



Dear Dawn:

The *Clean Water Exchange (Exchange)* is a communication from the National Association of Clean Water Agencies (NACWA) that highlights key issues that may be of interest to state and regional clean water organizations. **We encourage you to forward the *Exchange* emails to your members, asking them to add their voice and comments to issues that are playing out nationally but may have significant effects locally.** This is not a comprehensive list of NACWA's activities - please visit the NACWA [website](#) to learn more about the range of issues NACWA is tracking.

Please feel free to contact Brenna Mannion with any questions or concerns at [bmannon@nacwa.org](mailto:bmannon@nacwa.org).



**May 31, 2016**

#### **Key Topics**

- [Draft IRS Regulations Could Limit Use of Tax-Exempt Bonds](#)
- [House Committee Passes 2016 WRDA Bill with Key Stormwater Provisions](#)
- [Upcoming Comment Deadlines on EPA/USGS Report on Hydrologic Alteration and Revisions to NPDES Permit Program](#)
- [New Tennessee Stormwater Law Limits Use of Post-Construction Performance Standards](#)

- [Three New Federal Reports Examine "Green" Spending, Challenges to Expanding Water Reuse, and CSO Discharges to the Great Lakes](#)
- [EPA Releases Utility Customer Assistance Programs Resource](#)
- [New Report Released on California Citizen Suit Enforcement](#)
- [Upcoming Events and Deadlines](#)

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## Draft IRS Regulations Could Limit Use of Tax-Exempt Bonds

The Internal Revenue Service (IRS) recently issued [proposed regulations](#) altering the definition of a "political subdivision" for the purpose of issuing tax-exempt bonds and use of tax-exempt financed facilities.

Under current IRS regulations, a "political subdivision" is "any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit." This has meant that a public entity able to exercise taxing, eminent domain, or police (regulatory) powers, is able to issue tax-exempt bonds and use tax-exempt financed facilities. However, the proposed new language imposes two additional requirements: 1) public purpose, and 2) governmental control, both of which, depending on how they are interpreted, may have impacts on wastewater or stormwater utilities.

NACWA joined with national water sector organizations and the California Association of Sanitation Agencies (CASA) to [request](#) that the Treasury Department and the IRS redraft the recently released Proposed Regulations in order to ensure that water utilities continue to have access to funding from tax-exempt bonds. The coalition urged Treasury to modify the proposal to allow public stormwater utilities, flood control districts, drinking water agencies, and publicly owned treatment works, known as "clean water utilities," to continue to qualify as political subdivisions and maintain their current and long-standing access to tax-exempt financing even though some may be controlled by multiple governmental entities that may not possess all three of the traditional sovereign powers or have board members who are removable only for cause.

NACWA has requested to provide oral comments during a June 6 hearing to be held by the IRS. If this issue will affect utilities in your state, please let us know - there is an opportunity to incorporate that feedback into the oral comments and future engagement with Treasury. The hearing is also open to public observers.

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## House Committee Passes 2016 WRDA Bill with Key Stormwater Provisions

Last Wednesday, the House Transportation & Infrastructure Committee passed [HR 5303, the Water Resources Development Act \(WRDA\)](#) reauthorization package for flood control projects undertaken by the Army Corps of Engineers (ACOE). At the request of Representatives John Duncan (R-TN) and Dan Lipinski (D-IL), the Committee included a provision developed by NACWA, designed to lead to better integration of municipal stormwater projects and ACOE-sponsored flood control projects in order to address water supply and/or water quality challenges faced by municipalities.

Water resources management is becoming a complex challenge for local communities as they confront issues such as severe and persistent drought in the West and extreme wet weather events in the Midwest and East. Municipal stormwater management programs are increasingly imposing greater costs on ratepayers. The provision offered by Representatives Duncan and Lipinski provides an opportunity to help communities optimize stormwater resources to support water supply or water quality goals and to use ratepayer resources more efficiently.

The House proposed 2016 WRDA package has been characterized by many as a "pamphlet" version compared to the [2014 WRDA package](#) and the Senate proposed [2016 WRDA package](#) because it is limited to projects overseen by the ACOE. The full House and Senate may take up consideration of their respective proposals in June after which a conference committee will be convened to reconcile the two proposals. NACWA will be working with its

members and state associations on letter outreach to urge adoption of these proposals by Congress in a final WRDA authorization bill.

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## Upcoming Comment Deadlines on EPA/USGS Report on Hydrologic Alteration and Revisions to NPDES Permit Program

EPA and USGS have released a draft technical report, [Protecting Aquatic Life from Effects of Hydrologic Alteration](#), for public comment. NACWA is reviewing the document carefully and is coordinating its efforts to develop the Association's comments with several key stakeholders. NACWA welcomes input from state organizations. The comment period has been extended and will now close on June 17.

EPA [proposed](#) a number of updates to its National Pollutant Discharge Elimination System (NPDES) permit program May 18, including several provisions that could impact clean water agencies. While EPA describes most of the changes as having no or minimal impact on permittees, the true impact will depend on how a particular state is currently implementing its permit program.

The most contentious provision in the proposal would allow EPA Regions to designate certain administratively continued permits as "proposed permits" and trigger an EPA review process. The proposed rule change would give EPA more leverage with the state for those permits it considers "environmentally significant." However, some of EPA's potential triggers for use of this provision are basic elements of the Clean Water Act program, such as whether there is a new or revised water quality standard that has not been implemented in the permit. Given the frequency with which EPA revises its water quality criteria, this provision could pull in hundreds if not thousands of the approximately 17,000 facilities operating under expired permits as of September 2015.

State clean water organizations should evaluate the NPDES proposal specific to how it may impact their programs.

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## New Tennessee Stormwater Law Limits Use of Post-Construction Performance Standards

A Tennessee stormwater bill ([S.B. 1830](#)) that recently became [law](#) requires that MS4 permits issued by the state be no more restrictive than federal requirements for post-construction management of stormwater. This could lessen the ability of local governments to use post-construction onsite retention standards for managing stormwater. This bill sets a concerning precedent for other states, especially where municipal stormwater utilities are interested in using such standards as part of their stormwater management programs and must determine whether individual performance standards exceed "the federal minimum". Tennessee utilities and the Tennessee Stormwater Association (TNSA) are working to minimize the impact of the law on their particular stormwater management programs. During a recent call of the NACWA-convened National Stormwater Advocacy Network, TNSA cautioned other state stormwater organizations to be aware of the potential for the supporters of the law to push similar legislation in other states.

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## Three New Federal Reports Examine "Green" Spending, Challenges to Expanding Water Reuse, and CSO Discharges to the Great Lakes

In a [report](#) released May 2, EPA's Office of Inspector General (OIG) recommended that EPA collect additional data

and better evaluate the environmental and economic benefits of Green Project Reserve (GPR) projects, which received over \$3 billion of Clean Water State Revolving Loan Funds (CWSRF) between 2009-2014.

The Government Accountability Office (GAO) has found that clean water utilities interested in reuse of treated wastewater face significant regulatory and financial hurdles. While this is not news to the many NACWA members that have been exploring this concept for years, a new GAO [report](#) confirms that there can be barriers to effectively implementing water reuse and recycling projects. Although primarily focused on freshwater supply issues, the report also lays out the various available reuse treatment and desalination technologies, as well as technologies that assess pipe condition. While not expected to result in any immediate regulatory or legislative changes, the report adds to the growing body of information on water reuse issues and the need for national strategies to expand the role of water reuse/reclamation.

EPA transmitted its [Report to Congress](#) on combined sewer overflows (CSOs) into the Great Lakes on April 19, as it was required to do by the *Consolidated & Further Continuing Appropriations Act of 2015*. Congress requested a summary of CSO discharge volumes to the Great Lakes in 2014. In response, EPA collected readily available data on CSO permittees, their discharge locations, the status of long-term control plans (LTCPs) and post-construction monitoring programs, historical and anticipated CSOs, and 2014 CSOs. EPA has expressed an interest in expanding these requirements beyond the Great Lakes region.

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## EPA Releases Utility Customer Assistance Programs Resource

EPA released a compendium of [Drinking Water & Wastewater Utility Customer Assistance Programs](#) (CAPs) on April 14, providing a national overview of programs used by communities to provide assistance to low-income ratepayers who cannot afford to pay the full cost of their water and sewer bills. The compendium includes detailed descriptions and of the various types of CAPs - Bill Discount, Flexible Terms, Lifeline Rate, Temporary Assistance, and Water Efficiency.

NACWA, along with several national member associations representing public and private wastewater and drinking water utilities, are conducting an information gathering effort and examination of subsidy program models in use today with a specific focus on the statutory, regulatory, constitutional and policy underpinnings of barriers to customer assistance and variable rate programs at the state and local levels. The publication is targeted for March 2017.

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## New Report Released on California Citizen Suit Enforcement

The Wheeler Institute for Water Law & Policy at the UC Berkeley School of Law recently released a report entitled *Citizen Enforcement and Sanitary Sewer Overflows in California*. NACWA and several wastewater agencies and CASA provided funding for this [report](#) but - to ensure an independent process - did not have editorial control over the questions asked, Wheeler's analysis or conclusions, or the writing of the report.

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