



Testimony of Gregory M. Cohen  
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Before the  
Subcommittee on Water and Wildlife  
Committee on Environment and Public Works  
United States Senate  
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Chairman Cardin and Members of the Subcommittee, I appreciate this opportunity to present the views of the American Highway Users Alliance on issues regarding transportation infrastructure runoff.

### **About The American Highway Users Alliance**

The Highway Users Alliance is an advocacy group representing hundreds of national and state non-profits and businesses of all sizes, including AAA clubs, bus and truck companies, motorcyclists and recreational vehicle users, and a diverse network of companies that require a safe, efficient, and reliable national system of highways. Our members represent millions of highway users across the country and we serve as the united voice for those who want better roads and “trustworthy” user-fee based trust funds.

For over 80 years, The Highway Users has been an advocate for strong federal leadership on American transportation infrastructure. We believe that the federal government has an essential responsibility for ensuring safe interstate commerce, making America more connected, and increasing mobility and opportunity for all citizens while contributing to economic growth. The Highway Users has been a stakeholder on nearly every federal highway and surface transportation bill, including the most recent MAP-21 law, which we endorsed and strongly supported despite concerns over the lack of sustainable long-term revenue. We are currently working with Congress to address those fiscal concerns while maintaining the key, historic policy reforms contained in MAP-21.

We are particularly pleased to be working with this Committee on the highway title of the reauthorization bill and applaud the bipartisan approach in both the Senate and House to address our nation’s transportation infrastructure. We have testified many times over the last decade on highway needs. And now, we are very grateful for the opportunity to work with you on the related issue of mitigating watershed pollution caused, in part, by highway runoff.

## **Background**

The built environment has had a significant impact on the pre-development hydrology of watersheds by changing the amount of water, location of entry points, and the quality of the water that enters our streams, rivers, bays, and oceans. Runoff from transportation infrastructure is one of the ways that urban and rural development has impacted water quality. The vast majority of runoff from roads, parking lots, private development, and agriculture is not controlled for pollution.

Clean water should be a concern for all Americans, including the vast majority who drive or ride on our streets and highways and rely on the shipment of goods over our roads. The American Highway Users Alliance strongly supports funding from the federal government and the efforts of the States to provide integrated assessments and water quality reporting and improvement plans for impaired and threatened waterways.

Some States, like the Chairman's home state which surrounds most of the Chesapeake Bay, have critical needs and more stringent water discharge requirements. Nearly the entire State of Maryland is heavily regulated under the National Pollutant Discharge Elimination System (NPDES) permit program in order to restore the health of the Bay. Substantial funding has been raised from general obligation bonds as well as traditional State and federal environmental program funds. As a result, Maryland has possibly the most comprehensive plans to control highway water runoff. Yet, even in a State like Maryland, with an extensive program, it is simply unaffordable to control the overwhelming majority of runoff. Even the runoff that is controlled does not eliminate every pollutant that exists or control for every other factor that impacts water quality. Yet for the vast majority of other States, a program like Maryland's is far beyond what they can afford or manage.

Clearly, this is a very difficult and expensive problem for Congress to "solve" and the focus therefore turns to ways to address the issue incrementally and as cost-effectively as possible. From State to State, the availability of funds, the significance of the water resources involved, and the extent of water quality problems vary tremendously. Certainly the availability of federal funds to address water quality, including pollutants from runoff, is critical.

## **Need for a Rational, Flexible, Cost-Effective Approach**

With a problem as big as this, it is important that expectations are realistic about what can be done and how fast; incremental progress should be made in a manner that focuses on goals and outcomes, where States learn from one another and from the EPA, rather than an approach that mandates that every State do the exact same list of activities under the same circumstances. Room is needed to encourage innovation and flexible approaches from State-to-State, and a goal of getting the biggest bang for the buck. Special care should also be made to understand that incremental progress in improving water quality should not come at the expense of other important public needs, such as our economy, quality-of-life, and public safety.

## **Addressing Water Quality Without Further Straining Highway Programs**

As every Committee member knows all too well, there is a crisis in highway funding and States are dealing with potentially massive cuts in their highway and transit programs this summer. Even if reauthorization passes and the Highway Trust Fund is saved, it will be a significant challenge to increase funding to levels that address transportation needs – a problem that will be exacerbated as those needs continue to increase as the system ages and mobility needs increase. In addition, an important goal of MAP-21, the Administration’s GROW AMERICA proposal, and the EPW Committee bill is to reduce project delays and streamline project approvals. As a former Maryland State Highway Administration project engineer, I know all too well that it simply takes too long to get projects done, particularly when a myriad of federal and state government agencies are “cooperating” in the project planning process. When highways aren’t improved in a timely manner, the safety of the motoring public is put at risk and the economy and productivity of the United States is weakened.

So, how do we address our water quality needs without the unintended consequences of exacerbating our highway funding challenges and slowing down project approvals?

Some approaches can be helpful, while others create more problems. Let me briefly discuss some possible approaches, and why we regard some favorably and others as problematic.

- (1) Congress could authorize appropriations for a significant new EPA program for funding to the States for mitigation and treatment of watersheds, with flexibility and technical assistance, and empower States to consider innovative approaches that achieve high returns on investment in their varying circumstances. Separately or as part of such a program, Congress can encourage closer coordination with State transportation departments, on issues related to transportation runoff. This approach, properly implemented, would allow a more holistic approach to addressing the problems and would allow the restoration funding and project management to be conducted by State environmental departments who would comprehensively consider all sources of runoff and watershed degradation, including transportation. Aggressively funding this approach would work the best to address the problem, without negative impacts to public safety, congestion relief, and other goals of MAP-21.
- (2) Continue to allow project mitigation to be an eligible programmatic expense within the highway program. Currently, mitigation is eligible under the transportation alternatives and traditional highway construction programs. In having provided this option, Congress was aware that outlays from the Highway Trust Fund for stormwater features would reduce some outlays for other worthy projects or project features. Yet for States that want the flexibility to utilize these funds for mitigation and restoration, it can help address community concerns about the environmental impact. As an example in the Chairman’s home State, the Intercounty Connector (ICC) project involved significant storm water

management and watershed restoration, to the extent that the watershed is reportedly in better condition after road construction than before the ICC was built. This is an extraordinary example of what can be done when there is enough money available and the watershed is particularly sensitive and valuable. In other locations, it may not be effective, desirable, or worthwhile to tie a highway project to a watershed restoration effort. Flexibility for the States is the key. We do not oppose this flexible approach but we would not support a mandate that funds must be used for these purposes or a requirement that a specific percentage of highway funds be set aside by each State only for this purpose.

- (3) Congress could create unfunded federal mandates that require specific designs for certain types of highway improvements in order to address runoff. We oppose this approach. It is not cost-effective and for many States it would be unaffordable, derailing important projects. A design mandate would address runoff in a piecemeal, project-by-project basis, ignoring several issues. First, the current best practice in controlling water pollution is a watershed-wide approach, where the engineering team looks at the most critical watersheds where the most good can be done, rather than looking at the design of individual highway projects in various isolated locations where roads are being improved. Second, this approach would delay and complicate project approvals, even making needed safety improvements infeasible. Third, this top-down “federal” approach may include design requirements that are difficult or impossible to achieve in certain areas. For example, it is practically impossible in many areas (and even if possible, prohibitively expensive) for improvements in urban areas to create “predevelopment hydrology” conditions or to replace an open-section of highway with a closed section without reducing the number of drainage points.

### **Draft “Section 404” Regulations**

Before closing, let me mention that the EPA and the Corps of Engineers have recently released for comment proposed section 404 wetland permit regulations. The Highway Users will provide comments directly to EPA on those proposed regulations before the docket closes. However, since this issue relates to the hearing subject, I would like to briefly address those proposed regulations.

Section 404 of the Clean Water Act (33 USC 1344) affects the ability of both the government and private land owners to build projects on their land if there is a significant nexus between the water on the land and “Waters of the United States”. I know from my past engineering experience that obtaining federal approval for Section 404 permits can be a real challenge, in some cases triggering a full NEPA review (preparation of an EIS). The U.S. Corps of Engineers and the EPA have faced two Supreme Court cases that forced them to scale back regulatory overreach but the new draft rulemaking attempts once again to make a federal issue over as many wet areas as possible, despite the clear legislative language that ties the regulatory authority to navigable waterways. The latest draft rulemaking is quite controversial among my members. Here is just one example where we believe there is a problem: The agencies still want to regulate the filling (even

in part) of many manmade roadside ditches. The practical impact is that if a county government wants to add safety shoulders to a stretch of dangerous two-lane rural road (even with no federal funding involved), the county could be required to avoid and minimize the impact to man-made ditches along the side of the road to the best of their ability. If that is not feasible and a permit is issued to fill the ditches, a mitigation plan would be needed, such as the construction of new roadside ditches. Even if hydrologic value is minimal and avoidance/minimization plan would stretch the resources of the county, it wouldn't be able to proceed without satisfying the Corps and EPA. While waiting to get through the federal bureaucracy, the safety of motorists on the road would be at risk. Although this example is hypothetical, problems like this are real and part of the reason it takes so long to get projects done when the federal government gets involved. Congress could serve people and the environment better by approaching watershed restoration and water quality improvements in more rational, cost-effective, and holistic ways.

### **Conclusion**

Among the various options to promote clean water, watershed renewal and restoration, and the built environment, the American Highway Users Alliance urges Congress to provide a significant general fund authorization for watershed restoration efforts. Although transportation infrastructure runoff is a factor in water quality degradation, we believe that transportation funding programs should continue to not include any mandates or funding set asides as to runoff but continue to allow features that address that issue to be an eligible expense under the highway program. We believe that it would be more effective to address the runoff problem by funding transportation infrastructure and watershed restoration programs independently so that these two worthy programs are not competing with each other for federal funds. We also ask that Congress provide both monetary and technical assistance to the States, without the heavy-handed mandates that unintentionally stifle creative solutions and new innovations. We urge Congress not to take any action which would slow down or lead to the cancellation of needed highway projects because of expensive design mandates or re-direction of highway funds.

We can make significant progress toward both cleaner water resources and safe, efficient highway infrastructure. Each goal should be pursued independently and aggressively, in a rational, cost-effective manner that creates better outcomes for both the motoring public and the natural environment.

Thanks again for providing the Highway Users this opportunity to address these issues.

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