

TAF Project Overview & Status Report

Current to May 23, 2013

AFFORDABILITY

Financial Capability Assessment White Paper – Opportunities of Integrated Planning

The release of EPA's Integrated Planning Framework and developments in ongoing and recently concluded wet weather consent decree negotiations are providing an opportunity for NACWA to build on its past advocacy efforts relating to the assessment of clean water utility financial capability. The Board approved \$10,000 in TAF funds to develop a white paper that will offer perspectives and guidance on financial capability assessment in the context of these recent developments. The paper will build upon NACWA's earlier work offered in *Principles for Assessment and Negotiation of Financial Capability: A Compilation of Resources* (November 2007) that largely addressed problematic aspects of the 1997 EPA financial capability guidance document and prescribed methodology. NACWA's Money Matters Task Force is overseeing development of the paper. The final paper is expected to be released by the end of May 2013.

CLIMATE & ENERGY

Biogenic Greenhouse Gas Emissions Coalition

NACWA joined with the Corn Refiners Association and other food- and crop-processing industry associations in a coalition to advocate for permanent exemption of short carbon cycle biogenic greenhouse gas (GHG) emissions from Clean Air Act (CAA) regulations. Biogenic emissions are produced by living organisms or biological processes and are considered part of the natural carbon cycle. Since clean water agencies release biogenic GHGs through the wastewater treatment process and through the combustion of biogas and biosolids, NACWA members will be significantly impacted if biogenic GHGs are subject to CAA permitting programs. The Board approved \$11,500 in FY 13 and \$5,500 in FY 14 for NACWA's participation in the Biogenic Emissions Coalition. EPA's three-year deferral of biogenic emissions will end in July 2014, and the Coalition plans to submit a petition and technical report to EPA to argue that CAA regulation of biogenic emissions from wastewater treatment and processing of food and crops is inappropriate. The attorneys and technical experts have been chosen and have drafted detailed outlines of the petition and report. The Coalition plans to submit these documents to EPA in the fall, with the exact timing to be determined by the outcome of several pending court cases related to the regulation of GHG emissions.

FUNDING & FINANCE

Analysis of the Impacts to Utilities of Eliminating Tax-Exempt Municipal Bond Status

NACWA and the Association of Metropolitan Water Agencies (AMWA) are sharing the cost (\$10,000 each for a total of \$20,000) to support an analysis of the potential impacts to the Nation's clean water agencies from a variety of recommended changes to municipal bonds made in President Obama's fiscal year 2014 budget proposal. The implications of these changes, most notably imposing a 28 percent benefit cap on tax-exempt municipal bond interest for high income taxpayers, would result in tens of

billions of dollars in annual costs to municipalities across the country. While estimates and statistics exist detailing how such a tax policy shift would impact municipalities as a whole, there is little information on how such a shift would impact the water sector directly. This analysis will provide the facts needed to advance a persuasive advocacy effort on Capitol Hill as well as with the Administration and key stakeholders and is expected to be completed before the end of June.

LITIGATION & LEGAL ISSUES

Chesapeake Bay TMDL Case

\$15,000 in FY 2012 TAF resources was allocated to support NACWA's participation in *American Farm Bureau v. EPA*, which is a challenge to EPA's final TMDL for the Chesapeake Bay. NACWA filed a brief in April 2012 defending EPA's use of a holistic watershed approach in creating the TMDL, including the assignment of allocations to non-point agricultural dischargers. NACWA furthered this position during participation at oral arguments in October 2012. NACWA's participation in this case is critical to ensuring that clean water utilities both within the Chesapeake Bay watershed and nationwide are able to seek appropriate contributions from non-point source dischargers to address water quality impairment. The case is being brought by a collection of agricultural interests attempting to remove themselves from the TMDL process and arguing that EPA has no authority to regulate or assign allocations to nonpoint agricultural sources. These claims present a significant threat to the comprehensive watershed approach upon which point source interests are highly dependent and which NACWA strongly supports, and could result in increased regulatory pressure on point sources such as municipal wastewater and stormwater dischargers. NACWA is participating in this litigation with a coalition of municipal clean water associations, and anticipates a decision from the court at any time.

Upper Blackstone Amicus Brief

The NACWA Board approved \$10,000 from the FY 2011 TAF to support the Association in filing an *amicus* brief in support of member agency the Upper Blackstone Water Pollution Abatement District (UBWPAD) in challenging a federally issued discharge permit containing inappropriate nutrient limits. NACWA's brief was filed with the court in November 2011. The federal appeals court denied the utility's challenge in August 2012, and the utility then appealed to the U.S. Supreme Court. The NACWA Board approved an additional \$10,000 from the FY 2013 for NACWA to submit a supporting brief with the Supreme Court, which was filed in early 2013. The NACWA brief argues that allowing permit writers to derive numeric limits from narrative standards, without regard to relevant local water quality information, is inconsistent with EPA's own regulations, and exposes public clean water utilities to the threat of spending limited public dollars on investments that are not necessary to address local water quality concerns. The Supreme Court announced in early May 2013 that it was not accepting the case for further legal review.

Stormwater Fee Litigation

In order to help defend NACWA's critical 2010 legislative victory clarifying the responsibility of federal government facilities to pay municipal stormwater fees, NACWA has been involved in two different federal cases supporting Association stormwater members. NACWA's participation in these cases is critical to ensure that stormwater utilities are able to collect unpaid stormwater charges from federal

government agencies that were billed prior to 2011. One case involves NACWA member the City of Vancouver, Washington, and the second case involves Association member DeKalb County, Georgia. In both litigation matters, NACWA has filed an *amicus* brief arguing that the 2010 legislative Clean Water Act amendment simplify clarified a pre-existing obligation for federal agencies to pay stormwater fees. The briefs also highlights the significant financial challenges that communities will face if the federal facilities do not pay these fees, as well as the dangerous precedent this would set for other municipal stormwater utilities across the country. A total of \$22,000 in FY 2012 TAF resources has been used to support NACWA's participation in these cases.

In late March, DeKalb County elected to appeal a negative decision it received in its legal challenge. In April 2013, the NACWA Board approved \$20,000 from the FY 2013 TAF to file an additional brief at the federal appellate stage in support of the county's appeal and urging reversal of the lower court decision due to potential negative national precedent.

An additional \$3,000 in FY 2013 TAF resources has been used for a NACWA brief submitted in February 2013 with an Ohio state appellate court supporting Association member, the Northeast Ohio Regional Sewer District (NEORS), in defending a municipal stormwater fee program from legal challenge. The brief argues that municipal stormwater service charges qualify as valid utility fees and are not impermissible taxes. The brief highlights a number of state and federal court decisions upholding stormwater charges as fees and not taxes, and argues that the recent amendment to the federal CWA – which was strongly supported by NACWA – further clarifies stormwater fees based on impervious surface are appropriate utility charges.

Municipal Integrated Planning Alliance

\$10,000 from the FY 2012 TAF was approved by NACWA's Board for Association participation along with the U.S. Conference of Mayors in a coalition effort to advance EPA's integrated planning work. NACWA's membership in the coalition helped to inform and provide strategic input into the Mayor's advocacy efforts on the integrated planning initiative, and complemented NACWA's own advocacy efforts via the Association's *Money Matters...Smarter Investment to Advance Clean Water*TM campaign. As a result of these joint efforts, EPA released the final framework document in June 2012.

Intervention in Nutrients Lawsuits

NACWA's Board of Directors approved \$70,000 from the FY 2012 TAF for the Association to participate in two critical nutrient cases that could have profound impacts on every clean water utility in the country. The Board further approved \$75,000 from the FY 2013 TAF to continue NACWA's involvement in these two important legal issues. The first case, *Natural Resources Defense Council v. EPA*, demands an EPA response to a 2007 petition requesting that the Agency's secondary treatment regulations be changed to require nutrient removal for every wastewater treatment plant nationwide. The second lawsuit, *Gulf Restoration Network v. EPA*, seeks federal numeric nutrient criteria for all necessary waters in the country, including the Mississippi River Basin.

NACWA won a critical advocacy victory in December 2012 when EPA issued a denial to the NRDC secondary treatment petition. Consistent with NACWA's recommendations and citing the technical constraints and costs associated with uniform national limits, EPA's denial letter reaffirms the Agency's preference for controlling nutrient discharges from POTWs through the water quality-based provisions of the CWA. The decision is a major win that will save public agencies tens of billions of dollars annually and ensures that an unworkable one-size-fits-all approach is not the solution to the nutrient challenge. While dismissal of the underlying lawsuit ends this chapter in the legal battle over secondary treatment, there is still the possibility that activist groups could file a future legal challenge to the substance of EPA's petition denial.

In the *Gulf Restoration* case, NACWA successfully intervened in May 2012, and filed briefs in the case in March and May 2013. NACWA's briefs support EPA's denial of a request to promulgate federal numeric nutrient criteria (NNC) for the MRB and arguing that meaningful progress on nutrients can only be made through a holistic watershed approach addressing all sources of impairment. The briefs further argue that federal NNC are an insufficient tool to solve a problem that demands a comprehensive solution, and instead suggest that states should take the lead on developing nutrient criteria and control programs that will result in more equitable reduction efforts across all sources.

Biogenic Greenhouse Gas Litigation Amicus Brief

\$15,000 in from the FY 2012 TAF was allocated to support NACWA's filing of an *amicus* brief in federal litigation in support of EPA's decision to defer sources of biogenic greenhouse gas (GHG) emissions – such as wastewater treatment plants – from regulation under new federal air emissions rules. If EPA's decision to defer wastewater treatment plants from these new GHG requirements is reversed, many NACWA members across the country may face additional costly and time consuming permitting and monitoring requirements for their facilities under the Clean Air Act. NACWA's participation in this case is vital to provide the court with an important national perspective on why EPA's deferral was appropriate, and what the regulatory and financial consequences will be for NACWA members if the deferral is struck down. NACWA filed a brief in the case in May 2012, and oral arguments were held in early April 2013.

Chesapeake Bay Nutrient Trading Lawsuit

\$50,000 from the FY 2013 TAF is allocated to support NACWA's participation in litigation filed in October 2012 by a coalition of environmental activist groups challenging the trading approach created by EPA in the final Chesapeake Bay TMDL. The complaint alleges that the trading program created by the Bay TMDL – and by extension all trading programs nationally – are illegal under the CWA, including trades between point sources as well as those between point and non-point dischargers. This case has the potential to impact trading programs involving wastewater treatment plants as well as stormwater sources, and has implications not just for the Chesapeake Bay region but for all water quality trading efforts nationally.

NACWA moved to intervene in the case in December 2012 to push back against the plaintiffs' misguided attacks on water quality trading and help defend trading programs nationwide. Intervention was granted by the court in February 2013.

Virginia Flow TMDL Litigation

The NACWA Board approved \$2,000 from the FY 2013 budget to support an amicus brief in federal litigation over "flow TMDLs" for municipal stormwater. NACWA filed a brief in November 2012, echoing arguments the Association had made previously about the inappropriate use by the Agency of "flow TMDLs" for municipal stormwater discharges, leading to flow limits in municipal separate storm sewer system (MS4) permits. In particular, the NACWA brief reiterated concerns over EPA's controversial November 2010 memo on this topic, which suggested that states should use flow as a pollutant surrogate to establish numeric effluent limits in MS4 permits. NACWA's brief provided a national perspective on the significant flaws in the document, as well as EPA's overall procedural approach in developing flow TMDLs.

The court issued a strong decision in early January 2013 finding that EPA's attempt to regulate stormwater flow in a federal TMDL is illegal under the CWA, echoing arguments made by NACWA in the case and providing a significant legal victory for the municipal stormwater community. EPA further announced in March 2013 that it would not appeal the ruling, preserving this important legal win for municipal stormwater utilities.

General Legal Support

The General Legal line item provides funds to support time-sensitive legal advocacy efforts and other related expenses that arise during the course of the year. The TAF funds of \$25,000 will be available for use throughout FY 2013 to consult and retain outside counsel on various legal and regulatory issues, assist with NACWA's legal advocacy on an as-needed basis, and for general litigation support. Expenditures thus far from the FY 2013 General Legal fund have gone towards work on stormwater legal and regulatory issues, administrative costs related to litigation filings, and legal consultation on matters related to the water/energy nexus.

ONGOING INITIATIVE & COALITION WORK

The Accord Group

NACWA utilizes the services of the advocacy firm, The Accord Group, to support the Association's efforts to advance its legislative and regulatory priorities. This item is considered to be an ongoing expenditure, and NACWA has utilized the services of The Accord Group for numerous years to provide the consistency and follow-through that the legislative and regulatory processes demand. Total approved funding for this line item in FY 2013 is \$72,000. The Accord Group's focus has, and will continue to, aid the Association in developing a legislatively viable and effective campaign on the Water Resources Utility of the Future effort, the Farm Bill, and in energy-related legislation. Specifically, the Accord Group is identifying key Members of Congress to lead the Congressional Caucus on Water Innovation & Technology (a key part of the advocacy agenda for the Water Resources Utility of the Future); played a critical role in securing an amendment to the Farm Bill to explicitly recognize

"wastewater treatment entities" as eligible partners for USDA conservation programs, as well as an amendment requiring the Secretary of Agriculture to give priority to partnerships between wastewater treatment entities and farmers that improve water quality; is playing a prominent role in NACWA's response to provisions in the President's budget to change the tax status of municipal bonds; and is working with the Association to identify key Members of Congress to champion NACWA's affordability work. In addition, the Accord Group provides strategic advice for our legislative work with respect to the link between energy and water and helping to identify key Congressional champions for this effort.

The Water Infrastructure Network (WIN)

NACWA's financial contribution to WIN's FY 2013 budget was \$25,000. This contribution secures NACWA's place on the WIN Executive Committee and ensures the Association's funding priorities for the Nation's clean water agencies are advanced through the coalition's vital outreach and advocacy efforts. This past fiscal year, WIN has worked to defend strong funding levels through the annual appropriations process; continued to lay the groundwork for reintroduction of long-term SRF reauthorization legislation; and, continued to advance support for trust fund and loan guaranty legislation that would bolster the SRF. Clearly, the federal budget circumstances have created a difficult environment for the funding issue but with over 90 new members of Congress it is more critical now to continue to advocate for their support of infrastructure funding. It is also important to keep in mind that NACWA, in its role as administrator of WIN, receives \$15,000 per year in return for its management services.

Participation in the Federal Water Quality Coalition

For the past several years, NACWA has maintained an associate membership in the Federal Water Quality Coalition (FWQC). The FWQC is a broad coalition of stakeholders, including industry and municipalities focused on water quality issues including water quality criteria, mercury issues, permitting, and total maximum daily loads. The FY 2013 funding of \$15,000 covers NACWA's discounted annual dues in the Coalition and gives the Association and its members' access to critical leveraging opportunities and information. The FWQC provides valuable assessments of a broad range of water quality issues and how they may affect municipalities, giving NACWA staff an exceptional resource to supplement the Association's existing capabilities. This leveraging of resources has enabled NACWA to cover a much broader array of water quality issues each year.

Economic Advocacy Support

In Fiscal Year 2012, NACWA allocated \$15,000 in TAF funds to secure an economic analysis on several important financial issues stemming from the ongoing economic downturn and budget crisis. This work included white papers that analyzed the viability of a loan guaranty program to finance large water infrastructure projects; a close look at the impacts of a potential elimination of tax exempt status for municipal bonds; and the beginning of the revenue/business model of utility of the future-type activity taking place at clean water agencies (see below).

Value of Water Coalition

In April 2013, NACWA's Board of Directors approved \$20,000 in TAF funds to support the *Value of Water Coalition*, a group comprised of the Water Environment Federation (WEF); the American Water Works Association (AWWA); NACWA; the Association of Metropolitan Water Agencies (AMWA); the U.S. Water Alliance; the National Association of Water Companies (NAWC); CH2M HILL; Veolia; United Water; American Water; Xylem; and MWH Global. The *Value of Water Coalition* met initially in June 2012, and has continued to meet since to discuss the steps needed to create a stronger, more united voice across the sector to improve public awareness of the value of water. The Coalition recently moved forward with The Glover Park Group (GPG), a strategic communications firm, on a campaign that includes substantive research and the creation of messaging architecture around the value of water. The Coalition's decision to proceed with the campaign was done with WEF's ongoing effort on a potential Ad Council campaign in mind, and it has been confirmed that the work of GPG will complement and inform any future Ad Council campaign.

Water Blues Green Solutions Project

The Board of Directors approved funding for [Water Blues Green Solutions](#) (previously known as *Water Naturally*) a documentary under production by Pennsylvania State University Public Broadcasting (PSPB) in February 2012. This multimedia documentary effort will follow up on the successful 2008 documentary [Liquid Assets](#). This installment is focusing on the use of green infrastructure in tandem with gray infrastructure to protect water quality. The documentary is exploring sustainable sites, conservation, and the integration of man-made systems with natural systems. Filmmakers are currently in the field shooting at the various case study locations. Multimedia outreach channels allow the public to follow these efforts, including via [Facebook](#) (facebook.com/WaterBluesGreenSolutions); [Twitter](#) (@H2oblues); [Pinterest](#) (pinterest.com/h2oblues); and [Storify](#) (storify.com/H2Oblues).

After the success of Liquid Assets, PSPB had identified NACWA as an important partner in this new public service media initiative. NACWA's contribution to the effort is \$50,000, split evenly between the FY 2013 and 2014 TAF budgets. The Association's support was given with the understanding that the documentary would provide a balanced approach regarding the need for both green and gray infrastructure in achieving water quality improvement. The initiative will culminate in a feature-length, nationally distributed documentary and online and community outreach. The premiere of the documentary is set for fall 2013. A recently received grant from the Park Foundation will provide small awards to television stations around the country to support airing Water Blues Green Solutions.

Government Affairs Rapid Response Fund

The Government Affairs Rapid Response Fund (GARRF) ensures targeted and timely responses to key advocacy issues as they arise. NACWA has used this \$25,000 fund to support vital projects including targeted efforts related to its *Money Matters*. . . *Smarter Investment to Advance Clean Water*™ campaign; EPA's integrated planning effort; the *Water Resources Utility of the Future* initiative; clean water financing/economic issues; and, energy production and bio-emissions issues, among others. The GARRF

ensures that NACWA can gather information or deliver a crisp, targeted message to the appropriate audience efficiently and swiftly.

UTILITY MANAGEMENT

ISO Wastewater Management Services Standard Support

With the support of the TAF, NACWA has been involved in an effort led by the International Organization for Standardization (ISO) to develop management standards for the water sector since 2004. As a member of the U.S. delegation, NACWA representatives participated in several Technical Committee and workgroup-level meetings to ensure the final standards did not conflict with current best practices in the U.S. NACWA has been actively participating in recent months to track the development of standards for crisis management (security) and another on asset management. All remaining funds for this project will be expended by the end of FY 2013 and there are no planned activities beyond FY 2013.

Effective Utility Management Initiative

The NACWA Board approved \$10,000 from the FY 2008 TAF budget to support the ongoing activities associated with the Effective Utility Management (EUM) initiative. These funds were spent during FY 2011 and FY 2012 in a collaborative effort to redesign the EUM initiative's website. The collaborating organizations – NACWA, the Association of Metropolitan Water Agencies (AMWA), the Water Environment Federation (WEF), the American Water Works Association (AWWA), the American Public Works Association (APWA), and the National Association of Water Companies (NAWC) – completed work on a *Primer* for utilities in 2009 detailing the ten attributes and five keys to management success, as well as an online resource tool box, developed by NACWA, to provide easy access to existing resources organized according to the attributes and keys to success. The website, www.watereum.org, provides easy access to these and other EUM resources.

NACWA Service Charge Index

The results from this annual survey are used extensively as a high-level summary of the efforts being made by the clean water community to increase revenues and maintain their systems. Since 1992, the Association has published the *NACWA Index* annually to track average single-family residential service charge increases as measured against the rate of inflation. Because there is a wide range of rate structures used by utilities (e.g., one or a combination of flat rates, fixed or tiered volume rates, tax rates, etc.), the average annual single-family residential sewer service charge (inclusive of collection and treatment) provides a consistent benchmark to measure changes in the price of service among public utilities nationwide. Total funding for this effort in FY 2013 is \$3,000.

2011 NACWA Financial Survey

Published every three years, the *Financial Survey* has consistently proven itself to be a valuable resource for NACWA member agencies as they evaluate financing options and consider rate adjustments. The information and data provided by this survey, in particular, will be critically important as we assess the

impact the economic downturn has had on utilities. The survey was distributed to the membership via *Member Update 11-03* in March of 2011 and the final survey report will be released just prior to the 2012 NACWA Summer Conference. A portion of the FY 2012 funding (\$22,000) was designated for development of the final report and the remaining funding (\$15,000) were allocated for design and publication costs. There are no budgeted expenses for FY2013, but a new, FY2014 TAF request will be made for the 2014 *Financial Survey* later this year.

CleanWater Central

The *CleanWater Central* database continues to serve as a tool for current and future data collection activities, such as the *NACWA Financial Survey* and *NACWA Index*. NACWA and the Water Environment Research Foundation (WERF) launched the database in 2003 and continued to expand the amount of information in the system, and the number of regular users through 2011. At the end of 2011, WERF indicated that it would no longer fund the database and the system was taken off line in April 2012. The database is now only used to conduct NACWA surveys and awards program applications. \$1,000 was budgeted for FY2013 to cover the cost of hosting the database.

WATER RESOURCES UTILITY OF THE FUTURE

Water Resources Utility of the Future *Blueprint*

NACWA completed work in Fiscal Year 2013 on the joint NACWA/WERF/WEF *Water Resources Utility of the Future . . . Blueprint for Action*. The Blueprint looked at case studies for the type of Utility of the Future (UOTF) work taking place at clean water agencies across the country in the areas of energy production, water reuse and reclamation, resource recovery, and green infrastructure. The Blueprint was completed in January of 2013 and provides a targeted advocacy agenda in the areas discussed above that will be a focus of the Association's outreach with the 113th Congress and the Administration. Total NACWA TAF funds contributed to this joint effort: \$38,800. In follow up to the report, NACWA has undertaken a legislative drafting effort to develop legislative language in support of the UOTF recommendations focused on incentivizing investments in resource recovery technology at POTWs. In May, NACWA issued an RFP to its legal affiliates soliciting proposals to develop tax-related provisions for this project. Total TAF request is \$15,000 for this task.

WATER QUALITY

WERF Effort on Nutrient Site Specific Criteria

NACWA contributed \$10,000 from the FY 2012 TAF to a Water Environment Research Foundation effort to build on work initiated under the Foundation's Research Challenge, *Linking Receiving Water Impacts to Sources and to Water Quality Management Decisions*. This new project, which was completed in early 2013, identifies a series of models that can be used to develop site-specific nutrient criteria, which continues to be NACWA's preferred approach for developing these criteria. The Nutrient Modeling Toolbox is now available to anyone, regardless of whether they are a WERF subscriber or not.

Advocacy Support for Pesticide, Consumer Product Source Control Efforts

NACWA contributed \$10,000 from the FY 2012 Targeted Action Fund (TAF) to support ongoing work related to toxicity issues and other water quality impacts on clean water agencies from pesticides and unregulated consumer product ingredients. Clean water agencies in California have been working for some time with the state's Department of Pesticide Regulation and the U.S. Environmental Protection Agency (EPA) on the registration review of pesticides. The California Association of Sanitation Agencies (CASA), the Bay Area Clean Water Agencies (BACWA), the Southern California Alliance of POTWs (SCAP), the Central Valley Clean Water Association (CVCWA), and the California Water Environmental Association (CWEA) have been funding this work on pesticide registration issues and work to address pollutants in consumer products. NACWA's members in California have greatly benefitted from the ongoing work and NACWA has leveraged the work in its national advocacy on pesticide impacts and the need for reform on the regulation of toxic substances in consumer products. Funding was not approved for this effort for FY 2013.