

Testimony of:

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Introduction

Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is David Williams and I am the Director of Wastewater for East Bay Municipal Utility District (EBMUD) in Oakland, California and am an elected Board Member for the Central Contra Costa Sanitary District in Contra Costa County, California. I also serve as the President of the National Association of Clean Water Agencies (NACWA) and it is my pleasure to testify today on behalf of NACWA.

NACWA's primary mission is to advocate on behalf of the nation's publicly owned wastewater treatment works (POTWs or clean water agencies) and the communities and ratepayers they serve. With the Clean Water Act (CWA) poised to turn 40 years old, NACWA public agency members have exhibited exceptional leadership. They are responsible for over four decades of water quality improvement. These leaders and their workforces are public servants and true environmentalists who ensure each and every day that the Nation's waters are clean and safe, meeting the strict requirements of the CWA.

Public agency leaders have done a remarkable job over the past four decades to clean up the Nation's waters. They are doing this with shrinking federal financial support, increasingly costly regulatory requirements, and an economic downturn that is impacting all levels of government. Despite these challenging trends, these utility leaders are transforming the way they do business and are engaging in innovations and employing new technologies on an unprecedented scale. These efforts include energy conservation and recovery, water reuse and reclamation, resource recovery from the waste-stream such as phosphorus for agricultural use, and low-impact development.

As the federal government seeks how, under severe budget constraints, to help the Nation's clean water agencies, NACWA believes the types of innovative financing mechanisms being contemplated here — and others yet to be identified — can be very helpful for use by agencies engaged in this transformational shift. NACWA also believes that this Subcommittee can play a unique role in ensuring that clean water agencies have the maximum flexibility under the CWA to address water quality challenges based on site-specific affordability determinations and choosing projects that maximize water quality “bang for the buck.” Finally, to the extent the CWA cannot accomplish these goals, NACWA hopes we can continue to work with this Subcommittee to consider targeted changes to the Act so that it can effectively address 21st century challenges and ensure another four decades of water quality improvement and unrivaled utility leadership.

In sum, these concepts form the basic underpinnings of NACWA's “2020 Vision for the Water Resources Utility of the Future” and we look forward to working with the Subcommittee to make the utility of the future a reality today.

Background

This hearing on innovative financing approaches takes an important look at new and creative options for financing critical infrastructure and innovative projects to help the Nation's public agencies. It is important, however, to understand the context in which this discussion is taking place.

In October 2012, the CWA will mark its 40th anniversary. There are those who will celebrate the many successes and the water quality gains made under the Act over the past four decades. Others may take a different approach, questioning whether the Act continues to effectively address complex 21st century challenges. Both perspectives are valid.

There is little doubt that the Nation's water quality has improved as a result of the CWA. In 1972, approximately 90 percent of the Nation's waterways were impaired due to pollution. Today, EPA estimates that approximately 45 percent of these waterways remain impaired – constituting a dramatic and unprecedented improvement over the past four decades. The vast network of treatment plants across our country, and the untold number of rivers, lakes and streams that they have improved, are viewed by many as evidence of the most successful environmental public works program in our Nation's history. Furthermore, this network of clean water agencies across a massive and diverse geography serving the majority of the population is the envy of countries across the globe.

But our success has also had consequences. During the initial phase of the CWA, the federal government provided over \$60 billion under the Construction Grants Program to help build this great network of treatment plants. This grants program gave way to the State Revolving Loan Fund program in 1987 – a helpful program that today provides approximately \$5 billion annually in low-interest loans to communities, many of which are small and in need of basic technical assistance. By comparison, municipalities spend nearly \$100 billion a year on water and wastewater infrastructure, supporting millions of jobs and demonstrating again how the leadership for maintaining, expanding and improving this network of high-tech systems resides at the municipal level.

This shift away from a federal funding partnership has also come at a time of expanding and costly regulatory requirements as well as an ongoing economic downturn that has put enormous additional pressures on the federal, state and local budgets the lingering impacts of which will be felt for years to come.

NACWA deeply appreciates the work of this Subcommittee to determine how, under these severe budget constraints, it can continue to be a partner in addressing the EPA-estimated \$300-\$500 billion funding gap that exists between what is currently being spent and what is needed to upgrade our existing water and wastewater infrastructure.

Simply put, more money on the table is helpful. Whether it comes in the form of a loan guaranty program, such as the Water Infrastructure Finance and Innovation Authority (WIFIA), lifting the cap on Private Activity Bonds (PABs), or via other approaches, NACWA is supportive of measures that provide new and helpful tools to the municipal financing toolkit. It is critical, however, that these funds hold harmless existing funding mechanisms, namely the SRFs, and do not have unintended consequences in terms of public agency access to the bond market or other capital markets.

NACWA also believes that these innovative funding mechanisms be used wisely to help clean water agencies fund innovative projects and new technologies as well as to supplement the SRF where it

has insufficient funds to help meet clean water agency needs on key infrastructure projects. NACWA also continues to support the need for a dedicated clean water trust fund that can put significant money on the table in a dedicated, sustainable, long-term fashion.

But let me be clear. The same budget constraints that make innovative financing measures a vital and viable discussion today, also demand an assessment of the other side of the same coin — namely that the command and control structure of the CWA must be re-assessed. Business as usual is simply no longer the answer.

Integrated Planning and the Utility of the Future

Late last year, I testified on behalf of NACWA in a hearing your Subcommittee held on integrated planning under the CWA. NACWA has consistently played a leadership role in advocating for an integrated planning approach, including longstanding and related efforts over the past decades to advance an integrated watershed approach and a more flexible and realistic approach to community affordability determinations under the CWA. NACWA also launched its *Money Matters... Smarter Investment to Advance Clean Water™* campaign two years ago to shed light on the growing financial and compliance challenges posed by CWA regulations and calling for an integrated approach based on prioritizing these competing requirements to achieve maximum water quality benefit.

The CWA has led to an accretion of costly regulations on the Nation's communities and on the rate-paying residents and industries that foot the bill to ensure CWA compliance. The list is well-known — from wet weather-based requirements including combined sewer overflows, sanitary sewer overflows, and stormwater regulations — to specific requirements for nutrients and other pollutants driven by stringent water quality standards and total maximum daily loads. At the same time that regulations continue to expand, so too have enforcement actions. Nearly 100 cities across the country have signed off on sewer overflow consent decrees, with some costing individual cities billions of dollars — often to meet a single CWA requirement. Recently, municipal clean water agencies were also hit with a stringent reinterpretation of the Clean Air Act (CAA), which if not overturned by judicial or legislative action would force enormous costs to communities who have sewage sludge incinerators. Ideally, CAA and Safe Drinking Water Act obligations should also be considered in terms of the overall costs and affordability burdens that public agencies face.

NACWA believes that the Subcommittee has a responsibility to communities and their ratepayers across the United States to encourage the U.S. Environmental Protection Agency (EPA) to act boldly and in a timely manner in putting its integrated planning framework together. NACWA has participated in all five workshops that EPA has held across the country regarding this effort and looks forward to the Agency's final framework due out at the end of March. NACWA will assess this framework document and will continue its productive dialogue with the Subcommittee to determine legislative next steps to the extent this Agency effort falls short.

Minimally, EPA's integrated planning initiative symbolizes the recognition that it is time to do things differently. It is, to some extent, a sign of the increasing awareness that the CWA is now forty years old and that existing interpretations of, and perhaps the Act itself are not ideally suited to meeting the needs of the 21st century.

Often and for good reasons, discussions regarding clean water agencies focus on specific regulatory compliance issues under the CWA or how to best fund or finance an aging network of pipes and systems. These important discussions, however, often neglect — and sometimes even serve to overshadow — the fact that a significant, transformational shift in how utilities are managing their systems is well underway.

Utility leaders have grown increasingly sophisticated over the 40 years since the CWA became law. The prescriptive “command-and-control” construct of the CWA was not intended to account for the multi-faceted and complex roles utilities must now play within their communities. Increasing numbers of wastewater treatment plants are becoming agents of resource recovery, using cutting-edge techniques and technologies. These agencies are engaged in the capture and reuse of energy, the reuse of their wastewater to bend the curve on the hydrological cycle, capturing phosphorus and other beneficial and vital resources available from a constantly replenishing waste stream, using their solids as fertilizer and energy sources, becoming stormwater harvesters, green infrastructure innovators, product stewards, and sustainable community advocates.

At East Bay Municipal Utility District, for example, we have a program we refer to as Resource Recovery. Under this program we accept trucked in liquid waste from surrounding communities. These wastes include fats, oils and grease from restaurants, food processing wastes such as from cheese production, animal processing wastes such as from chicken and beef production, and recently food scraps from restaurants and grocery stores. We digest these high strength organic wastes in large anaerobic digesters which produce methane gas as a by-product of the digestion process. This gas is captured and used to generate green energy at our power generation station where we have clean burn engines and a gas turbine. Our Resource Recovery Program has grown to the extent that we now produce enough green energy from these waste materials, that otherwise may go to a landfill, such that we meet the power demands of our entire wastewater treatment plant and provide excess green energy back to the electrical grid.

As you can see from this example, what were called wastewater treatment systems or publicly owned treatment works in the 1970s and 1980s, and became clean water agencies in the 1990s and 2000s, have now in 2012 matured even more — becoming resource recovery agencies. In line with this, NACWA has unveiled a “2020 Vision” for the “Utility of the Future”. In 2020, NACWA will be celebrating its 50th anniversary and the CWA will be nearing 50 years old as well. In line with these milestones, it is vital to recognize our sector is at a crossroads and to get out ahead of the curve and shape the next decade’s clean water agenda.

This evolution to a utility of the future, however, has significant consequences. It demands a serious re-appraisal of the CWA, its ongoing relevance in the 21st century, and whether and how it can be amended to address and embrace the transformational change taking place at the local level. The drivers of some of these trends were not entirely foreseeable when the CWA was passed, including population growth, weather patterns, a push toward energy independence, an ongoing economic downturn that rivals the Great Depression, awareness of multi-source pollution challenges, and

product stewardship approaches that can keep harmful products off the shelf and a plethora of medications and chemicals out of the waste stream.

The Business Case for the Water Resources Utility of the Future

The water resources utility of the future contemplates a new business model. Instead of simply collecting, treating, and disposing of municipal and industrial wastewater, the utility of the future re-imagines itself as an integral component of the local economy, ecology, and social community. Its objectives are to separate, extract, or convert valuable commodities from wastewater to reduce costs to households and businesses, improve the quality of surrounding ecosystem, and deliver economic value to the local economy.

This is not a future aspiration. With the help of technology developers, innovative municipal leaders are beginning to take these steps today. They are becoming more energy efficient, recovering energy from biosolids, reusing effluent and biosolids, recovering a wide range of commodities, transforming waste streams into valuable new commodities, and taking steps to support economic expansion by setting capital investment priorities to meet the needs of industry.

In so doing, utilities are reducing costs and finding new sources of revenue. Savings are passed back to the community in the form of mitigated rate increases and investments in community welfare. The environment also is a net beneficiary. And so is the local and, in many cases, the national economy. Reduced costs and increased revenues passed back to households and businesses create more disposable income, which can be reinvested in local goods and services. Capital can be freed up for reinvestment in the plant and equipment as well as research and development. Part of this investment ends up creating new jobs in the technology and manufacturing sectors, which creates demand for new housing and other goods. As a result, governments enjoy growing tax receipts. Nationally, energy savings reduce imports and support a healthier balance of trade.

Please see the graph at the end of the testimony which provides a visual of the business case for moving in the direction of the water resources utility of the future.

Conclusion

I believe that we are at a crossroads. We have a unique opportunity to put the federal, state and local partnership back on track to help meet our communities' water quality needs. This Subcommittee can play a vital role on several key, related fronts. NACWA applauds this Subcommittee's commitment to innovative financing mechanisms and wants to work with the Subcommittee on developing these mechanisms and ensuring that they are directly tied to the innovative leadership being shown across the country by our utilities. This would constitute a strong step toward making the utility of the future a reality and will be a partnership we can build on as economic times improve.

NACWA also deeply appreciates this Subcommittee's concerns with the growing cost of compliance with CWA regulations — no entity is more concerned about this than NACWA. It is critical that we watch closely EPA's integrated planning effort but also seriously assess the CWA's capacity to embrace the utility of the future concept and to allow our municipalities and states to work together

toward ensuring that limited resources are spent in a manner that maximizes water quality, community benefits, as well as local jobs and economic prosperity.

NACWA has also shared with the Subcommittee its draft legislation for a viable integrated permitting approach, which we stand ready to advance with your help at the appropriate time if necessary. NACWA is also developing over the coming months an advocacy agenda of specific legislative activities that can help ensure that roadblocks are removed and the needed tools and support are available for utilities, like the EBMUD and others across the country, as they continue to provide the unrivaled leadership that has been the hallmark of the last forty years.

Thank you for the opportunity to appear before you today, I look forward to any questions the Subcommittee may have regarding my testimony. We look forward to continuing to work with the Subcommittee on this and other important clean water initiatives.

The Business Case for the Water Resources Utility of the Future

