December 2, 2010

The Honorable Harry Reid
Majority Leader
U.S. Senate
522 Hart Senate Office
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
361-A Russell Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Reid and Minority Leader McConnell:

On behalf of local governments and state water regulators across the country we urge your support for enacting legislation that requires the federal government to pay fees for stormwater management services provided by local authorities. S. 3481, a bill to amend the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) to clarify federal responsibility for stormwater pollution control, passed the Senate Environment and Public Works Committee unanimously in June, and is ready for Senate action. A companion House bill, H.R. 5724, is also ready for action.

The legislation is important to ensure that local governments are compensated for providing stormwater management services – services that are essential to moving our nation forward towards achieving better water quality in communities across our country. The urgency of this situation is compounded by the Government Accountability Office's (GAO) September decision (No. B-320795, 9/29/10) that federal facilities in the District of Columbia can claim sovereign immunity and do not have to pay fees billed for stormwater management services by the City. Because the City must provide these services under its federally issued permit, this decision represents a potential loss of $2.64 million annually in fees for the City – 20% of the total cost of stormwater management services provided by the City.

In other parts of the country, the federal government has decided not to pay local municipalities for stormwater management services – including the U.S. Forest Service in Washington State, Department of Defense installations in Texas, and federal installations in the States of Tennessee and Kentucky. In all cases, the federal government claims these fees are unconstitutional taxation by local authorities. The issue has also arisen in Colorado, Florida, Georgia, Michigan, Ohio, Oregon, and Virginia.

We believe that this failure by the federal government to pay stormwater fees is counter to Congress's intent in CWA Sec. 313. This provision states that the federal government is subject to and shall comply with the CWA as any nongovernmental entity, "including the payment of reasonable service charges." Congress clearly intended that the federal government pay for services related to the control and abatement of water pollution.

Congress should resolve this confusion as soon as possible and step in to establish clear national policy regarding the federal government's responsibility for paying its share of the costs to improve water quality in communities where it has facilities. For these reasons we strongly urge Congress to act on this measure before it adjourns in December. Thank you for your consideration of this matter we look forward to working with you to bring this matter to an equitable conclusion

Sincerely,

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