

Testimony of:

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**Subcommittee on Water Resources and Environment  
House Transportation and Infrastructure Committee  
U.S. House of Representatives  
December 14, 2011**

## 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.

I also serve as the President of the National Association of Clean Water Agencies (NACWA) and it is my pleasure to testify on NACWA's behalf today.

NACWA's primary mission is to advocate on behalf of the nation's publicly owned wastewater treatment works (POTWs) and the communities and ratepayers they serve. NACWA public agency members collectively treat the majority of the nation's wastewater. The employees of these agencies are public servants and true environmentalists who ensure that the Nation's waters are clean and safe, meeting the strict requirements of the Clean Water Act (CWA).

NACWA applauds the Subcommittee for holding this important hearing on the issue of 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 several years ago to shed a 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.

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. This testimony seeks to place the integrated planning initiative into the appropriate historical context and explain, from the perspective of NACWA's nearly 300 public clean water agency members, what some of the key elements of this approach must be to ensure it is relevant and successful.

## EPA's Integrated Planning Effort Is a Timely and Unique Opportunity

In October 2012, the CWA will mark its 40<sup>th</sup> 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 be relevant to meet complex 21<sup>st</sup> century challenges. Both perspectives are valid and the integrated planning effort, if designed and implemented correctly, can be the bridge between these two important perspectives. Integrated CWA planning has the potential to be a valuable tool that can help put municipal, state and federal water quality efforts on a more sustainable path.

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.

At the same time, over four decades, the command and control nature of 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 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 administrative, judicial, or legislative action would force enormous costs to communities who have sewage sludge incinerators. Ideally, Clean Air Act and Safe Drinking Water Act obligations should also be considered in terms of the overall costs and affordability burdens that public agencies face.

Separate and apart from regulatory requirements, public clean water agencies face a looming crisis with their aging network of pipes and systems that EPA estimates will cost between \$300-500 billion over the next twenty years. Simply put, agencies are seeing the writing on the wall that the current prescription of rate increases and expanding municipal debt loads are not sustainable. Absent a new approach to regulatory compliance and prioritization, the future of maintaining – let alone adding to – the record of water quality gains is at risk. Public clean water agencies are also seeing a troubling disconnect between the growing cost of these requirements and the decreasing water quality benefits these investments are yielding. With ratepayers wanting to see the greatest bang for the buck the argument for rate increases grows more difficult as the benefits to the ratepayer become less clear.

It is also critical to focus on the impacts of the ongoing economic downturn and how it has forced the Nation to re-examine how to best invest in its future while continuing to protect the environment. The downturn has had one distinct benefit in the water quality arena – it has made it clear to policy makers and politicians what utility leaders have known for a long time now – well before the downturn came along – that the way we implement the CWA must change.

I think the case of EBMUD and the communities we serve offer a prime example. In the 1980s our service area was experiencing many sanitary sewer overflows due to peak wet weather flows. To address this public health issue, EBMUD, the regional treatment provider, and the communities we serve collaborated with EPA in developing a comprehensive wet weather program that resulted in EBMUD building \$350 million of wet weather treatment facilities and the satellite communities spending a similar amount on rehabilitating their collection systems. The program was a huge success in that untreated overflows were dramatically reduced. However in the early 2000's the combination of a new interpretation of the secondary treatment regulations as they relate to our wet weather treatment facilities and new regulations dealing with trace amounts of metals, pesticides and other pollutants has resulted in a court order that requires EBMUD to stop discharging from

the wet weather treatment plants and the communities to embark on further capital programs to reduce their peak wet weather flows. Satellite communities we serve are already dealing with huge budget deficits and undoubtedly will have affordability issues as it attempts to meet the requirement of the court order. An integrated planning approach would seek to balance the regulatory requirements on our communities to ensure that there is a prioritization which results in achieving the highest net environmental benefits as quickly as possible recognizing the financial constraint of the communities.

### NACWA's Recommendations on Integrated Planning

It would be easy given this confluence of events to simply seek a relaxation of requirements under the CWA. As public servants tasked with carrying out the lofty objectives of the CWA, however, NACWA – and this is a point that must be clearly underscored – does not believe that regulatory rollbacks are appropriate and adheres to the principle that there must be no backsliding on improvements made to date under the CWA.

The way we implement the CWA, however, must change. Ratepayers – residential and industrial – cannot be asked to foot a bill for all of these requirements and upgrades *all at once*. As NACWA's *Money Matters . . . Smarter Investment to Advance Clean Water™* campaign has made clear, *if everything is a priority nothing is*. And what all stakeholders fear most is the potential paralysis that could result from competing requirements and investment needs that cannot be fulfilled. It is precisely this concern that the integrated planning initiative can help avoid.

As the NACWA *Money Matters™* campaign has made clear, an integrated planning approach should be focused on achieving four key policy goals:

- 1) Pursuing a watershed-based approach to solving water quality challenges through an adaptive management framework;
- 2) Recommitting all levels of government to new technology and pioneering innovation;
- 3) Entrusting local experts and leaders to use limited dollars to maximize a community's water quality progress through a net environmental benefit approach; and
- 4) Developing a rational, holistic and flexible approach to assessing community affordability.

(Visit NACWA's website at [www.nacwa.org](http://www.nacwa.org) and click on the *Money Matters* icon for more information.)

If done properly, integrated CWA planning can help speed up water quality improvement; incentivize new and innovative technologies, techniques and management approaches; and serve as a key tool to help usher in an era of sustainable water quality improvement.

EPA's Office of Water and Office of Enforcement and Compliance Assurance (OECA) have been working closely to develop a framework for a new integrated planning approach. The historic importance of these two EPA offices working so closely together deserves to be applauded and demonstrates the need for such an approach from both a policy and legal standpoint. NACWA believes that the Agency's integrated planning framework, however, must make it clear that the CWA

permitting program will be the focal point for implementation, not enforcement. This is one of a number of key topics that was discussed at a meeting between NACWA member agencies, EPA, and other key stakeholders on December 13. NACWA is also working closely with an array of key stakeholder groups, including the American Public Works Association, the U.S. Conference of Mayors, the Water Environment Federation, and the Association of Clean Water Administrators to ensure this effort reaches the finish line.

Some have raised the concern that this effort could be little more than a Trojan horse for a more antagonistic, legal/enforcement-dominated approach, with the end-product looking more like a consent decree than a permit. In the unlikely event this is the track EPA takes, NACWA will be the first to seek the Subcommittee's support for ensuring this does not happen. The integrated planning process must also not be about symbolic actions and should not simply result in giving communities a couple more years to comply with their schedules. It must provide real flexibility in terms of compliance with rules and guidance and to applying relief mechanisms (such as variances and compliance schedules) in an effective way. It must also account for utilities that are currently under a consent decree because, as a matter of equity, they deserve to be able to have the same access to the benefits of this new framework.

This integrated planning framework must account for a broader compliance period – perhaps 25 years or more – with municipal investment prioritized to meet those requirements that will yield their communities the greatest water quality benefits first. In short, all requirements must of course be met but the core of this new initiative rests in the development of viable and prioritized plans with clear benchmarks/milestones – perhaps reviewed every five years – for meeting the array of prioritized requirements. The framework must also make clear that the permit document provides municipal clean water agencies with a shield against legal action absent a clear violation of these agreed-to schedules. Furthermore, the framework must allow for joint plans. For example, in the stormwater arena there will be multiple municipal jurisdictions tasked with carrying out parts of the pending stormwater regulations. This is critical to ensure that an integrated approach can be successful. The same concept of joint planning would potentially hold true, for example, between a public wastewater treatment agency and a separate satellite collection system as well.

Additionally, concepts of equity and the needed flexibility to respond to significant changed circumstances must be key components of EPA's framework. For example, there may be an agreement under such a permit to move forward with a certain technology but, if it becomes clear that in the interim a new technology or technique is now available that is equally effective yet significantly cheaper, there should be built-in mechanisms to allow permit terms to be altered accordingly. To some extent, this is exactly what is happening with the advent of green infrastructure approaches that in certain circumstances offer cost savings and an equally effective alternative to some grey infrastructure approaches.

Similarly, if EPA has agreed within the terms of an integrated plan to a compliance schedule based on data regarding a community's financial circumstances and those circumstances substantially and unforeseeably change, the utility's permit should allow for an appropriate modification to ensure that compliance remains affordable. These are simply a couple of examples of changed

circumstances, among others that NACWA believes are vital, and which will be a focus for ongoing discussions with EPA as this framework takes shape.

## Conclusion

We are at a crossroads. This is a unique opportunity to put the federal, state and local partnership back on track to help meet our communities' water quality needs. The Subcommittee can play a vital role by following this effort closely and encouraging EPA to stay on the right course to produce a viable end-product pursuant to a clear deadline.

NACWA recognizes the Subcommittee's concerns with the growing cost of compliance with CWA regulations — no entity is more concerned about this than NACWA — but we remain optimistic that EPA can advance a solid new framework that addresses our mutual concerns. 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. We look forward to continuing to work with the Subcommittee on this and other important clean water initiatives.

Thank you for the opportunity to appear before you today, I look forward to any questions the Subcommittee may have regarding my testimony.