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Alejandro Escobar

Chief, Technical Support Branch

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, D.C. 20460

RE: Proposed Waiver for Build America, Buy America for the Water Infrastructure Financing and Innovation Act (WIFIA) Program

Dear Mr. Escobar,

The National Association of Clean Water Agencies (NACWA) writes in strong support of U.S. EPA's proposed waiver for the Water Infrastructure Finance and Innovation Act (WIFIA) Program from the Build America, Buy America Act (BABAA) requirements for projects that initiated design planning prior to the effective date of the Bipartisan Infrastructure Law (BIL).

NACWA represents 350 publicly owned wastewater treatment agencies nationwide who serve the majority of the sewered population in the United States. Our members have long and successful histories obtaining federal water financing, specifically WIFIA and the State Revolving Funds (SRFs). Many of our member utilities have successfully leveraged WIFIA in recent years or have applications underway.

Advancing clean water investment was an important priority in the BIL. Exempting water projects that have initiated design planning or construction will help avoid costly delays and keep critical compliance projects on schedule, protecting environmental and public health. It will also help get these much-needed infrastructure dollars into the ground as rapidly as possible to improve our nation's water infrastructure.

The proposed program waiver acknowledges that critical clean water infrastructure projects require significant—typically years—of planning and engineering prior to applying for federal funds and breaking ground. Absent this waiver, much-needed projects that initiated planning prior to the law taking effect would be sent back to the drawing board, rather than accelerated forward by this historic federal investment.

Further, clean water investments are frequently made to comply with strict regulations, technology standards, and/or implement consent decrees. This means that alternatives or modifications may not be possible for the utility while still meeting their regulatory or judicial timelines.

NACWA agrees with EPA's belief that without this waiver, communities may decline cheaper federal funds and look to other, more costly sources of financing to avoid delaying projects and incurring re-design and engineering costs. In addition to making utility projects more expensive, it would mean that these major water infrastructure projects would advance without any domestic preference requirements, including the existing American Iron & Steel requirements they have been designed to meet.

We strongly support EPA's definition of "initiated project design planning", specifically "efforts made by the utility owner to evaluate and identify both technologically and financially viable options for capital improvement projects". Given the differences across utilities and communities in terms of the planning and design process, NACWA encourages flexibility in the types of documentation or steps that constitute design planning initiation, such as the date of execution of a bid or a contract for design planning services.

The proposed waiver aligns with NACWA's request to the Agency to ensure that projects for which planning is underway are grandfathered in. These projects will be required to meet domestic procurement requirements that are already in place, but not the expanded BABAA requirements which took effect on May 14th. Clean water utilities leveraging federal funding have been operating under American Iron & Steel requirements for years. BABAA represents a major expansion to include manufactured products and construction materials.

The proposed WIFIA waiver is a sound approach to help utilities navigate these changes and ramp up achieving the goals of BABAA. NACWA urges that this waiver be a model for a similar waiver for the SRFs. The SRF's wide reach and leveraging by thousands of communities, large and small, will require a similar grandfathering in period to reflect the planning and design process to ultimately succeed both in accelerating water investment and advancing domestic production.

Thank you for the opportunity to comment on this proposed waiver. NACWA and our membership looks forward to continuing to work with the Biden-Harris Administration to implement the historic BIL funding and the BABAA provisions to improve our nation's environmental and economic resilience.

Sincerely,



Kristina Surfus
Managing Director, Government Affairs
NACWA