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## Flint Crisis Focuses Attention on Water Issues

The water crisis in Flint, Michigan continues to receive significant national attention from both the media and federal policymakers, and has focused minds both in Washington and nationwide on water system management and water infrastructure. NACWA joined with other water sector associations in February to release a [joint statement](#) on Flint, and has monitored the situation.

Congressional leaders continue working toward a compromise to provide assistance to Flint and other communities facing potential lead threats. An aid package was negotiated to move along with the Senate's comprehensive energy bill, but holds on the vote have not yet been resolved despite intense discussions. As the Senate returned this week from a two-week recess, efforts to resolve outstanding concerns regarding Flint aid and to pass the energy bill will continue.

In early March, a Democratic Presidential Debate was held in Flint, and the issue of water contamination was front and center. Both candidates used their opening statements to discuss the crisis and expressed deep concern over the developments that contributed to the elevated lead levels in drinking water.

Congress has zeroed in as well, holding hearings with top officials to better understand the causes of the lead issues in Flint and how to prevent such an occurrence again elsewhere in the country. EPA Administrator Gina McCarthy and Michigan Gov. Rick Snyder [testified](#) before a House committee on March 17, and tempers ran high as House members from both parties sought to hold McCarthy and Snyder accountable. Both witnesses acknowledged breakdowns at the federal and state level in protecting the citizens of Flint, but did not shed any new light on the origins of the crisis.

There have also been a host of legislative proposals introduced in response to the situation in Flint, many addressing the water infrastructure challenges facing communities like Flint nationwide. Among the bills introduced is one proposing a [national clean water trust fund](#), and another calling for a [program to provide rate assistance](#) to low-income households to help poorer ratepayers while also empowering drinking water and clean water utilities to raise the revenue necessary for needed infrastructure investments. EPA has weighed in as well, with Administrator McCarthy penning an [op-ed](#) about the situation in Flint and noting that the crisis has elevated the water infrastructure issues plaguing many communities around the nation – especially those with low-income populations.

Issues around Flint will take center stage at the upcoming [National Water Policy Forum](#) next week in Washington, DC.

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## Administration's Budget Signals Shift in Water Investment Priorities, Contact Your Representatives!

The Obama Administration released its proposed Fiscal Year (FY) 2017 budget in February, signaling a dramatic and disappointing shift in water investment priorities. While the Administration is touting a proposed \$300 million investment in water innovation and water supply, it is also significantly slashing funding to EPA's Clean Water State Revolving Fund (CWSRF) by over \$414 million. This is a surprising request in a final budget from an Administration that is trying to make clean water a centerpiece of its legacy, especially in light of the current water crisis playing out in Flint, Michigan.

The Administration's \$300 million initiative to invest in water innovation technology focused on dealing almost exclusively with water supply challenges caused by western drought. Monies would fund such things as technology development to increase water and energy efficiency measures at water treatment plants. While the clean water community is supportive of investing in water innovation and research, increasing funding for these efforts while also dramatically cutting funds for the federal government's primary water infrastructure investment programs demonstrates an unfortunate lack of awareness of the most important water investment priorities currently facing the nation.

On March 22 – [World Water Day](#) – the White House hosted an important [Water Summit](#) focused on this innovation initiative and building a sustainable water future for the United States. Themes of innovation, resiliency, and sustainability played an important role in the day's events, but NACWA was also pleased there was significant attention on the water infrastructure challenges facing communities around the nation – especially when it comes to funding needed infrastructure investments and the disproportionate impact this can have on poorer households. Budget negotiations will now shift to Capitol Hill, where NACWA is strongly advocating against the Administration's proposed SRF cuts. State organizations and utilities are encouraged to contact their Congressional representatives in support of strong funding for the CWSRF, and are also encouraged to support [Water Week 2016](#) in Washington, DC next week. Please contact [Brenna Mannion](#) if you wish to be a supporting organization.

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## Comments on MS4 Rule Recommend Flexible Hybrid Approach

NACWA forwarded [comments](#) on March 21 to EPA on the Agency's [proposed rule](#) to change the Phase II federal stormwater regulations for small municipal separate storm sewer systems (MS4s). NACWA's comments request a number of modifications and clarifications. The comments also indicate that, of the three options presented in the rule proposal, NACWA believes Option 3 (also referred to as the hybrid approach) will best address the procedural and participatory elements required of the rule – while also maintaining sufficient flexibility for permitting authorities and permittees to develop and regulate their small stormwater programs.

The Association's comments also reflect member input and concerns about the Agency's potential move away from narrative and BMP-based effluent limitations for stormwater discharges to more numeric limits.

EPA proposed the MS4 General Permit Remand Rule (Remand Rule) in December modifying the national small MS4 program to comply with the Ninth Circuit's 2003 *Environmental Defense Center (EDC) v. EPA* ruling and a subsequent 2014 petition related to the decision. The Remand Rule proposal is intended to be a narrow procedural response to the Court's requirements, but the potential impact of the proposal could be far reaching with significant substantive consequences for permittees.

NACWA also joined other national, state and regional stormwater associations to submit joint comments on the Remand Rule proposal from the National Stormwater Advocacy Network (NSAN). The [NSAN comments](#) reflect a broad set of consensus thoughts regarding the proposed rule that are jointly shared by the signatory organizations. NACWA formed and facilitates the NSAN to provide a forum for state and regional stormwater groups to engage in national stormwater advocacy.

NACWA and the NSAN will continue to work with EPA as they finalize the rule over the coming months. EPA must finalize the rule by November 2016.

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## Stormwater Management on Capitol Hill: Transportation Bill, WRDA, & Green Infrastructure Taxation

As municipalities face increasingly complex stormwater management issues, it's imperative that advocates pursue all legislative avenues to advance the profile of urban wet weather management. A few recent examples of this include the comprehensive transportation package [passed](#) by Congress late last year which included language that supports additional consideration for reducing and mitigating the impacts of stormwater runoff from surface transportation projects. The language added to sections [134](#) and [135](#) of the existing transportation statute does not create any new regulatory requirements but instead encourages transportation officials to explore opportunities to increase the resiliency of transportation systems while also minimizing impacts from runoff when engaging in transportation planning.

As with the work NACWA did on the 2014 Farm Bill, the inclusion of this stormwater language in the Transportation Bill demonstrates unconventional paths to acknowledge the importance of stormwater - especially in broad legislative packages that traditionally enjoy strong bipartisan support.

Along similar lines, NACWA is also promoting a [legislative proposal](#) that would incorporate stormwater considerations into the upcoming Water Resources Development Act (WRDA). NACWA President Adel Hagekhalil and CEO Adam Krantz met with House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) and Water Resources and Environment Subcommittee Chairman Bob Gibbs (R-OH) in March to discuss support for the proposal, which would encourage the Army Corps of Engineers (ACOE) to coordinate with local stormwater and clean water agencies where appropriate in the development of flood control projects authorized by WRDA.

NACWA is urging support for the proposal so that local communities struggling with diminishing water supplies due to persistent drought or with degradation of surface water quality due to extreme wet weather events can work with the ACOE to ensure that flood control projects are integrated with local efforts to address these broader water resource challenges. NACWA encourages state and regional associations to track and discuss these efforts with their representatives as the WRDA bill moves forward.

On the green infrastructure front, NACWA sent a [letter](#) supporting H.R. 4615, the [Water Conservation Rebate Tax Parity Act](#), recently introduced by Reps. Huffman (D-CA) and Rohrabacher (R-CA). The bill seeks to provide clarity in the federal tax code that rebates for water efficiency and stormwater management at residential properties are exempt from federal income tax. NACWA has [engaged with](#) a coalition of environmental and advocacy groups collaborating to ensure that utilities using private property green infrastructure rebate programs can move forward without the chilling effect that taxation may cause.

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## Drought & Resilience Take Center Stage in Congress, NACWA Releases New Climate Tool

The ongoing drought in the West continues to spark significant interest in Congress. Key legislative developments include Sen. Dianne Feinstein's (D-CA) introduction February 10 of the [California Drought Relief Act](#). The bill includes provisions addressing long-term western water supply needs, including water recycling. The bill references the study of water recycling potential that NACWA and partner organizations carried out last year. NACWA provided a [letter](#) in support of certain provisions in the bill. NACWA also held a briefing in March on water utility resilience.

In addition to this legislation, Sen. Feinstein's continues to press for a robust Bureau of Reclamation response to the drought through her role as Ranking Member on the Senate *Energy & Water Development Appropriations Subcommittee*. Subcommittee Chairman Lamar Alexander (R-TN) has indicated he hopes to avoid policy riders in the FY17 Energy & Water Appropriations bill. NACWA anticipates the FY17 bill will be released by the end of April.

Democratic Staff for Sen. Cantwell (D-WA), Ranking Member of the Senate *Energy and Natural Resources Committee*, released a white paper in late March outlining a national policy framework to address drought and water security in the U.S. The white paper can be reviewed [here](#).

In a related development, NACWA's Climate Resilience Resource Menu for Clean Water Agencies is a new way for utilities to access a wide array of climate resources, reports, and data to inform their resilience planning. Recognizing the huge volume of information on climate change, mitigation, adaptation, and resilience that has been produced, the Association's Climate and Resilience Committee saw an opportunity to collect the most relevant resources for clean water utilities in one place. Clean water professionals can find initiatives, reports, funding sources, scientific data, case studies, and more in the Menu to help guide their resiliency efforts. If you would like a copy of the Menu, please contact [Brenna Mannion](#).

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## High Court Rejects Chesapeake Bay TMDL Challenge

The U.S. Supreme Court in February [rejected](#) a petition challenging the final Chesapeake Bay total maximum daily load (TMDL). This action upholds EPA's decision to take a watershed approach in developing the TMDL, including specific allocations to nonpoint sources. It serves as an important victory for the municipal clean water utility community in creating greater accountability for nonpoint dischargers, especially agricultural sources. NACWA and its municipal partners played a key role in the case as an [intervenor](#).

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## NACWA Releases Analysis On Tiered Water Rates

A recent California case addressing the legality of tiered rates for water service has received significant attention within California and questions have been raised about its potential impact elsewhere in the country, including its implication for tiered sewer rates to address affordability concerns for low income populations.

In an April 2015 decision, a California appellate court rejected the use of tiered rates for water service in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano*. The water rates at issue gradually increased based on usage, with the highest rates imposed on the highest users. The rates were not based on a corresponding increased cost to serve higher volume users, but were instead an attempt to encourage water conservation in the drought-stricken region. The court struck down the City's rates based on a California constitutional amendment requiring that rates not exceed the cost of providing service to a given property, holding that while tiered rates are permissible, the rates must nonetheless be based on the cost of providing service to a given tier.

NACWA conducted a detailed analysis of the precedent on the use of tiered rates for sewer service nationwide, and the potential impact of the *Capistrano* decision. Absent a significant paradigm shift or sweeping constitutional amendments across the country, it is unlikely that the *Capistrano* decision will have a significant impact outside of California. While the decision may place a higher burden on California utilities to establish that rates are based on

cost to serve a given tier, other states are unlikely to follow suit. Instead, courts across the country have resoundingly supported tiered rates, so long as they are equitable and non-discriminatory. In addition, courts have consistently held that cost need not be the only factor to be considered in rate setting, and that utilities are given a great deal of deference to determine a reasonable method of establishing rates. This is true in the context of both water and sewer rates. If you would like a copy of the complete analysis, please contact [Brenna Mannion](#).

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## Upcoming Events and Deadlines

- **Call to Action:** We are asking utilities to complete the [Economic Pathways and Partners for Water Reuse Survey](#). Please consider including the survey in your next member newsletter! It will help gain a clearer national and regional picture of what makes reuse projects go from ideas to reality. The survey will be open through **Monday, April 18** and targets not only utilities that have built or are building reuse projects, but also those that have not. You can read more about the survey [here](#).
- Join us May 17 – 20 in Long Beach for the [National Pretreatment and Pollution Prevention Workshop & Training](#), the only national conference designed especially for pretreatment professionals.
- EPA announced the release of the Integrating *Human Health and Well-Being with Ecosystem Services Request for Applications* (RFA). This RFA's goal is to fund community-based research that will foster better understanding of how human health and well-being are interconnected with - and dependent on - ecosystem services. Applications will be accepted **until April 21**.
- The National Association of Flood & Stormwater Management Agencies (NAFSMA) has opened its 2016 [Green Infrastructure Awards Program](#) to recognize communities using GI to advance their wet weather management goals and enhance their communities. Applications are **due on May 17**. Applications are also available for a separate recognition program for [communication](#) around "Improving Water Quality".
- [Register](#) today for the *U.S. Water Alliance's One Water Leadership Summit*, June 8-10, 2016, in Atlanta, GA. The Summit is the premier gathering of the country's sharpest minds addressing our nation's most urgent water challenges to build stronger and more prosperous communities.

