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Federal Highway Administration

Before the House Public Works and Transportation Committee

H.R. 3948, "Water Quality Act of 1994"

Thursday, May 26, 1994

It is indeed a pleasure to be here today on such a distinguished panel to discuss an issue of vital importance to the transportation community and the Nation as a whole. I am speaking, of course, of the efforts of Congress to re-authorize the Clean Water Act. I am accompanied today by Anthony R. Kane, Associate Administrator for Program Development.

Protecting our Nation's waters from the impact of transportation programs is an integral component of Secretary Peña's commitment to environmental stewardship as described in the Department of Transportation's National Strategic Plan. Goal Number Five of the Plan states that it is a Departmental policy to "vigorously...lead in the development of new programs to further enhance water quality."

My comments today demonstrate our full commitment to President Clinton's Clean Water Initiative, issued in February of this year. Federal Highway Administration (FHWA) staff actively participated in the development of the Administration approach to the Clean Water Act re-authorization, beginning last year about this time. After a period of extensive interagency coordination, the President's plan was delivered as a model for protecting and improving the Nation's water resources now and into the next century. The Department of Transportation and

the FHWA wholeheartedly endorse the primary emphasis of the plan to reduce pollution and protect priority waters through performance- and incentive-based State programs. The State programs will emphasize targeted and streamlined planning, management, and enforcement mechanisms. The Clinton Clean Water Initiative provides recommendations to slash unfunded mandates, increase flexibility, and cut red tape for States, municipalities, and the private sector so resources are targeted to the most serious water quality problems. We are pleased to note that the bill before the committee, H.R. 3948, includes many of the Administration's goals for a strengthened Clean Water Act.

This new State-based approach for protecting and enhancing our Nation's water resources strikes a familiar chord within the transportation community. The Federal-aid highway program, under this type of approach, specifies State and local management of transportation priorities. Needless to say, the program has achieved tremendous results -- results measured in mobility and access tailored, or if you will, **targeted**, to local and regional needs. At the same time, national consistency and system continuity is not sacrificed. Witness the Interstate System and the proposed National Highway System (NHS). Although designed to be implemented at the State and local levels, these systems achieve a uniform national result because of the broad, national direction of transportation legislation.

President Clinton's Clean Water Initiative stresses these same principles. It calls for providing the States with both the tools and the incentives to achieve local and regional water quality objectives. Individual State programs address localized concerns and needs, yet when taken

together form national solutions to our water quality problems. A key to the success of the Administration's approach is area-wide water quality planning and management. For water resource planning the most logical management unit has proven to be the watershed. All human activities occurring within the confines of a watershed have the potential to affect water quality in that geographical area. Therefore, management and control programs targeted at the watershed level are immediately relevant to any existing water quality problems and will be effective in controlling new potential sources of pollution. We are encouraged that the Committee in H.R. 3948 has embraced the watershed concept in various programs of the proposed legislation, including the measures to manage stormwater and control non-point pollution.

The FHWA has long been an advocate of area-wide measures to solve access and mobility problems. We have a rich history of coordinating regional transportation planning and management programs. We firmly believe the same approach can be used to address many of our Nation's environmental issues, including water quality. Piecemeal strategies and single-purpose mandates for resource management fail to recognize the ecosystem factors at work in natural systems, such as watersheds. It is clear that if we are to remain competitive in the global economy, transportation decisions in this country must be constituent-generated and coordinated, multi-interest, and regionally-based. So too, must our strategies for clean water.

Several provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), mandating environmental protection and enhancement measures, are characterized by nationally

directed but locally implemented programs which relate directly to the Clean Water Act:

- ISTEAs makes contributions to Statewide wetland plans and wetland banking efforts eligible for funding under both the NHS and the Surface Transportation Program (STP). More than two dozen State transportation departments have used Federal-aid highway funds to establish wetland banks.
- The mitigation of water quality impacts due to stormwater runoff from highways is a designated Environmental Enhancement category eligible for set aside funding under the STP. Several State transportation departments have implemented water quality improvement projects utilizing this source of funding.
- Section 1057 of the ISTEA directs the Department to develop broad erosion control guidelines to assist the State transportation agencies in developing and implementing their own practices and procedures to control the impacts of erosion at highway construction sites. Final publication of this guidance is expected very soon.
- ISTEA directed the FHWA and the Federal Transit Administration to develop Statewide and metropolitan transportation planning procedures. Rules establishing these procedures were published in October of last year. Our procedures stress the need to coordinate transportation plans with area-wide environmental planning and management programs, including plans developed under the Clean Water Act.

It is clear that watershed programs, as envisioned by H.R. 3948 and the Administration's Initiative, will involve interaction with the development of transportation plans.

Our reaction to the potential for the integration of watershed management and area-wide transportation planning is nothing but positive. In fact, we can't imagine one operating at maximum effectiveness without input from the other. The information generated, for example, during the transportation planning process will prove invaluable to watershed planners who must consider land-use changes and development trends when formulating their programs. Equally, transportation planners in the States and metropolitan organizations must be aware of the water quality priorities and control mechanisms that may limit certain design elements, or in some cases, determine the viability of proposed transportation improvements.

The effectiveness of erosion and sediment control management measures and practices is dependent on a variety of environmental, geographic and site specific variations. For non-point sources, the President's Clean Water Initiative calls for flexible State programs targeted to water quality problems and in conformance with broad national guidance establishing the best available management measures. This guidance should consider cost and pollution reductions achieved and should be broad and flexible enough to allow for local tailoring. A watershed management approach that identifies critical water quality areas and provides for the development of an integrated program of project planning and implementation, ultimately resulting in water quality improvements, would be the most cost-effective strategy.

The FHWA has long been associated with efforts to bring about State-directed watershed planning and thus we pledge our support to the Committee's efforts to incorporate such concepts into the Clean Water Act. We have participated in several interagency efforts to develop a national perspective on watershed management. These efforts culminated last year in the highly successful **Watershed '93** conference in Washington. The conference focused national attention on the need for watershed protection and management. We remain committed to moving forward in efforts to make watershed-based programs a reality in the Clean Water Act re-authorization.

We suggest that for watershed-based programs to be effective :

- 1.) We must provide the States a variety of incentives to embark upon watershed-based programs. Incentives should include flexibility to define targeted programs, reduction or streamlining of direct Federal mandates, and more flexible funding.
- 2.) State watershed programs should be developed under broad Federal guidance that not only allows, but encourages the States to develop equally effective site-specific management controls for non-point sources.
- 3.) States must have the flexibility to identify selected pollutant sources and implement targeted control remedies to meet environmental objectives. Inherent in this flexibility is the latitude to use scientifically valid information to establish

priorities of sources requiring control. Furthermore, such information can also be the basis of selected best management practices for pollution abatement.

To illustrate how research results and information based on past practices can be used to impart flexibility into State-operated programs let me offer the following example:

Extensive research conducted by the FHWA and other entities indicates that the measured levels of certain pollutants of stormwater runoff from roadway surfaces are positively correlated to the average daily traffic carried by the facility being sampled. By relating pollutant loadings of the runoff to water quality standards, it may be possible to estimate the impacts of runoff on receiving water quality. It follows then, that these estimates can also be related to the traffic levels. Therefore, under a flexible approach we envision for the Clean Water Act, the States should be allowed to correlate information such as average daily traffic with available water quality monitoring information when establishing targeted pollution control strategies and programs and specific management measures. That is, facilities carrying higher levels of traffic could be targeted for controls and management measures. The specific level of traffic that would indicate the potential for water quality control measures should be determined on a State-by-State basis.

Based on this example and my previous discussion, I hope that I have been clear about our support of flexibility and targeting. I am pleased to note that H.R. 3948 adopts a similar

approach. Administrator Browner in her testimony on May 24 noted several areas for improvement, to which I would add FHWA's support, for a more targeted approach involving flexibility and risk-based concepts to address water quality problems.

There will always be costs associated with new and revised programs. Much has been said about added costs of measures to reduce water quality impacts on new and existing highway facilities which the new Act would impose upon transportation development agencies. Actual cost ramifications of H.R. 3948 are difficult to determine at this point because under both proposals, latitude would be available to the States in establishing their control programs. If the flexibility inherent in the President's Initiative is included in the re-authorization, we would expect that transportation programs would experience some cost savings due to the change in the current law which would, in time, bring all Phase II stormwater sources under the National Pollutant Discharge Elimination System permitting regulations. However, we would also expect localized cost increases that are associated with projects having the clear potential to produce significant water quality impacts and with projects located in sensitive water resource areas. Again, we emphasize that both we and EPA are sensitive to cost concerns, and we want to avoid sweeping Federal requirements that are costly and inflexible.

We are committed to working cooperatively with States, EPA, and other Federal agencies to develop reasonable cost projections for management practices to reduce non-point source pollution and control stormwater runoff subject to NPDES permits. The Administration currently projects that for all forms of pollution, the President's Clean Water Initiative would

save \$29 billion over a strict interpretation of the current law. About \$16 billion of these savings are due to the replacement of currently applicable Phase II stormwater requirements with improved and targeted non-point source programs.

With respect to wetlands, re-authorization of the Clean Water Act presents a real opportunity to move wetlands protection forward through the enhancement of a balanced, common sense, workable set of improvements. I am pleased that H.R. 3948 contains many of the provisions in the Administration's Wetlands Plan. This plan stresses improved administrative flexibility to resolve § 404 permit issues. The FHWA supports the Administration's decision to defer consideration of changes in the criteria of wetlands delineation pending completion and evaluation of the National Academy of Sciences (NAS) study. A member of FHWA's staff is participating in the NAS effort.

The Administration's plan also endorses the use of mitigation banks under appropriate circumstances. The FHWA and many State departments of transportation have had a significant amount of experience with the use of mitigation banks for unavoidable, often small impacts to wetlands along roads and highways. Banking can help address small, cumulative losses in an effective and efficient manner. The FHWA actively pursues the Administration's emphasis and focus on improving interagency coordination and streamlining. Our agency has worked many years with other Federal agencies to streamline the § 404 permit process as we evaluate proposed Federal-aid highway alignments.

In closing, the FHWA is mindful of two important national goals: to improve the quality of our environment **and** to foster a productive economy. Highway programs have an important responsibility to support both of those goals and we endorse legislation that establishes a targeted, flexible, and State-based approach to improving water quality. Once legislation is enacted and signed by the President, we pledge to work closely with EPA and the States to carry out such an approach in ways that are cost-effective and manageable. Yes, there will be some additional financial burden, but we believe the benefits of improved water quality are important enough to justify those costs.

I would be pleased to answer any questions you may have.