

TAF Project Overview & Status Report Current to June 6, 2014

Technical/Advocacy Projects

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. All remaining funds for this project were expended by the end of FY 2013. The U.S. working group will be meeting in June 2014 to discuss the need for further involvement in this initiative.

Financial Capability Assessment White Paper – Opportunities of Integrated Planning

The release of EPA's Integrated Planning Framework in June 2012 and developments in ongoing and recently concluded wet weather consent decree negotiations provided 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 offers perspectives and guidance on financial capability assessment in the context of these recent developments. The final paper, released in June 2013, builds upon NACWA's earlier work offered in *Principles for Assessment and Negotiation of Financial Capability: A Compilation of Resources* (November 2007), which largely addressed problematic aspects of the 1997 EPA financial capability guidance document and prescribed methodology. NACWA's Money Matters Task Force oversaw development of the paper and NACWA met with EPA in July to discuss the paper and the changes it recommends to EPA's current approach to financial capability.

Key concepts from the white paper have now been included in EPA's draft financial capability framework, which the Agency plans to release as a supplement to its 1997 guidance later this year. The framework, and EPA's willingness to broaden the factors it considers when assessing financial capability, have resulted from the ongoing pressure applied by NACWA and groups like the U.S. Conference of Mayors for EPA to change its approach.

Water Resources Utility of the Future – Legislative Drafting

Following up on the collaborative publication of the *Water Resources Utility of the Future . . . A Blueprint for Action*, NACWA has completed draft legislative language to advance Utility of the Future (UOTF) goals aimed at incentivizing investments in resource recovery technology at public clean water agencies. Though a TAF request was made for \$15,000, NACWA's consultant on the project agreed to do it for free. The next steps are to continue to work on the language with NACWA's members and private sector

organizations and to begin to shop elements of the legislation to the appropriate Congressional members and committees.

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

This [joint report](#) by NACWA and the Association of Metropolitan Water Agencies (AMWA) was finalized in July 2013 and demonstrates that nearly \$6 billion in annual water/wastewater investment would be lost if the changes to the municipal bond tax exempt status proposed in President Obama's fiscal year 2014 budget proposal were to be enacted. NACWA has shared these findings and the full report with key members and staff of the House and Senate, as well as with the US Conference of Mayors-led coalition of more than 100 stakeholder groups in an effort to maintain the full tax-exemption. NACWA had the consultant in charge of writing the report speak at its 2013 Summer Conference and shared the report with the press, resulting in a front page article in the *Bond Buyer* on the report's findings. As tax reform legislation advances in the House and Senate, NACWA will continue to use the report's findings in its advocacy efforts to maintain the full tax exempt status of municipal bonds.

Water Resources Utility of the Future – Energy Analysis

NACWA, the Water Environment Federation (WEF), and the Water Environment Research Foundation (WERF) each contributed \$10,000 to expand an existing project to explore and analyze the opportunities for clean water agencies to take advantage of energy production opportunities, particularly to meet the goal of a 'net-zero' water resource recovery facility consistent with the *Water Resources Utility of the Future . . . Blueprint for Action*. The expansion of the project quantifies the nationwide potential for clean water agencies to provide renewable energy from wastewater-derived sources. In addition, the capital costs to convert these utilities to sources of renewable energy were also calculated. NACWA, WEF and WERF have already met with the Department of Energy (DOE) to discuss the report's findings (a final report will be released this summer).

Now armed with a reliable estimate of the energy generation potential from POTWs, NACWA is actively working with the DOE to identify areas for additional federal investment, including for the deployment of additional technology to generate energy and for further research to reduce the time and resources it will take to transition POTWs from energy users to energy producers.

Support for Wastewater Biogas Website

NACWA's Board of Directors approved a contribution of \$5,000 in TAF funds in both FY 2014 and FY 2015 – for total funding of \$10,000 over two years – to collaborate with other organizations to support the continued growth and maintenance of a new website containing the most comprehensive data on the production and use of biogas within the clean water community. In 2011, with seed funding from the Water Environment Federation (WEF), and data contributions from InSinkErator and others, the Northeast Biosolids & Residuals Association (NEBRA) and Black & Veatch began work to create a publicly-available, complete, and accurate consensus dataset that describes the biogas potential from existing anaerobic digestion (AD) systems at over 1200 U.S. wastewater treatment plants (WWTPs), and the current uses of, and potential future opportunities for using, the biogas produced by these facilities.

NACWA provided in-kind contributions to this effort. The resulting www.biogasdata.org website is free and open to anyone.

Subsequent to the Board's approval of the TAF funding, WEF's Board acted to assert ownership of the database and information and has assumed responsibility for maintaining the system. WEF has also entered into a partnership with the American Biogas Council to help maintain the data and collect additional information. The TAF funds are no longer needed for this effort and will be returned to the pool of available funds.

Critical Review of EPA's Use of the Technical Support Document for Setting Numeric Nutrient Permit Limits

The Board approved \$75,000 from the FY 2014 TAF to conduct a critical review of EPA's application of the 1991 Technical Support Document (TSD) for Water Quality-based Toxics Control to the development of nutrient permit limits. In an effort to increase the number of Clean Water Act permits with nutrient limits, EPA has initiated an effort to train state permit writers in the development of numeric permit limits for nutrients using the TSD as a guiding framework. EPA's use of the TSD is problematic and not supported by the scientific understanding of how nutrients differ from toxic pollutants. NACWA issued an RFP for this project in January and made an award in February. NACWA's review team has reviewed the draft report and the final review document will be available by the end of June. NACWA will use the document in its ongoing nutrient advocacy to ensure that EPA's approach to developing permit limits for nutrients is reasonable and reflects the unique properties of nutrients.

White Paper: Tapping into the Capacity of Municipal Water & Wastewater Utilities to Help Farmers Reduce Nutrient Run-off

The Board of Directors approved \$25,000 from the FY 2014 TAF to produce a white paper exploring a broad range of ways in which the municipal water and wastewater sectors have partnered with the agricultural sector to improve water quality collaboratively. Larry Walker & Associates has been selected to help write the paper, and it is being developed in collaboration with Agree and the U.S. Water Alliance. The paper will focus specifically on success stories and case studies featuring where these collaborations have worked, lessons learned from these experiences, and recommendations for how similar collaborations can be established throughout the country. The proposed white paper supports specific advocacy goals of NACWA, including regulatory advocacy to ensure the effective implementation of the newly-established USDA Regional Conservation Partnership Program; regulatory advocacy to ensure effective implementation of trading programs nationally and on a state level; and, legislative advocacy to continue to inform Members of Congress about effective policy approaches to dealing with nutrient management issues. This proposal complements and supports the work NACWA has undertaken with the Healthy Waters Coalition. It also complements NACWA's regulatory advocacy on nutrient-related Clean Water Act (CWA) regulations. The white paper should be completed in September.

2014 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 the survey also provides invaluable support for NACWA's strategic advocacy objectives in both the regulatory and legislative arenas – providing important data and analysis related to affordability, funding, and financing. The survey was distributed to members in early 2014, and data collection is now complete. Proposed funding of \$45,000 from the FY 2015 budget will be used to complete the contract work (\$30,000) including preparation of the final report and for design work and printing costs associated with the report and executive highlights document (\$15,000). This is in addition to the \$30,000 that was approved by the Board for the FY 2014 budget for contract expenses associated with survey form preparation and data collection. The final survey report will be released in February of 2015.

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. Remaining funds from FY2013 rolled over to FY2014 to cover the minimal internet hosting fees necessary to keep the database online.

NACWA Service Charge Index

For more than two decades, NACWA has published the *Service Charge Index Survey* annually to track average single-family residential service charge increases as measured against the rate of inflation. The survey's results provide NACWA with data essential to the Association's strategic advocacy objectives and member agencies with valuable annual benchmarks. 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 approved for FY 2014 was \$4,000, with another \$4,000 proposed for FY 2015.

Water Blues – Green Solutions

The Board of Directors approved funding for [*Water Blues-Green Solutions*](#), a documentary by Pennsylvania State University Public Media, in February 2012. *Water Blues-Green Solutions* tells the stories of several NACWA Member Agencies and their efforts to create green solutions for water blues in their communities. This multimedia documentary effort followed the successful 2008 documentary [*Liquid Assets*](#). After the success of *Liquid Assets*, Penn State Public Media identified NACWA as an important partner in this new public service media initiative. NACWA's contribution to the effort was \$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 that reflect the role that green

infrastructure can play in creating truly sustainable infrastructure. The initiative culminated in January 2014 with the release of a feature-length, nationally-distributed documentary, enhanced by online and community outreach. NACWA supported the national release with an additional approved TAF expenditure of (not to exceed) \$10,000 in FY 2013 TAF funds, and during *Water Week 2014*, delivered copies of the documentary to all Congressional offices with the message *Gray (Infrastructure) + Green (Infrastructure) = Clean Water*. A Pennsylvania premiere of the documentary, in May, 2014, garnered significant recognition for NACWA's sponsorship.

Since its premiere, *Water Blues-Green Solutions* has aired on public broadcasting stations in numerous markets in over 30 states reaching nearly half of the U.S. population. Campus, community and organization screenings and events are scheduled to take place all over the U.S. and the globe, including one in London, England in September 2014. Like *Liquid Assets*, *Water Blues-Green Solutions* supports the Association's strategic objectives by positioning Association members as innovative *Water Resources Utilities of the Future* – protecting the environment, creating jobs, and engaging their communities.

Technical Workgroup on Flushable Wipes

The Board approved \$20,000 from the FY 2014 TAF to support a facilitated technical workgroup on flushable wipes as a means to move toward consensus on flushability standards for wipes and other products that are likely to be flushed. The workgroup has now been formed and consists of representatives from NACWA, the Water Environment Federation (WEF), the American Public Works Association (APWA), and INDA (the trade association of the nonwoven fabrics industry). The TAF funds are being used to support a facilitator to establish the procedures and decision-making rules of the workgroup; to conduct pre-convening interviews; to convene the workgroup meetings; and, to prepare a findings and agreements document. The workgroup held its first in-person meeting in May. A series of conference calls and two more in-person meetings of the workgroup are planned for this summer. The workgroup is an important part of the "Toilets Are Not Trash Cans! Protecting Our Pipes, Pumps, Plants, and Personnel" campaign, which NACWA announced in October 2013, to reduce the amount of wipes and other inappropriate products that are flushed or drained into the sewer system.

WERF Targeted Collaborative Research on Energy Recovery from Incineration of Biosolids

The Board approved \$7,000 from the FY 2014 TAF to help support targeted research to determine and demonstrate that energy recovery from the thermal oxidation (incineration) of biosolids is technically and economically viable and to develop information that will help educate regulators on the benefits of renewable energy recovery from biosolids. The TAF funds were provided to the Water Environment Research Foundation (WERF) to support a Targeted Collaborative Research (TCR) study on the feasibility of energy recovery from biosolids incineration. A number of NACWA members have already contributed to the initial funding for this project, and NACWA's contribution ensures that the project can move forward. The contribution will leverage the small investment into a very beneficial report for NACWA members that currently use incineration to manage their biosolids.

Litigation/Legal Projects

General Legal Support

The *General Legal Support* line item provides funds for time-sensitive legal advocacy efforts and other related expenses that arise during the course of the year. The proposed TAF funds of \$40,000 will be available for use throughout FY 2015 to consult and retain outside counsel on various legal and regulatory issues, help prepare comments or legal analyses on matters that are time sensitive, assist with NACWA's legal advocacy on an as-needed basis, and for general litigation support. As an example of the how this fund is used, the activities funded through the *General Legal Support* line item in FY 2014 included NACWA participation on an amicus brief on TMDL issues before the Ohio Supreme Court; a brief addressing the appropriate expression of nutrient limits in POTW discharge permits before the U.S. Environmental Appeals Board; and a brief defending municipal stormwater fee programs before the Ohio Supreme Court. The FY 2014 *General Legal Support* line item was also used to support NACWA's efforts to develop comments on EPA's proposed revisions to its water quality standards rule. Prior to FY 2012, this budget item was funded at a level of \$50,000.

Chesapeake Bay TMDL Case

\$10,000 in FY 2014 TAF resources have been used to fund NACWA's participation in appellate briefing before the U.S. Court of Appeals for the Third Circuit to defend an important legal victory in *American Farm Bureau v. EPA*, which is a challenge to EPA's final TMDL for the Chesapeake Bay. This is in addition to \$15,000 in FY 2012 TAF resources and \$10,000 from the FY 2011 TAF previously spent to support NACWA's involvement.

NACWA is participating in this case in collaboration with the Virginia Association of Municipal Wastewater Agencies (VAMWA) and the Maryland Association of Municipal Wastewater Agencies (MAMWA) to defend EPA's use of a holistic watershed approach in creating the TMDL, including the assignment of allocations to nonpoint agricultural dischargers. By making non-point sources more responsible for their share of water quality impairment, NACWA is seeking to save its members significant money by avoiding more stringent POTW permit limits for pollutants such as nutrients.

A lower federal court issued a resounding legal victory for NACWA and its municipal partners in September 2013 when it rejected all challenges to the TMDL by the agricultural plaintiffs and upheld EPA's use of a holistic watershed approach in identifying both point and non-point source allocations. NACWA filed a brief with the Third Circuit in April 2014 seeking to defend that ruling on appeal.

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 important 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 2013, 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. However, the County and federal government subsequently settled the case before substantial briefing occurred in the appeal. NACWA incurred \$5,859 in costs to begin work on its brief before settlement occurred; the balance of the \$20,000 allocated to the project but unspent has been returned to the TAF.

An additional \$2,668 in FY 2013 TAF resources was 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 its municipal stormwater fee program from legal challenge. The state appellate court issued a negative ruling in September 2013. The case was successfully appealed to the Ohio Supreme Court, and NACWA used resources from *General Legal Support* (see above) to file a brief defending the stormwater fee program. The brief argues that municipal stormwater service charges qualify as valid utility fees and are not impermissible taxes. NACWA's involvement in litigation over municipal stormwater fee programs is critical to help Association members preserve the legal ability to raise much needed funds for implementation of federally mandated stormwater management programs.

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 a total of \$95,000 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 reaffirmed the Agency's preference for controlling nutrient discharges from POTWs through the water quality-based provisions of the CWA. The decision was a major win that resulted in significant avoided costs for public agencies and ensured that an unworkable one-size-fits-all approach is not the solution to the nutrient challenge. While dismissal of the underlying lawsuit ended 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 argue 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 in developing nutrient criteria and control programs that will result in more equitable reduction efforts across all sources. The court issued a partial legal victory for NACWA in the case in September 2013, ordering EPA to provide a clear "yes" or "no" answer to the need for federal NNC in the MRB within six months but also providing EPA with wide discretion regarding the factors it can consider when making the determination. The remaining allocated but unspent funds for this line item will be used to help NACWA track legal developments as EPA responds to the court's order, including EPA's current attempts to appeal the decision on an unrelated procedural issue.

Biogenic Greenhouse Gas Litigation Amicus Brief

An allocation of \$15,000 from the FY 2012 TAF funded 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. Although the U.S. Court of Appeals for the District of Columbia vacated the deferral in July 2013, the deferral is currently still in place while other cases make their way through the court system. If biogenic emissions from wastewater treatment plants are eventually included in GHG regulations, 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 provided 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. The information in the brief will continue to be useful as NACWA works on a permanent exemption for biogenic wastewater emissions, including the Association's participation in the Biogenic Greenhouse

Gas Emissions Coalition to secure a permanent exemption (see description in *Climate & Energy* section above for more details).

Chesapeake Bay Nutrient Trading Lawsuit

An amount of \$50,000 from the FY 2013 TAF was 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. 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. Water quality trading can provide a much more cost effective method for clean water utilities to meet water quality mandates, and NACWA is committed to defending the ability of Association members to pursue these cost savings via trading. This case had the potential to impact trading programs involving wastewater treatment plants as well as stormwater sources, and had implications not just for the Chesapeake Bay region but for all water quality trading efforts nationally. However, the case was dismissed by the court on procedural grounds in December 2013, providing a significant victory for water quality trading. The plaintiffs in the case did not appeal, and the remaining unspent funds have been returned to the TAF. NACWA will stay vigilant for future potential legal challenges to trading.

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 has 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 reiterates 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 provides 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. This decision alone potentially saved the impacted municipal governments from nearly \$300 million in unnecessary expenditures. EPA further announced in March 2013 that it would not appeal the ruling, preserving this important legal win for municipal stormwater utilities.

Consent Decree Handbook and e-Library Update

An allocation of \$50,000 in FY 2014 TAF funds were utilized to provide significant updates to NACWA's *Wet Weather Consent Decree Handbook* and online *Consent Decree e-Library*. These resources have the potential to save NACWA members substantial time and money in preparing for and conducting wet weather enforcement negotiations. Both resources are free to NACWA members and were released to the membership in May 2014.

The updated *Handbook* provides unparalleled information and analysis to assist utilities in negotiating or renegotiating a wet weather consent decree. It includes an analysis of key provisions from existing municipal wet weather enforcement orders and consent decrees, with the goal of helping utilities negotiate the best decrees for their communities by understanding the types of agreements that others have already secured. As part of this analysis, the *Handbook* contains comprehensive summaries of major wet weather orders with highlights of unique or notable features. The document also includes a robust analysis and explanation of the major regulatory and legal documents that will form the framework of enforcement discussions, providing key insights to assist utilities during the negotiation process.

Designed as a companion to the new *Handbook*, NACWA's revised *Consent Decree e-Library* provides the most comprehensive collection of full municipal wet weather consent decree and enforcement orders. While the *Handbook* offers a snapshot and summary of these documents, the *e-Library* allows users to access the documents in their entirety for further review and analysis. Additionally, the completely redesigned site now provides users with more ways to search for decrees, including by EPA region, state, or search term. Users can even create their own unique search term or query by using a new "search box" function. This new functionality and search engine will make it even easier for users to find specific terms, concepts, and legal definitions included in decree documents, allowing for more tailored and productive searches.

Permit Shield Litigation Amicus Brief

An amount totaling \$5,000 from FY 2014 TAF was allocated to support NACWA's participation on an *amicus* brief to help defend the "permit shield" defense available to municipal dischargers under the CWA. The case, *Southern Appalachian Mountain Stewards v. A&G Coal Corp.*, is before the U.S. Court of Appeals for the Fourth Circuit and addresses whether a permittee must have actually disclosed a pollutant in its National Pollutant Discharge Elimination System (NPDES) permit application in order to avail itself of the protection afforded by Section 402(k) of the CWA, commonly referred to as the "permit shield." The permit shield defense is a critical one for permittees under the CWA and holds that compliance with a permit is compliance with the CWA.

Given the importance of the permit shield to NACWA members for protection from citizen suits – as well as avoiding unnecessary and costly enforcement actions and lawsuits – NACWA is participating in this case to help preserve the permit shield as a strong and robust defense for NPDES permit holders to enforcement actions. NACWA's participation in this case is part of a broad coalition of diverse groups, including industrial and agricultural point source dischargers, who share a common interest in defending the permit shield defense. NACWA's brief was submitted in January 2014 and a decision from the court is expected soon.

Washington State Biosolids Case

FY 2014 TAF resources in the amount of \$15,000 have been used for NACWA to join a legal brief challenging a ban on land application of biosolids in Washington State. The case, *State of Washington v. Wahkiakum County*, deals with a ban on land application of class B biosolids initiated by Wahkiakum County, Wash. that violates state law and also ignores decades of research demonstrating the safety and

environmental benefits of well-run land application programs. NACWA is participating in the case on behalf of the Association's Washington State members who are adversely impacted by the land application ban. Additionally, NACWA has expressed longstanding opposition to biosolids land application bans, especially those passed by local counties that could negatively impact municipal clean water utilities in neighboring jurisdictions. NACWA is committed to preserving the ability of municipalities to choose the method of biosolids management that works best for their communities and is most cost effective, including the option of land application. The brief in the case was filed on May 30, 2014, and oral arguments are scheduled for early July 2014.

White Paper on Citizen Suit Issues

A total of \$20,000 in TAF resources – including \$10,000 in FY 2014 and \$10,000 in FY 2015 -- has been allocated to provide financial support for a research project and resulting white paper exploring the impacts of CWA citizen suits on municipal clean water utilities. The concept of the white paper originated in discussions among researchers and the California Association of Sanitation Agencies (CASA), and NACWA will be a participant on the project. Citizen suits can present significant challenges and financial cost to municipal clean water utilities. In order to help confront this issue, CASA is spearheading an independent research project and white paper by a respected academic institution to examine the impacts of citizen suits on the municipal clean water community. The white paper will explore a wide range of regulatory, legal, and financial issues to help inform its analysis. Among the questions the paper will seek to address are whether there is a quantifiable increase in citizen suits against wastewater utilities, what the costs of these suits are for ratepayers, whether these suits result in cost-effective environmental improvements, and whether these suits can in fact lead to undesirable outcomes or unintended effects. Additionally, the paper will examine whether there are more cost effective ways than the citizen suit approach to achieve clean water goals while also protecting the interests of ratepayers and taxpayers. The whitepaper is expected to be completed in late 2014 or early 2015.

Maryland Stormwater Litigation

A total of \$5,000 from the FY 2014 TAF will be used for NACWA to participate in litigation before the Maryland Court of Special Appeals over municipal separate stormwater sewer system (MS4) permit requirements. The major issue presented in this case, *Anacostia Riverkeeper, et al. v. Maryland Department of the Environment* is whether the federal CWA requires MS4 permits to mandate "strict compliance" with water quality standards and related TMDLs. This concept of "strict compliance" has long been advanced by environmental activist groups to require specific numeric effluent limits in MS4 permits. The trial court in this case agreed with arguments presented by activist groups that a challenged MS4 permit did not contain enough "specific, enforceable standards." The issue of whether the federal CWA mandates inclusion of numeric limits in MS4 permits will now be squarely before the Maryland appellate court, and how the court answers this question has potentially significant implications not just for Maryland MS4s but for other state courts and MS4s elsewhere in the nation. NACWA is participating in this case to help prevent the substantial additional costs that MS4 utilities would face in meeting discharge permits if numeric limits are required. Briefing in the case will occur in July 2014.

Advocacy Coalitions

Water Infrastructure Network (WIN)

NACWA's financial contribution to WIN's FY 2014 budget was \$25,000 and the same amount is proposed for FY 2015. This past fiscal year has been a banner year for WIN. The Network was instrumental in NACWA's efforts to obtain key provisions in the Water Resources Reform & Development Act (WRRDA) that dramatically improve the Clean Water State Revolving Fund (CWSRF) program, including extending the repayment period to up to 30 years, ensuring that innovative technologies and approaches in line with the Water Resources Utility of the Future initiative are eligible for CWSRF funding, and codifying rules for providing additional subsidization in the form of loan forgiveness and negative interest loans. These provisions also help ensure that the CWSRF remains the primary federal funding program for clean water projects where, for the first time, WRRDA includes a loan guaranty program for drinking water and clean water utilities. WIN has also worked to defend strong funding levels through the annual appropriations process and continued to advance support for trust fund legislation that would bolster the SRF.

The \$25,000 contribution secures the Association's place on the WIN Executive Committee and ensures the Association's advocacy agenda and strategic funding priorities for the Nation's clean water agencies are advanced through the coalition's vital outreach and advocacy efforts. NACWA, in its role as administrator of WIN, receives \$15,000 per year in return for its management services.

Federal Water Quality Coalition

NACWA continues to participate as an active member of the Federal Water Quality Coalition (FWQC). The FWQC is a broad coalition of stakeholders, including industry and municipalities focused on a range of water quality criteria and total maximum daily load (TMDL) issues. Approved funding for FY 2014 was \$15,000. The FY 2015 proposed funding amount of \$17,000 (the increase is due to a change in the FWQC's dues) covers NACWA's participation 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, providing NACWA with an exceptional resource to enhance and supplement the Association's existing capabilities and further the depth and breadth of its regulatory advocacy agenda.

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 – enabling this invaluable strategic collaboration to create a stronger, more united voice across the sector to improve public awareness of the value of water.

Following substantive research and the creation of messaging architecture around the value of water, the Coalition launched outreach via www.valueofwater.org on October 1, 2013. In the months that followed, the need to further focus the campaign's messaging was realized. Most recently, the Value of Water Coalition has taken a new and exciting course – selecting the U.S. Water Alliance as its program manager and working collaboratively to refine and focus the campaign's messaging and improve its website and other communication avenues – all with the goal of positioning the campaign for future fundraising. In March 2014 NACWA's Board approved TAF funding of \$20,000 for NACWA's ongoing participation in the Coalition for the calendar year 2014.

In May, the Value of Water (VoW) Coalition announced new efforts to demonstrate the critical role water infrastructure plays in our national economy. The new effort – *Water Works!* – kicked off with a panel discussion around the current condition of the nation's water infrastructure and the growth and opportunity it drives, as part of *Infrastructure Week 2014*. The *Water Works!* campaign leverages efforts to increase public awareness on the importance of clean and safe water to every community, and the need to invest in the infrastructure that provides quality service and economic opportunity. As part of the campaign the Coalition has compiled new and existing research that underscores not only the needed investment in our nation's water infrastructure, but also some of the attitudes Americans have toward this infrastructure. The resulting paper, [*From Invisible to Invaluable: Changing the Way We Think About Water Infrastructure*](#), details the implications that the health of our water infrastructure holds for homes, businesses and local and national economies. The *Water Works!* campaign is based around four basic messages to help communicate to the general public the value of water infrastructure: that water connects us; that it grows jobs and opportunities; that it keeps us safe and healthy; and, that it sustains our environment.

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 may be significantly impacted by the inclusion of biogenic GHGs in 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 was vacated in July 2013 by an appeals court decision, although the deferral is still in place while legal challenges to GHG regulation continue. The Coalition held several meetings with EPA, but is currently waiting for the outcome of a related case that is currently before the Supreme Court. The decision in that case will have broad implications for a number of GHG-related rules.

NACWA, through its work with this Coalition and its ongoing advocacy, is working to secure a workable path forward for biogenic emissions from POTWs. NACWA understands that EPA's current thinking would result in a positive outcome for POTWs, which will significantly limit the impact of EPA's biogenic GHG regulations on the clean water community.

Advocacy Support

Legislative Support

NACWA utilizes the services of the advocacy firm, The Accord Group, to support the Association's efforts to advance its legislative and regulatory priorities. The Association 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 2014 was \$72,000 and NACWA is requesting \$84,000 for Fiscal Year 2015.

The Accord Group's focus has been, and will continue to be, assisting 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 has identified and secured key Members of Congress to lead the Clean Water Caucus (a key part of the advocacy agenda for the Water Resources Utility of the Future) and 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. The Accord group is also exploring ways in which better coordination can occur on stormwater management issues with respect to transportation infrastructure. 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, while also helping ensure that NACWA's efforts on climate/resilience are successful.

Government Affairs Rapid Response Fund

The *Government Affairs Rapid Response Fund* (GARRF) provides NACWA with the ability to quickly respond to time-sensitive legislative and regulatory issues. Over the past year, the GARRF has supported vital advocacy efforts that continue to be used to advance NACWA's advocacy work. The Board approved \$35,000 for the GARRF in FY 2014 and NACWA is seeking \$40,000 for it in FY 2015. The FY 2014 funds have been used to support a number of initiatives through the year so far including the development of comments on the water quality standards proposed rule, securing the input of National Journal to provide effective association outreach and advocacy strategies with Congress as part of Water Week, and work via the Water Quality Trading Alliance to advance a national pro-trading agenda. Perhaps most importantly, the GARRF is supporting vital work to continue garnering momentum for the Water Resources Utility of the Future campaign with a project to highlight how utilities are effectively "Telling the Story" of the value local UOTF efforts bring their communities and the nation. Again, total funding proposed for this item in FY 2015 is \$40,000. Prior to FY 2012, this budget item was funded at a level of \$50,000.

Water Resources Utility of the Future *Blueprint*

NACWA completed work in FY 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, with the remaining funds contributed by WEF and WERF.