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March 15, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

On behalf of the National Association of Clean Water Agencies (NACWA), I congratulate you on your confirmation as Administrator of the U.S. Environmental Protection Agency (EPA). Me, my staff and members look forward to working closely with you and your staff in the years ahead as well as continuing to build on the collaborative relationship we have developed with EPA over many decades.

NACWA is the leading national advocacy voice for the nation's publicly owned wastewater and stormwater utilities. We represent over 330 municipal agency members across the country comprised of an array of large and small utilities all serving diverse customer bases. Our member agencies treat and reclaim water for over 124 million people in 46 states, the District of Columbia and Puerto Rico. The water sector utility workforce is comprised of dedicated public servants who are essential, front-line workers ensuring uninterrupted water and sewer services to homes and businesses across the country. Our member utilities create jobs, protect public health, ensure environmental and climate progress, and are vital, community-based institutions.

Attached for your review are several of NACWA's priority issue documents that we have already shared with your water office team and with the Administration so you can get a better sense of the water policy priorities of the public utility sector. We also look forward to meeting directly with you soon to discuss these priorities and we would be happy to have some of our member utility executives meet directly with you to exchange ideas and information.

On behalf of my members and the many other water sector organizations who are participating in the upcoming Virtual Water Week, I would also like to extend an invitation for you to be the keynote speaker for this event on April 27, 2021 at 2:00 PM ET. Water Week is

an annual event that raises the profile of the water sector with a focus on the Administration's and Congress's priorities for the water sector as a whole.

These are challenging times, and we wish you only success in the years ahead. Please do not hesitate to call on us, if we can serve as a useful resource and partner as you develop your priorities that will shape the "waterscape."

Again, congratulations. We look forward to working with you and your incredibly talented and dedicated EPA team.

Please feel free to contact me directly at akrantz@nacwa.org or 202/833-4651 to set up a meeting or discuss any issues further.

Sincerely,

A handwritten signature in black ink that reads "Adam Krantz". The signature is written in a cursive style with a prominent flourish at the end of the name.

Adam Krantz
CEO



First 100 Days Water Priorities for Biden-Harris Administration

Public clean water agencies are a crucial part of America's infrastructure and support healthy and resilient communities. NACWA appreciated the opportunity to meet with the EPA ART (transition team) and, as discussed, here is our document outlining recommended priority actions for the water sector in the Biden-Harris Administration's first 100 days. On behalf of public clean water agencies nationwide, we look forward to continuing to work with the transition team and the Biden-Harris Administration on the critical challenge of building a more sustainable future.

As the Biden-Harris Administration sets its priorities for its first 100 days, the following actions would demonstrate early policy momentum, set a marker for a revitalized partnership with local governments and utilities, and advance water infrastructure in a way that spurs economic growth, creates jobs, and benefits the environment and climate resilience. Thank you for your consideration of the following recommendations:

➤ **Proclaim water infrastructure and resiliency investment as a top priority**

Modernizing and replacing the country's aging water and wastewater infrastructure while adapting it to meet changing climate and water use patterns may be the single largest public works need that our nation faces. Local governments are on the front lines of this critical work but need a strong federal funding partner and an aggressive stance on federal infrastructure investment, including water, out of the gate.

➤ **Affirm EPA's Continued Commitment to Integrated Planning**

NACWA urges a clear signal early on that the Biden-Harris Administration seeks to work collaboratively with local governments and public utilities to advance the goals of the Clean Water Act (CWA). An early reaffirmation of Integrated Planning as a key tool to help utilities prioritize their investments and achieve full compliance with the CWA would be very well received by the municipal community and EPA staff who have worked together to advance this effort for the last 12 years, beginning in the Obama-Biden Administration.

➤ **Support EPA's Updated Financial Capability Assessment Guidance**

In September 2020, EPA released a draft updated Financial Capability Assessment guidance that helps move EPA away from an outdated over-reliance on median household income when determining the best schedule for a community's CWA investments. The old approach ignored low-income affordability impacts, while the recently released updated draft FCA guidance represents a more holistic look at community financial capability, especially for low-income households. We urge that it be finalized and implemented.

➤ **Support federal coordination on COVID-19 RNA wastewater surveillance**

COVID-19 RNA wastewater surveillance has emerged as an important tool to help predict community presence and trends of COVID-19. We urge the incoming Administration to take steps to promote greater coordination among the key entities leading these efforts at the federal level—the U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (which while part of HHS is conducting its own separate surveillance work), and EPA—and to identify which federal agency is best positioned to lead a coordinated effort with state health departments and the municipal utilities who provide samples, who are often being asked to duplicate efforts and need consistency to make such a program effective.

➤ **Restore the use of Supplement Environmental Projects**

NACWA was disappointed that the Trump Department of Justice (DOJ) prohibited EPA from agreeing to Supplemental Environmental Projects (SEPs) during CWA settlements. We urge the Biden DOJ to revisit this decision. SEPs have long been valued by diverse parties in CWA settlements to facilitate greater investment in local environmental projects.



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December 17, 2020

President-Elect Joe Biden
Vice President-Elect Kamala Harris
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear President-Elect Biden and Vice President-Elect Harris:

On behalf of the members of the National Association of Clean Water Agencies (NACWA), congratulations on your election as President of the United States.

NACWA is the leading national advocacy voice for the nation's publicly owned wastewater and stormwater utilities. We have 337 public agency members across the country who serve over 124 million people in 48 states, the District of Columbia, and Puerto Rico. NACWA is committed to advancing the interests of its members on a bipartisan basis.

NACWA and its public clean water utility members stand ready to work with you and your administration on critical issues you prioritized during your campaign, including rebuilding America's infrastructure, addressing the challenges of climate change and resilience, and confronting structural environmental inequities through environmental justice initiatives to support strong, healthy, equitable, and resilient communities today and tomorrow.

We appreciated the opportunity to meet with your EPA transition team recently and we look forward to continued work with the transition team and your new Administration on investing in our nation's clean water infrastructure, improving water quality and strengthening communities nationwide.

Our members are public servants working 24/7, 365 days a year to provide environmental and public health protection to local communities and to support local economies. While the work of NACWA's members has always been critical, the COVID-19 pandemic shed new light on several fundamental truths: sanitation and hygiene are critical to protecting lives, well-being, and thriving communities and economies. Water utility workers are essential, working on the front lines of public health and environmental protection. And safe and clean water are increasingly unaffordable to a growing number of households across the country, a reality which is exacerbated by the fact that there is no federal safety net to ensure access to water in a way that there is for other essential services such as food and energy.

In the face of the great challenges our nation is currently facing, clean water agencies look forward to working with your Administration to continue improving public health, environmental quality, and quality of life for all Americans – of which water is a vital part. We respectfully urge your administration to prioritize the following issues. The time has come for a re-envisioned, strengthened federal commitment to investing in safe, reliable, affordable and resilient water for all Americans. We are excited to work with your Administration to make this goal a reality.

Help Utilities Maintain Vital Services to All and Control the Spread of COVID-19

NACWA has estimated the financial impacts to the clean water sector from the pandemic, including lost revenues from declining commercial water use and the costs of maintaining water access for those unable to pay, could approach \$16 billion. Utilities and their essential workforce have been working throughout the pandemic to keep critical sanitation services flowing and helping in the fight against the spread of COVID-19 including partnering with health departments and the federal government on wastewater-based epidemiology. The clean water sector is proud to fill these roles in protecting public health and preventing the spread of COVID-19.

However, the expanding work and revenue challenges of the clean water sector are set against a backdrop where the federal cost-share on water infrastructure has declined for decades. Utilities rely heavily on the rates paid by water customers. For many utilities, simply raising water and sewer rates to support the costs of providing clean and safe water—and to offset revenue shortfalls stemming from COVID-19—is not a viable option that will keep water affordable and accessible. Many utilities are effectively constrained financially as they work to avoid disproportionate impacts on those lowest-income populations that simply are unable to pay, hindering the utility's ability to make needed investments in local health and environmental protection and leading to environmental injustice.

Water affordability has been a growing challenge for many years, but the COVID-19 pandemic laid bare the growing gap between the rich and the poor, and the disproportionate impact that rising water rates have on households which are struggling financially. And while the federal government provides support for essential needs like food and heating, no similar funding is available to help pay water bills. Many public clean water utilities have local customer assistance programs, but the extent of their relief is constrained by local resources and, in many cases, state laws limiting how utilities can collect and use rates to subsidize other customers.

Unfortunately, in many communities those most impacted by affordability challenges are also households of color, making water affordability an important racial justice issue. Utilities need more tools and more federal funding to help solve these challenges and support the clean water customers most at risk of falling behind financially. It is critical that the federal government step up now and partner with clean water utilities and other stakeholders to address this growing crisis.

Recommendations:

- **Provide immediate federal aid expressly for water and wastewater utilities to address revenue shortfalls from the COVID-19 crisis and help address bill arrearages accruing among customers struggling to pay their water bills during the pandemic.**
- **Establish a federal low-income water customer assistance program (LIWAP) to aid households in need pay for water and sewer services and prevent the loss of service due to inability to pay.** Similar to the SNAP and LIHEAP programs for food and energy costs, a water customer assistance program could provide a critical federal safety net to help address households unable to meet the costs of clean water services. This type of program has bipartisan, bicameral support ([S. 2687/H.R. 4382](#)) and water customer funding was incorporated into the U.S. Houses' HEROES Act.
- **Advance the use of EPA's updated Financial Capability Assessment Guidance in applying federal clean water requirements, which will provide utilities with key flexibility to address the financial needs of low-income households while still meeting all regulatory obligations.** EPA released a draft updated Financial Capability Assessment (FCA) guidance in September 2020 that helps move EPA away from an outdated over-reliance on median household income when determining the best schedule for a community's Clean Water Act compliance investments. The updated draft FCA guidance represents a more holistic look at a community's financial capability, especially for low-income households. We urge that it be finalized and implemented.
- **Support federal coordination on COVID-19 RNA wastewater surveillance.** COVID-19 RNA wastewater surveillance has emerged as an important tool to help predict community presence and trends of COVID-19. We urge the incoming Administration to take steps to promote greater coordination among the key entities leading these efforts at the federal level—the U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (which, while part of HHS, is conducting its own separate surveillance work), and EPA—and to identify which federal agency is best positioned to lead a coordinated effort with state health departments and municipal utilities. The clean water community provides important data for these initiatives, but they are often being asked to duplicate efforts and need consistency to make such a program effective.

Support Utilities in Addressing Climate Change and Investing in Water Resilience

No community is resilient without affordable, accessible water. Modernizing and replacing the country's aging water and wastewater infrastructure while adapting it to meet changing climate and water use patterns may be the single largest public works need that our nation faces.

The reality is that climate change is all about water. While the causes of climate change relate to air pollution, the impacts of climate change—including changing precipitation patterns, drought, floods, increased storm intensities, rising sea levels, coastal erosion—are almost all related to water.

Utilities are already at the front lines of helping communities adapt to these "new normals" and manage extreme storm events. EPA is a key partner, providing tools and outreach to help utilities incorporate climate change and resilience into their plans and investments. There is much more utilities can and will need to do to ensure their communities are resilient. Both

greater funding and the flexibility to innovate are needed for utilities to accelerate these efforts, which will require a strong partnership with the federal government.

The Clean Water Act (CWA) was based on the premise that the federal government would be a partner with local governments and utilities in investing in clean water, and for the first 20 years of the CWA's existence that partnership held true. The federal government played a critical role in water infrastructure during the early days of the CWA through the federal construction grants program, which was replaced by a financing program—the Clean Water State Revolving Fund (CWSRF)—in the 1980s.

But today, virtually all water infrastructure investment in the U.S. available to communities with over 10,000 people comes in the form of low-cost financing, and the federal cost share of water infrastructure has dropped to below 5 percent—lower than any other major infrastructure sector. Clean water rate increases have outpaced inflation for 18 consecutive years, and this trend is projected to continue. Compounding this issue is the fact that communities least financially able to manage rate increases frequently face structural circumstances that amplify the need for more investment, such as legacy pollution; older and outsized infrastructure; economic decline or industrial shifts; and susceptibility to natural hazards and climate change.

As we near the 50th anniversary of the CWA in 2022, the current situation is simply not sustainable. If communities and their utilities are to maintain their existing systems, meet CWA obligations and make significant new investments to address the challenges of climate change and emerging water quality concerns, the federal government must become a reliable funding partner once again.

Recommendations:

- **Work with Congress to advance a major infrastructure investment package next year, explicitly making investment in our sewer and stormwater systems a centerpiece of any infrastructure proposals, especially in light of the proven job creation capacity of the water sector.**
- **Support significantly higher annual appropriations for existing federal clean water investment programs, including the Clean Water State Revolving Fund (CWSRF) and the Water Infrastructure Finance and Innovation Act (WIFIA) program.**
- **Advance implementation of EPA's Water Reuse Action Plan (WRAP).**
- **Support and expand federal resources such as EPA's Creating Resilient Water Utilities tool.**
- **Support holistic approaches to watershed protection, including partnerships among nontraditional partners such as USDA, agricultural producers, non-profit organizations and clean water agencies.**

Maintain Appropriate Regulatory Flexibility for Public Clean Water Utilities

NACWA members are committed to maintaining the highest level of regulatory compliance. But over the last few decades, the accretion of new regulatory requirements – some with

questionable or very little environmental benefit – have made it more and more challenging for utilities to meet their environmental goals while also addressing very real community affordability concerns. As a result, Congress, various administrations, and the public clean water community have worked together to provide needed flexibility while also protecting the environment and public health. It is critical that those efforts continue.

For example, under President Obama, EPA developed and instituted the Integrated Planning framework to provide communities and utilities with the ability to prioritize their clean water investments while still ensuring all CWA requirements are met. This approach was incorporated into the CWA by large bipartisan majorities in Congress, and has been implemented by the Trump Administration in a manner consistent with how the framework was originally intended.

Integrated Planning is a proven way to help utilities make their investments in the most cost-effective and environmentally beneficial way, and can also help many communities address affordability challenges that disproportionately impact low-income households. This initiative should continue to be advanced and prioritized.

Similarly, there are several thorny issues impacting CWA permitting for public clean water utilities that EPA will face in the coming years and which would greatly benefit from continued dialogue with the sector on potential solutions. For example, nutrient impairment is a growing issue in many waterbodies that permit writers are struggling to address, especially where clean water utilities are only a small source of the problem. NACWA has worked collaboratively with EPA, states, the agricultural community, and other stakeholders in the past to seek solutions to this complicated issue, especially on a watershed scale, and we look forward to continuing these important efforts with your administration.

With respect to managing increasing wet weather events, a large number of municipalities are now preparing to complete decades-long substantial investment projects designed to reduce combined sewer overflow (CSO) occurrences. Once these projects are complete, these communities will have met all CWA requirements set forth for them, but as things currently stand they will still face uncertainty over whether they will be required to spend ever more local dollars on unneeded controls in future permits. All CWA permit holders also now face challenging questions about the scope of the CWA National Pollutant Discharge Elimination System (NPDES) permitting program due to recent judicial rulings, including the recent Supreme Court decision in the *County of Maui v. Hawaii Wildlife Fund* case, calling for greater clarification from EPA.

The ability of EPA to work collaboratively with NACWA and its members on these very complex issues will be crucial to establishing workable and appropriate regulatory requirements.

Recommendations:

- **Affirm EPA's Commitment to Integrated Planning and the Municipal Ombudsman Office to support the regulated community in clean water compliance.**
- **Support public clean water communities and other stakeholders through regulatory efforts that address nutrients and improve water quality in the most cost-effective manner, building in opportunities for adaptive management.**

- **Engage the public clean water community early and often around the complex regulatory issues of permitting, wet weather controls and application of the NPDES program.**

Promote a 'Compliance Assistance First' Approach to Clean Water Enforcement

One of the largest cost drivers for clean water utilities has been the massive expenditures mandated by EPA enforcement orders and consent decrees. Although enforcement may be necessary in certain situations, especially with historic bad actors, where appropriate EPA should instead focus on assisting local communities with compliance assistance first, and only begin formal enforcement proceedings if such efforts fail. Additionally, the cost of any enforcement actions required by EPA should be justified by measurable environmental benefits on a net environmental benefit basis.

Where enforcement actions are necessary, NACWA has long supported the use of supplemental environmental projects (SEPs). SEPs have been an important tool for all parties involved in clean water settlements, which help spur greater investment in environmentally beneficial projects supported by the community such as green infrastructure, and keep local ratepayer dollars invested in local projects. NACWA was disappointed to see this tool removed as an option for CWA settlements under the Trump Department of Justice and urges its quick return.

Recommendations:

- **Focus first on compliance assistance with public clean water utilities in addressing compliance violations, and only initiate formal enforcement actions if assistance actions have failed. The clean water community stands ready to work collaboratively with the federal government to ensure CWA compliance goals are met.**
- **Restore the use of Supplemental Environmental Projects (SEPs) in federal clean water enforcement actions.**

Prioritize EPA Research and Risk Assessment on Emerging Contaminants

NACWA urges EPA to work expeditiously to address emerging contaminants of concern through the regulatory process, advancing efforts on risk assessment and developing approved testing methodologies so that clean water agencies and the public can have the confidence that controls put in place and investments made are in fact needed to protect human health and the environment and are based on valid science. Most importantly, however, the Administration should focus on controlling the sources of pollution and ensuring producer responsibility, rather than expecting clean water agencies to address the problem that they had no part in causing. Clean water agencies can be partners in controlling PFAS, but ratepayers should be protected from undue costs and liabilities created by entities upstream from the utility.

Recommendations:

- **NACWA urges EPA to work expeditiously to implement its PFAS Action Plan and work through the regulatory process to determine appropriate controls on PFAS.**

- **Cognizant of the potential cost to the public, if EPA determines a CERCLA hazardous substance designation is appropriate for PFAS, we strongly urge EPA to issue guidance limiting the liability for public water and wastewater utilities who may receive PFAS-laden influent from upstream dischargers that they are required to treat and manage safely.**

Drive Innovation and Technology in the Water Sector

Public clean water utilities once solely focused on treating and managing a waste product. They have reinvented themselves over the years into producers of valuable products and services for their communities, as well as agents of innovation in resource management, technological advancement, and economic opportunity.

Clean water utilities have great examples of how innovation at the local level can help solve 21st century environmental challenges. The Utility of the Future (UOTF) concept piloted by NACWA and other water associations highlights the ways in which municipal clean water agencies can embrace and implement innovative approaches and technologies to improve environmental performance while also lowering costs, increasing revenue, and helping boost local economies. These approaches include things like energy production from the wastewater treatment process, use of green infrastructure to address stormwater management, recovery of valuable resources like phosphorus from waste streams, water reuse, use of data to better optimize system performance, nontraditional funding partnerships to finance clean water projects, and watershed-based approaches to addressing water quality impairments.

These innovations by the municipal clean water sector are a critical component of advancing America's wastewater and stormwater systems to address current challenges such as climate change and resilience while also providing greater environmental and economic value for local communities.

Recommendations:

- **Support the creation of an [Advanced Research Projects Agency – Water \(ARPA H2O\)](#), as a new entity within EPA to spur clean water research, technology and innovation.**
- **Provide financial incentives to spread adoption of existing UOTF innovations for widespread use and work actively to ensure EPA regulations do not impede these innovations.**
- **Support DOE initiatives to help utilities reduce their greenhouse gas emissions and increase the efficiency of the wastewater treatment process.**

Support the Water Workforce

The pandemic has underscored the vital nature of the water workforce and led to water utility employees being deemed essential workers by the Department of Labor. At the local level, the vital nature of utility jobs is apparent. The greying of the water workforce is a grave concern as utilities face high rates of retirement and the loss of decades of talent and experience. Water utilities offer good environmental and STEM-based job opportunities at a wide range of skill levels, yet often struggle to find skilled workers within the community. Partnerships with local

schools and colleges can help utilities build the diverse talent pipeline at home and spur interest in clean water careers.

Recommendations:

- **Support EPA's federal water workforce grants program and provide a particular focus on grants to partnerships between community colleges, vocational schools, and local water utilities.**
- **Support water utilities in working with states to ensure utility employees have priority alongside other essential workers for a COVID-19 vaccine.**

NACWA appreciates this opportunity to provide recommendations to you and your transition team as you prepare key policy initiatives for your presidency, and we look forward to working with your administration to elevate clean water as a national priority.

Sincerely,

A handwritten signature in black ink that reads "Adam Krantz". The signature is written in a cursive style with a stylized flourish at the end.

Adam Krantz
CEO