

TAF Project Overview & Status Report Current to April 24, 2015

Technical/Advocacy Projects

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 so the money saved has been used to consult with a former staff director of the Senate Finance committee to solicit strategic advice on an advocacy approach to potential Congressional supporters.

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. The final report is now available and NACWA has already met with EPA and the Association of Clean Water Administrators (ACWA) to outline the Association's recommendations. Based on initial discussions with EPA, NACWA is setting up a series of meetings to discuss the recommendations in its report in more detail. The first meeting took place on February 12 and another meeting will be planned for later in 2015.

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 was selected to draft the white paper, which was done in collaboration with Agree and the U.S. Water Alliance. The paper was released during the 2015 Winter Conference in Charleston. The paper focuses specifically on success stories and case studies featuring where collaborations have worked, lessons learned from these experiences, and recommendations for how similar collaborations can be established throughout the country. The 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 project 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.

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. Funding in the amount of \$45,000 from the FY 2015 budget is being 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 Executive Highlights section of the survey report was released in February 2015, and release of the full report is expected in June 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. Future expenditures for CleanWater Central maintenance will be covered by the General Fund.

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 2015 was \$4,000. Data collection for the 2014 survey is complete and preliminary figures were presented during the 2015 Winter Conference in February. The final survey report will be released in May.

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 reflected 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.

The *Water Blues Green Solutions* documentary has been successful in making its way into homes, local theaters, community organizations, and college campuses across the nation. Additionally, the documentary has received special recognition and multiple awards including 3 Mid-Atlantic Emmy nominations, 1 Mid-Atlantic Emmy win, and the Cine Golden Eagle Award. Like *Liquid Assets* before it, *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. In January 2015, \$7,104 of the approved FY 2013 TAF allocation of \$10,000 for the national release of the documentary was returned to the Fund. This TAF project has concluded.

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 consisted 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 supported 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 a series of conference calls and three in-person meetings in 2014, reaching an agreement for the associations to develop new flushability guidelines and to participate in a product stewardship initiative to encourage companies that produce and sell wipes to exert greater responsibility over the impacts of their products through improved labeling and public education. The associations have finalized the scopes of work for the flushability guidelines development and the product stewardship initiative, as well as a public statement to explain the ongoing collaboration. The agreement reached by 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. With the project contract now awarded, WERF expects this project to be completed by March 2016.

Peer Review Paper on Reasonable Potential

In July 2014, the NACWA Board approved \$25,000 from the FY 2014 TAF budget to develop a peer-reviewed journal publication outlining the major flaws in the U.S. Environmental Protection Agency's (EPA) use of statistics to set toxicity and nutrient permit limits. In 2006, the Water Environment Research Foundation (WERF) published *Accounting for Toxicity Test Variability in Evaluating WET Test Results*. As part of the report, the lead authors, including William Warren-Hicks and Ben Parkhurst, discovered that the equation used in EPA's Technical Support Document (TSD) to evaluate reasonable potential (RP) was incorrect. The WERF work was peer-reviewed at EPA's insistence by a panel of national statistics experts, and the findings of Warren-Hicks and Parkhurst were supported by the peer reviewers. The findings were never published, however, and EPA has made no changes to its current practice.

Nationally, the errors in the equation greatly overestimate "potential," resulting in a large number of permit limits that are not environmentally warranted. The Water Quality Committee proposed to work with Warren-Hicks and Parkhurst to develop a peer-reviewed journal publication on the inappropriate use of statistics to set toxicity and nutrient limits. Subsequent to Board approval, the cost estimate for the project was changed significantly due to additional work that Warren-Hicks and Parkhurst deemed necessary. NACWA sought co-funders to offset these additional costs, but was unsuccessful. The project is being tabled and the funds have been returned to the TAF.

Innovative Permitting Workshop and Framework

In July 2014, the NACWA Board approved \$15,000 from the FY 2014 TAF budget to support a collaborative project exploring current water regulatory models, focused on the control of nitrogen and phosphorus, outside of the U.S. As the U.S. has continued to develop and adopt innovative technologies to control nutrients, it has become increasingly clear that existing permitting practices are hindering innovation. Experts have begun to explore the possibility of stochastic permitting and other approaches to better reflect the operational patterns of nutrient control technology, but U.S. EPA and state regulators have to date not embraced these techniques. Outside of the U.S., however, regulatory agencies are looking to new models for permitting nutrients that better account for variation in discharge levels and that will allow for broader adoption of lower-energy nutrient removal technologies.

The project will begin with a literature review and survey followed by an expert workshop intended to refine the information collected by the project team, as well as better structure the information to evaluate the differences in the regulations and assess the effects on innovation. Next, the project will conduct treatment process and surface water quality modeling to evaluate the impact of the novel regulatory approaches on treatment plant design and operation and on water quality, as compared to

traditional NPDES permitting approaches. Finally, based on a detailed analysis of current permit structures, the project will result in a list of potential modifications to the U.S. regulatory framework, which are expected to stimulate more rapid adoption of innovative technologies.

All funding is being funneled through WERF so that the project can be funded under the existing WERF Nutrient Challenge. The literature review is ongoing and an initial workshop for the project is planned for Summer 2015.

Water Works! Jobs/Economy Outreach

In September 2014, water leaders from across the sector were in Washington, DC for a series of events co-hosted by members of The Value of Water Coalition, along with the American Society of Civil Engineers; the Bipartisan Policy Center; Building America's Future; the National Association of Counties; the National League of Cities; the National Urban League; and, the U.S. Conference of Mayors. The events focused on a new report, [*National Economic & Labor Impacts of the Water Sector*](#), released by the Water Research Foundation and the Water Environment Research Foundation – and included a drive-time ad buy, press conference, Congressional Briefing, and social media 'Thunderclap' – as well as utility leader interviews with media outlets across the country. The report's findings, and the range of the organizations participating in [*Water Works! – Investing Together for a Stronger America*](#), demonstrated the growing recognition of the water sector's economic importance and underscored that investment in our nation's water and wastewater infrastructure puts people to work, spurs economic development, and builds a stronger America.

NACWA/Agriculture Joint Mapping Analysis

In November 2014, the NACWA Board approved \$25,000 in FY 2015 TAF funding to support a project to conduct a point-nonpoint source mapping analysis to identify priority locations for development of collaborations between the wastewater sector and agricultural producers. This project has been placed on hold due to reconsideration of support by one of the expected partners, the Innovation Center for US Dairy.

Meetings with EPA on Nutrient Permitting Report

In November 2014, the NACWA Board approved \$33,000 in FY 2015 funding to support a series of in-depth meetings with EPA to discuss the Association's report, *Review of USEPA Methods for Setting Water Quality-Based Effluent Limits for Nutrients*. In 2013, the NACWA Board approved TAF funding to conduct a review of the training materials from EPA's course on writing permit limits for nutrients (see related project above). The training course, first administered in July 2013, aims to provide state permit writers with new tools and information on how to develop nutrient permit limits based on numeric or narrative state water quality criteria. NACWA identified a number of concerns with the training material and commissioned the report to examine where EPA methodologies were correct, incorrect or needed modification.

The final report was released in June 2014 and NACWA has had several productive discussions with EPA and state water regulators. At a September 25 meeting with EPA Headquarters officials, EPA identified several issues from the report that it would like to explore in more detail. EPA requested that NACWA convene a series of meetings between the report's authors, NACWA members and key EPA staff to discuss the issues in more detail. The funding is being used to cover time and travel expenses for the

report's authors to prepare for and participate in up to five (5) meetings at EPA in Washington, DC. The first meeting took place on February 12 and the next meeting will be scheduled for later in 2015 when key staff at EPA return from extended leave. The full \$33,000 may not be expended if all five meetings are not necessary.

Flushability Guidelines Development and Product Stewardship Initiative for Flushable Wipes

The NACWA Board approved \$12,500 from the FY 2015 TAF to continue NACWA's work with other associations to address the problems caused by flushable wipes and other non-dispersible products.

This project will consist of two components:

- Flushability Guidelines Development – The nonwoven fabrics industry and wastewater utilities will develop new flushability guidelines to ensure that wipes labeled “flushable” are safe for sewer systems. The \$6,175 in TAF funding for this component will cover the travel expenses to the meetings of the flushability guidelines drafting committee for NACWA's representative on the committee.
- Product Stewardship Initiative – This initiative will explore opportunities for the nonwoven fabrics industry to exert greater responsibility over downstream impacts of wipes through improved product labeling and public education. The \$6,325 in TAF funding for this component will pay for Ross Strategic (NACWA's contribution to total contract cost) to serve as a facilitator for the initiative.

Both of these components result from a previous TAF project that supported a Technical Workgroup to address issues related to flushability of wipes (see above). The conclusions and recommendations of the Technical Workgroup will be used to develop the new flushability guidelines and to guide the product stewardship initiative.

Revisiting the EUM Attributes & Embracing the Utility of the Future

The NACWA Board approved \$8,000 from the FY 2015 TAF to support a collaborative effort to revisit and potentially refresh the *Attributes of Effectively Managed Utilities and Keys to Management Success*. Since the signing in 2008 of the Statement of Support by six major associations (NACWA, WEF, AMWA, AWWA, NAWC and APWA) and EPA to promote the use the attributes and keys to management success, the EUM framework has been widely embraced and implemented across the clean water sector – including in NACWA's *Excellence in Management Recognition Program*. The EUM attributes and keys are used by a growing number of water and wastewater utilities to help guide their path toward improving their effectiveness and becoming truly sustainable over time.

At the same time, a number of important challenges and opportunities have emerged in the years since the EUM framework was developed. These include resource recovery, economic and affordability challenges, resilience, and others. Many of these new challenges and opportunities are embodied by the *Water Resources Utility of the Future Blueprint* (UOTF), developed by NACWA, WEF and WERF, and complementary efforts have also emerged from the drinking water community. In light of these developments, EPA and the original EUM partners believe it is appropriate to convene a group of water and wastewater utility leaders to examine the current EUM framework and determine if any adjustments,

modifications, or other revisions are necessary to improve its overall usefulness to utilities and others. Subsequent to the Board's action, it was determined that the six collaborating organizations would each contribute \$5,000 to the effort, for a total of \$30,000. EPA is also committing approximately \$30,000. The funds will be used to retain contractor support to facilitate the process of identifying utility representatives, convening and running the meetings to discuss the framework, and overseeing any revisions to the EUM attributes and keys to management success. The objective is to have a final, revised EUM framework by WEFTEC 2015.

Water Resources Utility of the Future Annual Report

The NACWA Board approved up to \$40,000 from the FY 2015 TAF to develop a utility of the future (UOTF) annual report. This effort is intended to respond to strong member, industry, and federal interest in the UOTF and would engage the clean water industry broadly around this win-win issue. It would highlight "best in class" initiatives among several key water sector interests, including the public utility, foundation, manufacturing/technology, and finance sectors. Further, it would showcase the achievements of NACWA, WEF and WERF on UOTF issues and help formalize a collaboration between the organizations in an annual format.

From NACWA's standpoint, the report will strengthen our leadership role as an advocate for legislative and regulatory change in support of our members; elevate the importance of NACWA's National Environmental Achievement Award in UOTF innovation; and, lay the groundwork for other, potentially broader, UOTF initiatives of interest to our membership going forward. WEF has committed \$10,000 in funding and WERF has committed \$5,000 in funding, which will bring NACWA's contribution down to \$25,000. The final report will be released at NACWA's 2015 Summer Conference.

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 TAF funds of \$42,680 for FY 2015 (including a \$40,000 allocation for FY 2015 and \$2,680 in unused funds from FY 2014) will be available for use 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. To date, \$5,000 from this line item has been allocated to support the Association's continued participation in the Chesapeake Bay TMDL litigation, and \$4,000 has been allocated to support oral argument preparations in the Environmental Appeals Board (EAB) Collection System Permit Appeal. Prior to FY 2012, this budget item was funded annually at a level of \$50,000.

Chesapeake Bay TMDL Case

As noted above, \$5,000 from the FY 2015 General Legal Fund was used to support NACWA's participation in litigation 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 \$10,000 in FY 2014 funds, \$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 nonpoint 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 nonpoint source allocations. NACWA filed a brief with the Third Circuit in April 2014 seeking to defend that ruling on appeal. Oral arguments before the Third Circuit were held in November 2014, and a decision is expected at any time.

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 (MRB).

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. Additional funding for this line item may be necessary during FY 2015.

NEORSD Stormwater Appeal

\$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 (NEORSD) in defending its municipal stormwater fee program from legal challenge. 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.

The state appellate court issued a negative ruling in September 2013. The case was successfully appealed to the Ohio Supreme Court, and NACWA used additional resources from the FY 2014 General Legal Fund to file an additional brief, in collaboration with the Association of Ohio Metropolitan Wastewater Agencies, to defend the stormwater fee program. Oral arguments were held before the Ohio Supreme Court in September 2014 and a decision is expected at any time. Remaining funds in this line item will be used to help track developments in the case.

Consent Decree Handbook and e-Library Update

An allocation of \$50,000 in FY 2014 TAF funds was 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 easier for users to find specific terms, concepts, and legal definitions included in decree documents, allowing for more tailored and productive searches.

The remaining funds in this line item will be used during FY 2015 to support continued fine-tuning of the new online *e-Library*, including fixes to some remaining software bugs, and also to make minor revisions to the *Handbook*.

Permit Shield Litigation Amicus Brief

\$5,000 from the 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.*, was before the U.S. Court of Appeals for the Fourth Circuit and addressed whether a permittee must have actually disclosed a pollutant in its 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.

NACWA's brief was submitted in January 2014 and a decision from the court was released in July 2014. The court issued a ruling that largely upheld the permit shield – preserving an important defense for NACWA members – but also clarified that permittees must fill out permit applications completely and in good faith to be covered by the shield.

Washington State Biosolids Case

FY 2014 TAF resources totaling \$15,000 were used for NACWA to join a legal brief with other municipal interests 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 participated 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 in May 2014 with oral arguments held in July 2014. The court issued a significant victory for the municipal groups in November 2014 when it struck down the land application ban as unconstitutional.

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 if 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 2015.

Maryland Stormwater Litigation

A total of \$5,000 from the FY 2014 TAF was spent for NACWA to participate in litigation before the Maryland Court of Special Appeals over 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. NACWA is partnering with a coalition of other municipal groups in this case, and the joint brief was submitted in August 2014.

Chicago Consent Decree Case

\$15,000 from the FY 2014 TAF was allocated for NACWA to file an *amicus* brief in federal litigation before the U.S. Court of Appeals for the Seventh Circuit over a consent decree for NACWA member the Metropolitan Water Reclamation District of Greater Chicago (MWRD). The case involves efforts by environmental activist groups to alter a wet weather consent decree successfully negotiated by MWRD with federal and state regulators in late 2011. In January 2014, the court issued a very strong decision and win for MWRD that dismissed the activist challenge and entered the decree as negotiated. The activist groups subsequently appealed.

NACWA submitted a brief to the court in December 2014 the strongly supported the lower court decision and its finding that the role of a federal court when reviewing decrees is to enter the decree as written, as long as it is fair and reasonable. NACWA emphasized from a national perspective the risks that municipal utilities face by spending significant time and resources to negotiate a decree, only to then have the decree significantly modified at the last minute by a federal court at the request of outside groups. NACWA also argued that given the significant environmental and economic stakes involved in consent decree negotiations, it is critical that final enforcement orders appropriately balance environmental and public health improvements with responsible expenditures of limited ratepayer dollars.

In an unusual development and a potential sign of NACWA’s growing influence on legal matters, the environmental activist groups involved in the case refused to give consent for NACWA to file an *amicus* brief. NACWA therefore had to submit a request to the court to file the brief, and the court surprisingly

declined to accept the brief on the basis that it did not add any information to what the other parties had briefed. While NACWA strongly disagrees with the court's decision, the Association is hopeful the brief will still have some impact on the court's deliberations.

EAB Collection System Permit Appeal

\$15,000 in FY 2015 TAF resources has been used to support a NACWA *amicus* brief in litigation before the U.S. Environmental Appeals Board (EAB) addressing the inclusion of satellite collection systems in discharge permits. The case, *Charles River Pollution Control District*, involves a challenge by NACWA Member Agency the Upper Blackstone Water Pollution Abatement District (UBWPAD) and a number of local satellite collection communities to an NPDES permit issued by EPA Region 1. EPA issued the permit with the co-permittee provision despite strong objections from the POTW permittee, the satellites, and other clean water utilities in Massachusetts, including UBWPAD.

NACWA's brief was filed in October 2014, supporting UBWPAD's challenge the co-permittee provisions, arguing that inclusion of satellite systems in the permit against the wishes of a POTW is illegal under CWA, and expressing the Association's longstanding opposition to overly burdensome and costly regulatory requirements when dealing with satellite systems.

On February 4, 2015, the EAB released its decision in the case, denying review of the permit and upholding the permit's co-permittee requirements. The EAB found that the satellite systems were part of the definition of a POTW under the CWA, and EPA accordingly had the authority to include the satellites as part of the POTW permit. The EAB also determined that the satellites were not required to individually apply for inclusion in the permit, since the CWA's "duty to apply" obligation was met when the POTW itself applied for the permit. The EAB reasoned that the information provided by the POTW in its own permit application was enough to waive the requirement for separate applications from the satellites.

NACWA is disappointed with the EAB's ruling and is concerned about various aspects of the decision. The Association will engage in discussions with impacted members from Region 1 to determine appropriate next steps, including a possible appeal.

Pennsylvania Biosolids Litigation

\$5,000 from the FY 2015 TAF was allocated for NACWA's participation on a joint municipal brief with the Pennsylvania Municipal Authorities Association (PMAA) before the Pennsylvania Supreme Court in litigation over the land application of biosolids. The major issue presented in *Gilbert v. Synagro* is whether the land application of biosolids is an agricultural activity that is protected under Pennsylvania's right to farm act. Ensuring that land application is considered a normal agricultural practice under right to farm laws is critical for clean water utilities because it provides land application programs with additional legal protection from lawsuits challenging the practice, similar to protections enjoyed by other agricultural fertilizers. The joint NACWA/PMAA brief (which was also joined by Association member the Allegheny County Sanitary Authority) was filed in December 2014 and provided an authoritative clean water utility view on the history, success and importance of land application of biosolids from both the national and state perspective. The brief also outlined the large body of

literature, facts, and state and federal policies and law demonstrating that land application is an accepted farm practice across the United States.

Advocacy Coalitions

Water Infrastructure Network (WIN)

NACWA's financial contribution to WIN's FY 2015 budget is \$25,000. 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 improved 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. Having the CWSRF in WRRDA also means that WIN and NACWA can advocate for additional changes that can streamline the CWSRF application process and seek other efficiencies in the program, since the WRRDA bill comes up for reauthorization every two years. WIN has also worked to defend strong funding levels through the annual appropriations, has continued to advance support for trust fund legislation that would bolster the SRF, and is actively opposing any roll-backs to the tax-exempt status of municipal bonds.

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 2015 is \$17,000, which 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. Nearly a year ago, the Value of Water Coalition took a new and exciting course – selecting the U.S. Water Alliance as its program manager and beginning collaborative work 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 2014, 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.

Most recently, the Coalition continues to look toward the future as it welcomes Radhika Fox as its director. Radhika will leave her position as Director of Policy & Government Affairs for San Francisco Public Utilities Commission at the end of January and begin full-time work as VoW Coalition Director on February 1. The Coalition has before it a revised budget and business plan, and recently welcomed ten utility leaders to its membership – Julius Ciaccia; George Hawkins; Ted Henifin; Harlan Kelly; Andy Kricun; Terry Leeds; Howard Neukrug; Tony Parrott; Karen Pallansch; and, David St. Pierre. Work has also been initiated on fundraising and significant website improvements.

As the New Year begins, this unique alliance of public and private water agencies, business leaders, and national organizations is united in elevating the importance of water to the economic, environmental and social well-being of America. In 2015 the Coalition will not only continue past initiatives – like the *Water Works!* campaign – but also embark on new strategies. Among prospective activities are: an “I Value Water” online pledge; the commissioning of a national poll on public attitudes toward water; a TV and radio media tour; and an event at the U.S. Conference of Mayors annual meeting. Also under consideration is hosting “a day without water”, launching a national competition in schools, and making a “value of water” commitment to action at the Clinton Global Initiative.

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. Although EPA's three-year deferral of biogenic emissions was vacated in July 2013 by an appeals court decision, the deferral was still in place while legal challenges to GHG regulation continued. The U.S. Supreme Court then ruled in June 2014 that EPA is prohibited under the CAA from regulating stationary sources via the Title V and Prevention of Significant Deterioration (PSD) programs based solely on GHG emissions, which will keep many utilities out of these programs altogether and allow others to narrow the scope of their Title V obligations. NACWA's formal involvement with the Coalition is complete, but the Association is still in communication with the Coalition and can become involved again if necessary.

Water Quality Trading Alliance

NACWA's Board of Directors approved \$3,500 from the FY 2015 TAF for NACWA's continued participation in the National Water Quality Trading Alliance. NACWA joined the Alliance in 2014 as a founding member to increase opportunities to collaborate with like-minded organizations on ensuring that trading remains a viable tool for meeting Clean Water Act obligations. While NACWA continues to manage its trading-related advocacy agenda through the Water Quality Trading Workgroup, NACWA benefits from the interaction and additional dialogue provided by the Alliance. NACWA will revisit its membership in the Alliance on an annual basis.

Advocacy Support

Legislative Support

NACWA utilizes the lobbying services of Jeff More, formerly of the Accord Group, currently with the Alpine Group. Total approved funding for this line item in FY 2015 is \$84,000.

The Alpine Group's focus will be assisting the Association in developing a legislatively viable and effective campaign on the Water Resources Utility of the Future effort and energy-related legislation. Specifically, the Alpine Group will identify and secure 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). The Alpine group will also explore ways in which better coordination can occur on stormwater management issues with respect to transportation infrastructure. In addition, the Alpine Group will explore whether targeted revisions to the CWA so that POTWs might receive credit in an NPDES permit for investments made upstream on agricultural lands.

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. The GARRF is funded at \$40,000 for FY 2015. To date, GARRF funds have been used to support work on EPA's ammonia criteria development and issues related to NACWA's *Toilets Are Not Trashcans* initiative.