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Ken Kirk

August 26, 2014

Mr. Andrew Sawyers

Director, Office of Wastewater Management

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, N.W.

Mail Code: 4201M

Washington, DC 20460

Dear Andrew:

Thank you for meeting with several NACWA members last week to discuss the Agency's Initial Interpretive Guidance to States for implementation of recent statutory revisions made to the Clean Water State Revolving Fund Program (CWSRF) in the *Water Resources Reform and Development Act (WRRDA)*. In follow-up to this discussion, we have enumerated below the priority concerns and issues we raised with you and your staff for your consideration as you finalize the guidance document. We applaud the Agency's effort on this, especially in light of the tight statutory deadlines your team has confronted in the wake of the WRRDA legislation's passage.

1. Section 602(b)(9): While many utilities already follow Generally Accepted Accounting Principles (GAAP), those that do not may need additional time and support to comply with this requirement. Guidance should clarify that States should work with utilities that may need assistance to develop and implement GAAP and that SRF funds are available for this purpose.
2. Section 602(b)(14): Additional clarification would be helpful in determining the types of annual performance data required by the contractor and we urge that the focus be on milestones and deliverables for the specific project under contract rather than on general qualifications related to the overall firm. Clarification would also be helpful for the requirement that a minimum of three firms be contacted for discussion purposes versus the number of firms from whom actual bids are necessary. If, for example, after discussions with three firms, only two firms decide to submit bids, the utility should still be found to be in compliance with this section.
3. Section 603(c)(10): Cybersecurity systems are now integral and essential components of a utility's overall security program and we urge that the

guidance clarify that cybersecurity systems, including system development, equipment and software purchases, qualify for SRF assistance under this section.

4. Section 603(d)(1)(A)&(B): We are particularly pleased that the repayment term for a CWSRF loan has been extended to thirty years. This provision alone can potentially save millions of dollars for a utility seeking to finance a larger project through the CWSRF. We also expect that this change will lead to a large number of loan refinancings and urge the EPA to consider issuing supplemental guidance to States to help ensure these subsequent refinancings are structured with affordability objectives in mind.
5. Section 603(d)(1)(E): While we recognize that the imposition of a new requirement to develop Fiscal Sustainability Plans by SRF loan recipients could potentially lead to utilities improving how they manage their systems' assets, implementing this provision as flexibly as possible will ensure utilities can optimize and focus their resources on improving water quality for their communities and avoiding needlessly slowing down the SRF loan process. We recommend that utilities that already have equivalent plans in place, such as capital improvement programs, asset management systems, and long-term financial plans, be encouraged to use those documents for the purposes of meeting obligations under this section.

With respect to the requirement that a utility certify that it has evaluated and will be implementing water and energy conservation efforts as part of its plan, we encourage the Agency to allow the utility to use a "portfolio of projects" approach to meeting this element. For example, a utility that demonstrates that SRF-funded investments will improve overall system performance by reducing such things as inflow and infiltration and therefore lead to improved water and energy conservation performance should be able to demonstrate compliance with this provision.

6. Section 603(i): NACWA is pleased that the CWSRF will now permanently be able to offer financially struggling communities additional subsidization in the form of negative interest loans and principal forgiveness as part of a financing package in support of clean water projects. Urban communities whose overall median household income may appear to be significantly higher than their smaller neighbors should be able to take advantage of this opportunity. However, States' affordability criteria have often prevented them from doing so. We urge that the guidance include language clarifying that affordability criteria should not prohibit large cities from qualifying for this assistance simply because of their size. In addition, NACWA urges States to fully consider not only the ability of the ratepayer to pay but, just as importantly, the financial health of the utility itself and its ability to issue additional debt as an important criterion that can be considered in qualifying for additional subsidization. As we discussed, EPA's EFAB is preparing to submit a draft report on the Financial Capability Assessment Framework shortly and we encourage you to review and incorporate any relevant recommendations into this Initial Interpretive Guidance.
7. Section 5012, Definition of Treatment Works (FWPCA Section 212): NACWA strongly urges the Agency to include green infrastructure investments that are designed to manage stormwater on the list of projects (Appendix XX) that are excluded from the definition of Treatment Works. Green infrastructure projects are designed to prevent stormwater from infiltrating into the treatment works system and do not meet the definition of a Treatment Works. Green infrastructure stormwater

management projects do not serve to store, treat, recycle or reclaim municipal sewage but serve a function for keeping water out of the system to begin with and they are dispersed throughout urban and suburban landscapes. While there may be projects that can be considered “green infrastructure” such as wetlands designed to treat effluent, the vast majority of projects associated with the term “green infrastructure” are used as a stormwater management tool for the sole purpose of preventing water from coming into the treatment works in the first place. Including these types of projects, regardless of whether they are included in a NPDES permit, in the definition of a Treatment Works could potentially dissuade many communities from making investments in these types of projects and vastly increase their cost. We urge the Agency to explicitly clarify that these types of projects are excluded from the definition of treatment works.

Thank you again for your consideration of our concerns and we look forward to working with you on implementing these new requirements under the CWSRF. If you have questions regarding any of the topics raised in this letter, please contact me or Patricia Sinicropi at psinicropi@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is stylized with a large "K" and a cursive "Kirk".

Ken Kirk
Executive Director