



NATIONAL CLEAN WATER ADVOCACY WITH LOCAL RESULTS

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estled within the pastoral Gallatin Valley of southwestern Montana, NACWA small member utility the City of Bozeman is the fastest growing micropolitan community in the United States. Bozeman is rapidly transforming into a dense population center and regional economic stronghold, as evidenced by construction cranes that dot a skyline once reserved for the mountains of the Greater Yellowstone Ecosystem. Bozeman is in the midst of a difficult transitional period as it departs its small town nest and takes flight as a full-fledged city.

Although relatively small in terms of size, issues facing NACWA small member utilities such as the City of Bozeman – those serving less than 100,000 people – are in many ways no different than issues confronted by NACWA large member utilities. Bozeman is grappling with an array of challenges, each compounded and made more difficult by its transitional growing pains: overcoming technical and legal issues related to achieving aspirational water quality standards; recruiting and retaining skilled utility workers; correcting deferred maintenance obligations; shifting into a ‘utility of the future’ by implementing data-driven asset management and integrated planning principles; meeting level of service expectations affordably; complying with enforceable provisions of its POTW and MS4 discharge permits; setting fair and reasonable utility rates that balance community affordability against capital funding necessities; and implementing major capital improvements to proactively stay ahead of the growth curve.

This list of issues is certainly not all inclusive yet illustrates how small and large member utilities' challenges are not generally distinguishable by scope, but are rather separated by degree or magnitude. Arguably, challenges facing small member utilities such as the City of Bozeman manifest more acutely as personnel and funding resources are limited by diminutive rate bases as compared to larger utility cohorts.

NACWA brings the substantial weight of its national advocacy resources to bear by assisting the City of Bozeman with the single largest issue facing its wastewater utility: complying with the State of Montana's numeric nutrient water quality standards (WQS). It is an issue of national significance despite

of pipe effluent limits, crafted a complementary nutrient WQS variance designed to:

1. Make incremental progress towards achieving the WQS over time; and
2. Allow additional time for new wastewater treatment technologies to emerge and advance in the marketplace to the point of being reliable and affordable.

Unfortunately, this variance quickly attracted the attention of environmental activist groups. The very first federal lawsuit challenging EPA's recently promulgated WQS variance regulations originated in Montana. The main complaint filed by activist groups in *Upper Missouri Waterkeeper v.*

“ SMALL MEMBER UTILITIES SUCH AS THE CITY OF BOZEMAN BENEFIT DIRECTLY FROM NACWA'S MISSION.

it being explicitly applicable to discharge permit holders in Montana. This is because incremental progress towards achieving Montana's numeric nutrient WQS depends on, and is inextricably linked to, a crucial implementation tool contained in federal implementing regulations of the Clean Water Act (CWA): a WQS variance.

Montana's numeric nutrient WQS are set at such a restrictive level (0.3 mg/L TN, 0.03 mg/L TP) that no currently available wastewater treatment technology exists to meet the standard end of pipe. Not even reverse osmosis, the most advanced treatment technology available, can produce effluent of this quality.

The State of Montana, recognizing that its nutrient WQS are literally impossible to achieve as end

EPA alleges that WQS variances are unlawful under the plain language of the CWA and are inconsistent with congressional intent. NACWA, through the wisdom and guidance of its Legal Affairs Committee, immediately grasped the threat to NACWA member utilities, small and large, should EPA's WQS variance regulations be eviscerated in this case.

On its own initiative, NACWA reached out to the City of Bozeman to offer its legal assistance. NACWA was successful in entering the case as an Intervenor-Defendant, not only injecting an important national policy perspective, but also arguing on behalf of the best interests of all its member utilities. At the same time, NACWA's actions were directly helping local communities on the ground in Montana like Bozeman – communities that may not often factor



into national clean water policy decisions but which acutely feel their impacts.

Due in no small part to NACWA's legal efforts, the court's ruling in this case crucially held that WQS variances are in fact lawful under the CWA and do not depart from congressional intent. The court's ruling, however, also found that EPA acted in an arbitrary and capricious manner in approving a particular component of Montana's nutrient WQS variance concerning the length of time Montana dischargers have to achieve the interim Highest Attainable Condition. NACWA is currently appealing the adverse portion of the ruling to the 9th Circuit in an effort to remove the chilling influence it may have on future EPA approvals of WQS variances proposed not only by Montana but by other states in other EPA Regions.

NACWA's Board, leadership and staff are commended for their recognition and support of

issues small member utilities contend with on a daily basis, providing much needed and appreciated resources that not only buoy daily operations but help guide long range compliance and utility planning efforts.

Small member utilities such as the City of Bozeman benefit directly from NACWA's mission – objectively accruing advantages through tireless advocacy on Capitol Hill, working relationships with political and career EPA staff and engaging in federal litigation with far-reaching impacts to its member utilities. By folding in small member utilities, NACWA's vanguard gains potency and diversity in creating a strong, sustainable clean water future for communities nationwide, no matter their size.

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