

Post-Election Analysis

What the New Administration & Congress Mean for NACWA

2016 Fall Strategic Leadership Retreat



Big Audacious Goal

The public, the economy, and the environment experience profound benefits as a result of sustainable policies and regulation that balance the protection and use of our nation's water resources.

Advocacy Goal #1

*Further secure the role of clean water agencies as **public health, environmental and economic stewards** by ensuring sufficient **regulatory flexibility** to meet or move beyond Clean Water Act obligations – including through use of **integrated planning** concepts and appropriate, realistic analysis of **community affordability** concerns – while at the same time promoting a **robust federal funding partnership** to support regulatory compliance obligations.*

Implications for Goal #1

- Possibility of of major infrastructure bill, NACWA must work to include clean water as key component
- Hold Trump accountable to commitment to infrastructure & greater investments in urban areas
- Advance role of clean water utilities as key partners and co-regulators
- Continue advancing affordability and integrated planning in regulatory & legislative context

Advocacy Goal #2

Advocate for **properly promulgated** clean water regulations and policies that are based on **valid science** and achieve **environmentally-beneficial and cost-effective** water quality improvements, and safeguard clean water utilities from **unreasonable enforcement** actions especially in the **wet weather** context.

Implications for Goal #2

- Likely to be significantly more attention to EPA regulatory overreach/accretion
- Focus on rolling back air/climate regs – what does this mean for utilities in coastal areas? What is NACWA's role on water issues?
- EPA will still issue new regulations – NACWA must focus on valid science and net environmental benefit
- Opening for more reasonable discussion on wet weather issues
- EPA enforcement priorities may shift, but citizen suits will increase

Advocacy Goal #3

*Advance statutory reforms to **modernize the Clean Water Act** and incorporate tools that support **innovative approaches** by clean water agencies to **achieve national water quality goals**, including tools that promote **watershed-based approaches**.*

Implications for Goal #3

- Potential openness to significant CWA changes – could include integrated planning, affordability, extended permit terms, water quality issues, smarter approach to wet weather
- Challenge is to advance changes that benefit NACWA members but in environmentally responsible way that can garner broad support
- Farm Bill will present key opportunity for greater work on watershed solutions, but no opening for non-point regulations

Advocacy Goal #4

*Empower and support clean water utilities to **pursue new forms of innovation** – including implementation of advanced technologies and utility operation techniques that **maximize water quality benefits for the investment dollar** – in order to address challenges of **serving growing populations and meeting greater environmental responsibilities with fewer financial resources.***

Implications for Goal #4

- UOTF still a powerful & well received concept – need to continue advancing on all advocacy fronts
- Opportunity to advance concepts of net environmental benefit at most effective cost – must be key NACWA focus
- Message of challenge to “do more with less” will have more receptive audience

Advocacy Even More Important

- Republican control of White House, Congress presents unique set of advocacy challenges
- Will be significant focus on other environmental areas, must keep water central part of discussion
- Legal advocacy to become especially critical
- Communication strategy vitally important
- Bottom Line: Continue to advance water as a bipartisan priority

Legislative Issues



Remaining Items for 114th Lame Duck

- FY 2017 Appropriations Package
 - Continuing Resolution expires December 9th
 - - SRF Appropriations
 - - Integrated Planning Technical Assistance
- Water Resources Development Act of 2016
 - S. 2848 passed 95 – 3 / H.R. 5303 passed with 399-23 vote
 - * Title VII: CWA Reforms, Trust Fund, Other Investments
 - * Municipal Stormwater Link to ACOE Projects

Remaining Items for 114th Lame Duck (cont'd)

- Energy Legislation
 - Remains in conference
- Federal Aid to City of Flint, MI
 - Package in WRDA
 - Package in Energy Legislation
 - May include in Appropriations

115th Outlook

Political Context

- Senate (Mitch McConnell (R-KY) and Chuck Schumer (D-NY))
 - 52-48 Republican Majority (LA run-off in Dec. but R win anticipated)
 - 6 Democratic Senators Face 2018 Re-election in States Donald Trump Won by > 8% / 4 Ds in < 3%
 - (OH, IN, MO, WV, MT, ND)
 - 8 Democrats needed to reach 60 votes in the 115th
- House (Paul Ryan (R-WI) and Nancy Pelosi (D-CA) - ?)
 - 241 – 194 (likely) Republican Majority (47 seat diff.)
 - 218 needed to pass legislation (23 seat R buffer)
 - 36 Returning Members of Tea Party (13 seats)

Potential 115th Policy Items

Trump Administration Priorities

- \$ 1 Trillion over 10 years Infrastructure Package: “American Energy and Infrastructure Act”
 - Link with Tax Reform
 - Revenue neutral sources (tax-exempt bonds at risk)
- Trump Infrastructure Vision: Make clean water a high priority. Develop a long-term water infrastructure plan with city, state and federal leaders to upgrade aging water systems. Triple funding for state revolving loan fund programs to help states and local governments upgrade critical drinking water and wastewater infrastructure.
- Put American steel made by American workers into the backbone of America’s infrastructure (Buy American stays)
- 100 Day Action Plan: cancel billions in payments to U.N. Climate Change programs and use the money to fix America’s water and environmental infrastructure.

Potential 115th Policy Items

FY18 Budget (cuts likely)

Farm Bill Reauthorization

- Health Waters Coalition and Focus on Nutrients

House Republican Priorities — Chairman Shuster returns to T&I

- WRDA / ACOE oversight
- CWA program oversight: SRF Formula allocation, Integrated Planning and Affordability
- Workforce Development Issues – GAO report
- Partnerships and Consolidation in Water/Wastewater Sector

Senate Republican Priorities – EPW Leadership Uncertain

- WRDA / ACOE oversight
- Anti-Regulatory Agenda: Clean Power Plan, Clean Water Rule

Democrats Focus: Opposition Where Doable / Cooperation Where Necessary

Regulatory Issues



Fate of EPA

- Dismantle EPA?
 - No, but “refocus...on its core mission of ensuring clean air, and clean, safe drinking water”
 - Ensure it is guided by “true specialists in conservation, not those with radical political agendas”
 - Less regulatory-heavy mission
 - Cut regulations by 70-80% – issue one – repeal two

EPA Transition and First 100 Days

- Myron Ebell, Competitive Enterprise Institute – leading the EPA transition team
- Transition team expected to be at EPA this week; staff had been providing briefing papers for both teams, but the real work will start this week with the Trump team
- Early rumors for EPA Administrator:
 - Myron Ebell, Competitive Enterprise Institute
 - Craig Butler, head of Ohio EPA
 - Pat Morrissey, WV Attorney General
 - Harold Hamm, Oil Tycoon
 - Scott Pruitt, Oklahoma Attorney General
 - Kathleen Hartnett White, former head of TCEQ
 - Robert Grady, venture capitalist
 - Joe Aiello, Director of NJDEP Div. of Env. Safety and QA
 - Carol Comer, head of Indiana DEM
 - Leslie Rutledge, Arkansas Attorney General

EPA Transition and First 100 Days (cont'd)

- Federal government-wide hiring freeze, except the military
 - Any political staff that may have stayed on will be gone very soon
 - Retirement-eligible staff likely to head for the exits
 - Younger career staff may be looking for a way out
- Already identified for repeal/dismantling/withdrawal in the first 100 days:
 - Obama's Climate Action Plan
 - Clean Power Plan
 - Paris Climate Agreement
 - Clean Water Rule (WOTUS)

Regulatory Environment

- Federal Level
 - EPA will still develop regulations, but nature and pace likely to be different
 - Key appointment for Trump will be the head of the Office of Information and Regulatory Affairs (OIRA) at OMB – Regulatory Gatekeeper
- States still run the bulk of the water program

Status of Pending Rules and NACWA Priority Issues

- **Dental Amalgam Rule** – expected end of 2016 – EPA will make every attempt to get this out before January 20
- **Stormwater Phase II Remand Rule** – any day now; settlement agreement-driven deadline
- **Proposed Great Lakes CSO Notification Rule** – Congressionally mandated – draft expected in December; fate of final rule, due December 2017, unclear
- **EPA Survey on Nutrient Performance, Secondary Treatment** – fate unknown, delay likely

Pending Rules and NACWA Priority Issues (cont'd)

- **Coliphage, nutrients, other WQC issues** – No immediate change expected
- **Discussion of possible solutions for blending/SSOs/wet weather** – career staff may resist any efforts during a Trump administration
- **Integrated Planning, Affordability** – no change expected in EPA support
- **UOTF-related Initiatives** – no change expected in EPA support

Legal Issues



Revenge of the Citizen Suit?

- Trump EPA likely to create significant rise in CWA citizen suits filed against Agency & individual NPDES dischargers
- Role of NACWA legal advocacy to intervene in these suits where necessary
- NACWA legal resources like Consent Decree Handbook take on added importance

Wet Weather Enforcement

- EPA's 2017-2019 National Enforcement Initiatives
 - Keeping raw sewage and contaminated stormwater out of our nation's waters
- Political transitions have not significantly changed EPA enforcement levels
 - Career staff, not political appointees, do most enforcement work
 - Obama EPA enforcement #s comparable to Bush numbers

Other Areas of Concern for NACWA Members

- Nutrient Litigation
 - Stakeholder Roles/Agenda in Nutrient arena
- Variances
- Narrowing of CWA Permit Shield
- Citizen Suits Frequency
- Stormwater Fee Challenges

Discussion/Questions

