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## Water Week Events Bring Positive Message to Congress, Administration

NACWA joined with an array of water sector association partners to celebrate [Water Week 2017](#) in Washington, DC, bringing hundreds of clean water professionals from around the country to the nation's capital to [elevate water](#) as a national priority. Participants met with their members of Congress, spoke with officials from EPA, and networked with one another as they sought to educate national policymakers on critical clean water issues.

*Water Week 2017* constituted the largest gathering since the meeting's inception and was highlighted by the first ever [Rally for Water](#), which drew an energized crowd to Capitol Hill's Upper Senate Park to hear remarks in support from Rep. Garret Graves (R-LA), Chairman of the House Subcommittee on Water Resources and the Environment, Rep. Dan Kildee (D-MI), and Rep. Jared Huffman (D-CA), along with municipal utility and state leaders from across the country. All of the speakers emphasized the crucial role that clean water plays economically and environmentally at the national, state and local community level. All speakers highlighted the importance of a continued partnership in funding water infrastructure.

The week also featured a widely attended Congressional Reception on Capitol Hill on March 22, which brought all participating water sector groups together to celebrate a strong, unified commitment to water and water advocacy. Senators Sherrod Brown (D-OH), John Boozman (R-AR), James Inhofe (R-OK), Thomas Carper (D-DE), Gary Peters (D-MI) and several members of the House of Representatives spoke at the Reception, echoing a bipartisan message of support for investing in the nation's aging water infrastructure and water's importance to our daily lives.

The anchor event of *Water Week* was the [National Water Policy Fly-In](#), jointly hosted by NACWA, the Water Environment Federation (WEF), the Water Environment & Reuse Foundation (WE&RF), the Water Research Foundation (WRF), and the WaterReuse Association. The *Fly-In* featured speakers from EPA and congressional staff discussing current regulatory and legislative priorities at the national level. Participants also engaged in discussion with EPA staff via roundtable discussions on a number of key issue areas.

Other national groups collaborating on *Water Week* included the American Water Works Association (AWWA), the U.S. Water Alliance, the Water & Wastewater Equipment Manufacturers Association (WWEMA), and the Association of Metropolitan Water Agencies (AMWA). A broad coalition of state and regional groups [supported](#) the effort as well.

NACWA thanks all the participants, partnering organizations and supporters of *Water Week 2017* and looks forward to building on this success for *Water Week 2018*!

### **[NACWA, AMWA Issue Analysis on Municipal Bond Tax-Exemption- Utility Action Needed!](#)**

The role of municipal tax-exempt bonds to fund needed infrastructure investments is at risk as some Congressional leaders propose to eliminate the tax-exempt status of municipal bonds in an effort to reform the tax code and lower corporate tax rates. To help push back against such efforts, NACWA and the Association of Metropolitan Water Agencies (AMWA) [collaborated on an analysis](#) of the national and state-by-state investment in tax-exempt municipal bonds for crucial water projects.

In 2016, municipalities issued [nearly \\$38 billion](#) of tax-exempt municipal bonds to finance investments in drinking water and clean water infrastructure. Further, if the tax-exemption were eliminated, the cost of issuing municipal bonds would increase by 25 percent. In fact, more than 10 percent of all tax-exempt municipal bond issuances in a given year finance water and sewer projects. These findings underscore the vital role that tax-exempt municipal bonds play in financing clean water infrastructure and in maintaining rates at affordable levels.

It is critical that clean water utility leaders contact their Members of Congress to urge them to oppose any effort to eliminate tax-exempt municipal bonds. To aid you in this outreach, NACWA recently launched a new [online resource hub](#) dedicated to tax-exempt municipal bond advocacy. On the webpage, you will find a national fact sheet that highlights the benefits of the municipal bond tax-exemption for water and clean water utilities. The Resource Hub also features factsheets for all 50 states plus D.C., providing data on how utilities would be impacted if the tax-exemption were to be eliminated.

While the municipal bond tax-exemption has been in place since 1913, its continuance is far from guaranteed, particularly this year when many Congressional leaders have high hopes for transformational federal tax code reforms. Given the significant infrastructure investment needs across the country, utilities must play a central role in helping policymakers understand the critical role that tax-exempt municipal bonds play in financing water, wastewater, and stormwater projects.

### **Preliminary Trump Budget Cuts EPA Funding by 31%, But Fully Funds SRFs**

The Trump Administration released its [preliminary Fiscal Year \(FY\) 2018 budget numbers](#) on March 16 for all federal agencies, including EPA. The EPA proposal slashes the Agency's funding by 31% - the biggest cut of any federal department – but also would fully fund the State Revolving Funds (SRFs). Maintaining SRF funding levels represents an important advocacy achievement for NACWA and its members.

The budget proposes funding EPA at \$5.7 billion for FY 2018. NACWA and its water sector partners, however, worked hard to ensure the proposal maintains full funding levels for the State Revolving Funds (SRFs) at \$2.3 billion – a level that actually includes a modest \$4 million increase. The proposal also includes \$20 million for the *Water Infrastructure Finance and Innovation Act* (WIFIA) program.

NACWA has been a strong proponent of water infrastructure funding with the Trump Administration, both during the transition period and since taking office, and is pleased to see that the Association's requests for continued SRF support is reflected in the President's budget proposal.

However, the EPA budget proposal does make significant cuts to other programs of priority importance to clean water utilities. The budget would eliminate funding for critical geographic programs such as the Great Lakes Restoration Initiative, the Chesapeake Bay, and others. The budget also proposes significant cuts to grant funding to states and slashes EPA's research budget, and to key rural programs. NACWA will be working with other partners in the water sector to oppose these funding reductions while also ensuring that SRF funding remains whole.

It is important to note that this proposed budget is just the first step in the budgeting process. The Administration will release a more detailed budget proposal in May, and then the focus will shift to Capitol Hill where Congress has ultimate authority to craft and bring forward a final budget for the President's approval. NACWA will work closely with Congress and the Administration throughout this process and will continue to provide updates on any new developments.

## **NACWA Recommends Revisions to Proposed Great Lakes CSO Notification Requirements**

NACWA submitted [comments](#) on March 14 on EPA's proposed [Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin](#), recommending that EPA make the requirements more practical for utilities to implement. EPA was mandated in its Fiscal Year (FY) 2016 appropriations bill to develop these requirements, with implementation of the new requirements by December 2017.

NACWA asked the Agency to revise the proposal to more closely conform with the requirements set out in the appropriations bill. In particular, EPA expanded the scope of the utilities affected by the requirements to all those in the "Great Lakes Basin," rather than those with CSO discharges into the Great Lakes as defined in the bill. The bill also did not specify timing for notifications, and EPA proposed that utilities notify local public health departments and the public within four hours of becoming aware of a combined sewer overflow (CSO). NACWA asked EPA to apply the rule only to CSO discharges into the Great Lakes and to allow 24 hours for initial notifications.

The proposal also contained requirements for supplemental notifications that would include CSO volume, and annual reports. NACWA's comments explained the implications of these requirements for utilities, including the time and costs to implement them, which are much higher than estimated by EPA. NACWA will continue to work with utilities affected by the proposal to provide input to EPA as the Agency develops the final rule.

## **EPA Defends Approval of Montana General Nutrient Variance**

The EPA filed a [brief](#) on March 3 in [federal litigation](#) challenging the Agency's approval of a [general nutrient variance](#), defending the Agency's actions in approving the variance and echoing NACWA's position in the case.

In 2014, Montana promulgated numeric nutrient criteria (NNC) for phosphorus and nitrogen. Both EPA and the Montana Department of Environmental Quality (MTDEQ) understood that most National Pollutant Discharge Elimination System (NPDES) dischargers, including Publicly Owned Treatment Works, would be unable to meet the very low in-stream limits. Thus, at the same time MTDEQ submitted the criteria to EPA for approval, the State applied for a general variance. EPA approved both in February 2015.

In May 2016, the Upper Missouri Waterkeeper filed [litigation](#) against EPA seeking to have the variance approval overturned. Without the variance, all NDPEs dischargers would be required to comply with the State's low in-stream NNC causing significant economic impacts.

NACWA [intervened](#) in the case last October to ensure the variance approval is defended. NACWA applauds EPA's brief, which strongly defends the Agency's approval of the variance. EPA argues that the plaintiff fundamentally misconstrues the framework for variances under EPA's long-standing regulations, which allow variances based on economic and social impacts as a tool to achieve incremental progress towards meeting long-term water quality goals.

EPA further explains that MTDEQ identified the NNC as the highest attainable condition and adopted an authorized adaptive approach with an initial effluent condition, a requirement to complete an optimization study in the short term and future interim milestones to be adopted every three years based on new information as mechanisms to drive water quality progress towards the long-term highest attainable use (i.e., the NNC) through the course of the variance.

NACWA is scheduled to file a brief in the litigation in April. See [Litigation Tracking](#) for more details on this case.

## **NACWA Leadership Discusses Nutrient Challenge with Key Stakeholders**

NACWA Board Members and committee leaders stayed in Washington, DC after the *National Water Policy Fly-In* and *Rally for Water* to meet with key stakeholders on the growing nutrient pollution challenge. NACWA's *Nutrient Summit*, held March 23, brought together national leaders from the agriculture, environmental NGO, state water regulator and clean water communities to discuss where NACWA can provide leadership in advancing work to address nutrient over-enrichment. Discussions at the *Summit* focused on how best to engage the agriculture community—including through partnerships between clean water utilities and producers—and whether the current *Clean Water Act* paradigm is presenting obstacles to further progress. A discussion synthesis will be available in the next month, and a small workgroup will be helping the *Summit* facilitator craft NACWA's short and long-term objectives on the nutrient issue. Those objectives will be incorporated into a draft position statement that the NACWA Board will consider for approval in July.

## **Federal Court in Iowa Dismisses Novel Nutrients Lawsuit**

On March 17, the United States District Court for the Northern District of Iowa [dismissed](#) novel [litigation](#) brought in federal district court by [Des Moines Water Works](#) (DMWW), a regional drinking water utility, to address the discharge of nitrates from agricultural sources into the Raccoon River. This river is one of two sources of drinking water for approximately half a million people in the Des Moines, IA, metro area.

In the litigation, DMWW alleged nuisance, trespass, negligence, taking without just compensation in violation of the United States and Iowa Constitutions, due process and equal protection violations, and violations of the federal Clean Water Act (CWA) and Iowa state law. The utility argued that the nitrates in the rivers come from artificial subsurface drainage systems (e.g., tile drains) associated with agricultural operations and fertilizer application. DMWW contends that rainwater that infiltrates into the groundwater is no longer agricultural stormwater or irrigation return flow, and, therefore, not exempt under CWA §502(14). The utility further argues that the discharges from the tile drains and ditches into the rivers are point source discharges of pollutants, in violation of CWA §301(a) and require NPDES permits.

In early 2016, the district court issued a partial stay of the case and requested the Iowa Supreme Court address several questions of state law. In January, a divided Iowa Supreme Court answered this question by upholding a state legal doctrine that protects agriculture drainage districts from certain lawsuits. The Iowa Supreme Court held that the drainage districts are immune from suits for damages and injunctive relief under state law. The court went on to explain that lawmakers could decide whether the costs of removing nitrates should be shifted from DMWW ratepayers to farmers. The ruling is being hailed as a victory for Iowa agriculture, because it will continue to restrict the ability to recover monetary damages from upstream agricultural operations that contribute pollution affecting downstream entities. The matter returns to federal court for further proceedings. If the federal judge dismisses the state claims as expected, DMWW still has federal claims pending including the question of whether the drainage districts must obtain NPDES permits. A trial on the federal issues is scheduled for June, 2017. NACWA will continue to track the federal litigation and report any developments.

In dismissing the suit, the district court relied on the Iowa Supreme Court's interpretation of the power of the drainage districts to address the harm alleged by DMWW. Specifically, the court noted that the drainage districts are limited to managing the volume of water that flows through their systems, but that they have no power to regulate the amount of nutrients from agricultural dischargers. The court did not decide whether the drainage districts are point sources required to obtain National Pollutant Discharge Elimination System permits, but only that they are powerless to provide the relief sought by DMWW.

## **NACWA and Water Associations Submit Join WIFIA Comments**

NACWA joined the American Water Works Association (AWWA), the Water Environment Federation (WEF) and the WaterReuse Association in submitting [comments](#) to EPA on two key implementation rules for the *Water Infrastructure Finance and Innovation Act* (WIFIA) program: the Interim Final Rule for Credit Assistance for Water Infrastructure Projects and the Proposed Rule on Fees for Water Infrastructure Project Applications.

While the EPA issued its [Notice of Funding Availability](#) for the WIFIA program in January, these two rules seek to finalize the guidelines under which the program will operate. Congress established WIFIA in the 2014 *Water Resources Reform and Development Act* and provided a \$20 million appropriation in the 2016 *Water Infrastructure Improvements for the Nation Act* to begin processing applications for over \$2 billion in project financing. WIFIA is designed to provide direct loans and loan guarantees for large water or wastewater projects that may not be able to receive financing through the State Revolving Fund programs. For more information about WIFIA, NACWA members are encouraged to visit EPA website, [www.epa.gov/wifia](http://www.epa.gov/wifia).



## NACWA Stormwater Advocacy Network Discusses Long-Term Planning with EPA

NACWA hosted the first quarterly National Stormwater Advocacy Network (NSAN) conference call of 2017 to discuss EPA's draft [Community Solutions for Stormwater Management: Guide for Voluntary Long-Term Planning](#). A variety of state and regional stormwater groups from around the country participated in the March 15 call and asked the EPA thoughtful questions, as well as offered productive feedback on the draft. NACWA plans to submit comments on the draft to EPA by the end of March.

The call also featured a follow-up of the Phase II Remand Rule discussions from NACWA's *2017 Winter Conference*.

NSAN is convened by NACWA and is a coalition of state and regional stormwater groups that provides a forum to coordinate advocacy activities and regularly exchange information, network, and receive timely and concise updates on federal policy activities. For more information on the NSAN or the efforts referenced above, please contact [Emily Rimmel](#).

## NACWA Brings Clean Water Message to New York

NACWA participated in the Utility Executives Committee meeting at the annual conference of the New York Water Environment Association (NYWEA) in New York City, connecting with one of the Association's key regional partners and providing a national advocacy perspective to the discussion.

NACWA's Deputy General Counsel, Erica Spitzig, gave a brief update on a number of current NACWA advocacy priorities, including opportunities to work with the Trump Administration on regulatory reform, a federal low-income ratepayer assistance program, and increased funding for the State Revolving Loan Funds. Spitzig also provided updates on the proposed [Great Lakes CSO notification rule](#), the proposed amendments to the [National Emissions Standards for Hazardous Air Pollutants for Publicly Operated Treatment Works](#) and several recent court decisions impacting the clean water sector.

NACWA thanks NYWEA for the opportunity to participate in the meeting and is always interested in speaking with state and regional clean water groups around the country. If you are interested in a NACWA presence at your state or regional meeting, please contact [Erica Spitzig](#).

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