executive Order) to “further the policies of the Unfunded Mandates Reform Act” and to “insure that the principles of federalism established by the Framers guide the executive departments and agencies in the

formulation and implementation of policies.” In addition to enumerating the basic principles of federalism, the Executive Order directed federal agencies to set up a consultation process “to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.”

In 2008, EPA revised its Guidance document on Executive Order 13132: Federalism, lowering the threshold for triggering the state and local consultation process from \$100 million to \$25 million.

Because the threshold was so high from the Executive Order’s effective date (1999) through 2008, only two EPA regulations met the threshold and triggered the review process. This led to many instances where agency regulations imposed unplanned expenditures on local governments and diverted scarce resources from other important local activities, without the benefit of our consultation. Since lowering the threshold for triggering the federalism consultation process, state and local governments have been consulted on a more regular basis on issues of mutual importance to the quality of life in our communities and the fiscal impacts of those decisions. While cities and towns do not always agree with the substance of rules put forth by EPA, particularly the increasing number of unfunded federal mandates imposed on local governments, we strongly believe that early consultation can lead to better results and can strengthen the federal, state, and local government partnership, and we encourage Congress to continue to support this process.

### *Regulatory Review*

Second, earlier this year, EPA published a memorandum, “Safe Drinking Water Act - Consumer Confidence Report Delivery Options,” which clarified that water suppliers may use electronic delivery options for Consumer Confidence Reports (CCRs). As there are approximately 51,651 community water systems in the country that are currently publishing and distributing the CCRs to their consumers, granting local governments electronic delivery options for CCRs will provide local water utilities and taxpayers with significant savings in printing and mailing costs. As cities and towns continue to recover from the economic downturn, this is a welcome means of lessening the financial burden on local governments.

This Administrative action stemmed from Executive Order 13563: Improving Regulation and Regulatory Review (January 2011), which called on federal agencies to identify opportunities for reducing administrative and regulatory burdens on local governments, and EPA’s Final Plan for Periodic Retrospective Review of Existing Regulations (August 2011) that followed.

### *Integrated Planning and Affordability Dialogue*

Finally, EPA’s Integrated Municipal Stormwater and Wastewater Planning Approach Framework (Framework, June 2012) and recent memorandum on Assessing Financial Capability for Municipal Clean Water Act Requirements (January 2013) serve as Agency acknowledgement that many local governments face difficult financial conditions that impact their ability to meet Clean Water Act (CWA) obligations.

The integrated planning framework is aimed at helping state and local governments identify opportunities to achieve clean water by controlling and managing releases of wastewater and stormwater runoff in an efficient and cost effective manner. By allowing for an integrated planning approach, local governments can decide how they will meet their CWA requirements through the sequencing, scheduling and prioritization of projects.

In developing the Framework, EPA sought stakeholder input, including from NLC. In a February 2012 letter to EPA, NLC called on the agency to consider affordability issues for communities, to grant local governments flexibility to evaluate and make improvements to the plan, and to rely on the permit process, rather than through consent decrees, for the implementation of long-term integrated plans. NLC emphasized these key concerns to Congress as part of testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment in December 2011 and July 2012.

Cities and towns across the country continue to have concerns about the affordability of meeting CWA requirements. In Gaithersburg, the implementation of stormwater management programs has a direct impact on the quality of water in the streams and rivers that flow into the Chesapeake Bay. A healthy, clean Chesapeake Bay is vital to the economic health of the Mid-Atlantic States. While the federal mandates of the CWA may be necessary to maintain and improve water quality, they do not come without a high cost to local governments and taxpayers.

For example, there are approximately 24 miles of streams in Gaithersburg, many of which are in need of restoration in order to protect our watershed. We are in the process of soliciting for and

conducting assessments for three of our major watersheds, as required by our Phase II MS4 permit. The first of these studies is expected to cost taxpayers \$99,000. The U.S. Army Corps of Engineers has identified a 10,000-foot portion of the city's Muddy Branch watershed as in need of restoration—at a cost of \$2.5 million to taxpayers. Moreover, the city recently reconstructed three stormwater management facilities at a cost of \$860,000. Our taxpayers support the efforts to protect the environment but also ask, “Is this a cost effective and efficient use of taxpayer money?”

Additionally, under our next permit cycle, Gaithersburg will have to retrofit 20 percent, or 576 acres, of our current 2,882 acres of impervious surface, much of which is owned by the private sector. Using neighboring Montgomery County's treatment estimate of approximately \$127,000 per acre, for Gaithersburg to treat its 576 acres, the projected cost would be approximately \$73 million. Gaithersburg's fiscal year 2013 total operating budget is \$46 million. The impact and cost to Montgomery County will be even greater; by 2020, Montgomery County estimates that 7,722 acres of impervious surface will have to be retrofitted at a cost to taxpayers of \$987 million. This amounts to more than 20 percent of the county's annual operating budget of \$4.56 billion for fiscal year 2013. Again, while these are important projects, the cost to local governments and taxpayers is high.

In addition to implementation costs and effort, staffing costs to ensure compliance with our MS4 permit will require additional funding within the city's budget. We will need to conduct routine surveys and monitor commercial and industrial areas for discovery and elimination of hotspots. We will need to establish a more exhaustive mechanism for annual reporting related to our

permit. And we will need to conduct more systematic watershed assessments and combine them with a report of restoration goals prior to the permit term ending. The city will also need to meet new Total Maximum Daily Load and Waste Load Allocations approved by EPA for our water bodies.

Because of the continuing concerns of local governments around the issue of affordability and the fiscal impact that regulatory compliance has on communities, EPA issued a memorandum to the regions, *Assessing Financial Capability for Municipal Clean Water Act Requirements*, clarifying how the financial capability of a community will be considered when developing schedules for municipal projects necessary to meet CWA obligations. EPA also began an affordability dialogue with local elected officials and local government organizations on this topic. We commend EPA for both the integrated planning effort and local government affordability dialogue that will serve to strengthen the intergovernmental partnership.

Despite these good efforts, however, cities have a concern with the integrated planning framework. While the local government affordability discussions with EPA will include a focus on assessing a community's financial capability including their obligations under the Safe Drinking Water Act (SDWA), the integrated planning framework does not apply to drinking water regulations. As drinking water utilities are increasingly being called on to monitor and remove emerging contaminants, such as chromium and pharmaceutical products, and with the forthcoming proposed regulatory revisions to the Lead and Copper Rule, we have called on EPA to consider drinking water within the integrated planning approach. Moreover, drinking water and wastewater are viewed as one system indistinguishable from each other by our citizens and

customers. Utilities, especially those with responsibility for wastewater, stormwater and drinking water, often take a holistic approach to water management, and would benefit from a national policy framework that allows for a similar integrated and coordinated approach.

### **Fiscal Impact of Aging Infrastructure**

As you know, local governments construct, operate, and maintain the vast amount—95 to 98 percent—of the country’s water infrastructure networks, which are essential for economic development and quality of life in our communities, and the needs in our communities continue to grow. Cities face a backlog of projects and, especially as cities continue to recover from the economic downturn, are finding challenges in funding much needed water infrastructure improvements, as well as other priorities. Meanwhile, federal mandates, along with aging infrastructure, are straining local budgets and federal options for grants and loans are dwindling. We, therefore, call on you to support existing and new financing mechanisms for funding water infrastructure projects.

#### *Infrastructure Needs*

The need for infrastructure investment—and the jobs that come with it—is acute. The American Society of Civil Engineers estimates that the nation should spend \$2.2 trillion over the next five years on infrastructure projects. Specifically, EPA’s most recent Drinking Water Infrastructure Needs Survey and Assessment estimates the cost of drinking water infrastructure upgrades over a 20 year period to be \$334.8 billion. Likewise, the most recent EPA Clean Watersheds Needs Survey indicates that the 20 year investment needed to upgrade our nation’s total wastewater and

stormwater management infrastructure to meet the water quality goals set in the CWA to be \$298.1 billion. In our estimation, these investment levels are actually an underestimate given the advancing age of our infrastructure, the burden of unfunded federal regulatory mandates, and factors not yet known as a result of our changing climate.

The lack of quality water infrastructure threatens local and regional economies, the environment, and public health and safety. Like other communities, much of Gaithersburg's water infrastructure is beyond its expected design life and is in need of substantial funding to address our existing system needs. City leaders remain committed to meeting the growing water infrastructure needs in our communities. We call upon the federal government to be a full partner in this important endeavor.

### *City Fiscal Conditions*

According to NLC's 2012 *City Fiscal Conditions* report<sup>1</sup>, general city revenues are continuing to fall, with a projected -3.9 percent decrease over 2011. This is the sixth straight year of declines in revenue with probable further declines in 2013 due to stagnant housing markets, high unemployment, and looming federal budget cuts. Cities are responding to these declines by cutting personnel (48 percent), increasing service fees (43 percent), delaying infrastructure projects (33 percent)—in addition to deferring facility maintenance and equipment replacement, and making cuts in services such as public works, library, parks and recreation programs (25 percent).

---

<sup>1</sup> Hoene, Christopher W. and Michael A. Pagano, *City Fiscal Conditions in 2012*, National League of Cities, September 2012. (Available at <http://www.nlc.org/find-city-solutions/center-for-research-and-innovation/finance/city-fiscal-conditions-in-2012>)

Cities also have been forced to contend with significant decreases in intergovernmental revenue, including federal, state, and county aid, adding to the fiscal pressures. In addition to on-going deficit reduction efforts at the federal level, which has led to spending cuts in federal programs for local communities, according to NLC's report, since 2010, cities report state cuts in shared revenues (45 percent), general aid (42 percent), and reductions in reimbursements and other transfers (30 percent). As states make these cuts to balance their budgets, it puts greater budgetary pressure on local governments that must balance their budgets as well.

There can be no doubt that in Gaithersburg and in cities around the country, city officials are making difficult decisions and are working hard to find innovative solutions to reenergize our communities. But, without more resources and more cooperation from the federal government, the outlook will continue to be challenging. Moreover, at a time when financial resources are increasingly limited, the federal government continues to impose costly federal regulatory requirements to carry out the objectives of the SDWA and CWA without regard for the efficacy of the regulation or a prioritization scheme.

### *Financing Mechanisms*

As the Administration and Congress look to identify savings and new revenue to reduce the deficit, the federal income tax exemption provided to interest paid on state and municipal bonds (debt) is under threat. These bonds are the primary financing mechanism for state and local infrastructure projects, with three-quarters of the infrastructure projects in the U.S. built by state and local governments using municipal bonds as the primary tool, and with over \$3.7 trillion in outstanding tax-exempt bonds, issued by 30,000 separate government units. According to the

National Association of Clean Water Agencies, in the first six months of 2012, tax-exempt municipal bonds financed more than \$23 billion worth of water and wastewater infrastructure projects.

Local governments save an average of 25 to 30 percent on interest costs with tax-exempt municipal bonds as compared to taxable bonds. This is true because investors are willing to accept lower interest on tax-exempt bonds in conjunction with the tax benefit. If the federal income tax exemption is eliminated or limited, states and local governments will pay more to finance projects, leading to less infrastructure investment, fewer jobs, and greater burdens on citizens who will have to pay higher taxes and fees. NLC opposes any attempt to eliminate or limit the traditional tax exemption for municipal bonds whether as a part of a deficit reduction plan, a push for comprehensive tax reform, or as an offset for new spending.

While we recognize that the federal government has many funding challenges to meet, we urge you to prioritize funding for the Drinking Water and Clean Water State Revolving Loan Fund (SRF) programs. The SRF programs are integral tools used by our communities for providing clean, drinkable, and swimmable water to the American people. In 2010, local governments spent \$111 billion<sup>2</sup> on water and wastewater investments, while the SRF programs provided \$3.5 billion, primarily in the form of loans from state agencies to local governments. Federal investment in our nation's infrastructure is critical if the nation's cities, counties and states are to improve aging infrastructure, meet federal regulatory requirements, create and retain jobs, and foster a climate of economic growth in our communities.

---

<sup>2</sup> *2010 Annual Surveys of State and Local Government Finances*, U. S. Census Bureau, October 2012. (Available at: <http://www.census.gov/govs/estimate/>)

Accordingly, local governments need a reliable, long-term source of substantial capital for municipal water infrastructure systems to help close the gap between current expenditures and anticipated needs to enhance and maintain critical water infrastructure in our communities. NLC supports water infrastructure funding through the SRF programs and other alternative mechanisms of financing water infrastructure improvements and investments, such as, for example, mechanisms that lower the cost of borrowing that will help leverage local funding, offer direct loans and loan guarantees from the federal government to cities, or remove the federal volume cap on tax-exempt bonds for water and wastewater infrastructure projects.

## **Conclusion**

The United States marked the 20th century with breakthroughs and investment in water infrastructure that helped lift our nation to international prominence for the past 100 years. We ask you to lead and serve the country by addressing the underlying issue of aging infrastructure and unmet infrastructure needs. This effort will strengthen the intergovernmental partnership by enabling our cities and towns, our states, and country to meet the challenges and opportunities of leading the world into the next century.

Local governments remain committed to meeting the water infrastructure needs and environmental protection standards in our communities now and in the future. We hope the federal government remains committed to being a full partner in this important endeavor. As the nation's cities continue to endeavor to improve aging infrastructure, meet federal regulatory

requirements, create and retain jobs, and foster a climate of economic growth in our communities, a partnership with the federal government is essential.

Thank you for the opportunity to speak on behalf of America's cities and towns. I look forward to your questions.