RESOLUTION CONCERNING CLEAN WATER ACT REGULATIONS

WHEREAS, the Clean Water Act (CWA) and implementing regulations of the past four decades recognize the partnership between federal, state, and local governments to achieve the objectives of the Act; and

WHEREAS, Section 101(g) of the CWA expressly states that it is “the authority of each state to allocate quantities of water within its jurisdiction [that] shall not be superseded, abrogated, or otherwise impaired by this Act”; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers have a proposed rule to redefine “waters of the U.S.” that could significantly increase the cost and regulatory requirements for state and local governments and ultimately the costs for state and local residents and businesses; and

WHEREAS, the proposed rule has no prescribed limits to federal jurisdiction and does not clearly define what waters are to be regulated under the federal government and what waters are under the state’s jurisdiction; and

WHEREAS, the proposed rule will apply to all programs of the CWA and, therefore, subject more activities to CWA permitting requirements, National Environmental Policy Act (NEPA) analyses, mitigation requirements, and citizen suits challenging local actions based on the applicability and interpretation of new-found authorities; and

WHEREAS, the costs of obtaining U.S. Army Corps of Engineers wetlands permits are significant, averaging 788 days and $271,596 for an individual permit; 313 days and $28,915 for a nationwide permit – not including the costs of mitigation or design changes – and the greatest burden will fall on small landowners and small businesses least able to absorb the costs; and

WHEREAS, the proposing agencies’ economic analysis for this rule did not consider impacts of the full range of CWA programs affected, or of economic impacts to small businesses, and the analysis relies on nearly 20-year-old cost data that has not been adjusted for inflation and, in concluding, that the proposed rule would increase the waters subject to permitting requirements by only 2.7 percent, the
proposing agencies rely on a data base that is incomplete and not representative of those waters that are subject to jurisdiction under current regulation; and

WHEREAS, the justification for the scope of the proposed rule rests on a scientific analysis that is still under review and the proposing agencies decided to proceed with development of a proposed rule addressing issues associated with the connectivity of waters prior to being informed by the Science Advisory Board Review and the implications of its findings; and

WHEREAS, the proposed rule does not provide an explanation or clear understanding about how the proposed expansion of CWA jurisdiction and transfer of ultimate authority might affect other CWA programs, state laws and responsibilities, water rights, land use, governances, and regulated parties; and

WHEREAS, the EPA and the U.S. Army Corps of Engineers have not fulfilled statutory obligations to fully consult with the states, thus undermining the cooperative federalism intent at the heart of the CWA; and

NOW THEREFORE, BE IT RESOLVED, as co-regulators of water resources, states should be fully consulted and engaged in any process that may affect the management of their waters; and

BE IT FURTHER RESOLVED, that The Council of State Governments urges the EPA and the U.S. Army Corps of Engineers to defer adopting any redefinition of the waters of the U.S. rule until:

- The Science Advisory Board concludes its review and the EPA and the U.S. Army Corps of Engineers incorporates the conclusions of the Science Advisory Board review; and
- An economic analysis is completed that addresses the full economic impact of the rule and uses properly updated data.

BE IT FURTHER RESOLVED, copies of this resolution shall be transmitted to the president, all members of Congress, the Administrator of the U.S. EPA, and the leadership of the U.S. Army Corps of Engineers, and the CSG staff is directed to advocate for policies that reflect these principles.

Adopted this 13th Day of August, 2014 at CSG’s 2014 National Conference in Anchorage, Alaska.