Energy, Environment and Natural Resources

Summer Board and Leadership Meeting
Statehouse Convention Center
ROOM: Miller
Little Rock, Arkansas
June 25-27, 2018
Agenda: Energy, Environment and Natural Resources

Statehouse Convention Center
101 East Markham Street
Little Rock, Arkansas
Room: Miller

Monday, June 25, 2018

9:00 a.m. –  Onsite Registration
6:30 p.m.  Statehouse Convention Center
            Caddo

5:00 p.m. –  JOINT WELCOME RECEPTION
6:30 p.m.  Marriott Little Rock
            3 Statehouse Plaza
            Little Rock, Arkansas
            Riverview

Tuesday, June 26, 2018

7:00 a.m. –  JOINT BREAKFAST (COMMITTEES, BOARD & COUNCILS)
8:30 a.m.  Statehouse Convention Center
            Wally Allen Ballroom B & C

8:00 a.m. –  FEDERAL ADVOCACY COMMITTEE MOBILE WORKSHOPS
12:00 p.m.

The Summer Meeting Mobile Tour will explore various Little Rock neighborhoods and focus on some of the City's community-oriented partnerships. The tour will include:

- Willie L. Hinton Neighborhood Resource Center
- 12th Street Initiative
- Southwest Community Center Complex
- River Market District
- Creative Corridor

Shuttle pick up will begin at 7:45 a.m. outside of the Convention Center and Little Rock Marriott along Markham Street

12:00 p.m. –  JOINT LUNCH (COMMITTEES, BOARD & COUNCILS)
1:30 p.m.  Statehouse Convention Center
            Wally Allen Ballroom B & C
1:30 p.m. – 5:00 p.m.  
ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE MEETING  
Statehouse Convention Center  
Miller

1:30 p.m. – 1:45 p.m.  
WELCOME, INTRODUCTIONS AND MEETING OVERVIEW  
• The Honorable Cynthia Pratt, Chair  
  Deputy Mayor, City of Lacey, Washington

Deputy Mayor Pratt will welcome the committee and give an update from the NLC Board of Directors meeting.

1:45 p.m. – 2:15 p.m.  
NLC FEDERAL ADVOCACY UPDATE  
• Carolyn Berndt  
  Program Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will hear an update on NLC’s legislative priorities, as well as issues before Congress, the Administration, and the Courts related to energy and the environment.

2:15 p.m. – 2:30 p.m.  
REPORT BACK: EPA OUTREACH AND ENGAGEMENT

Committee members will share updates on outreach and engagement with EPA officials as a result of the March meeting during the Congressional City Conference.

2:30 p.m. – 3:30 p.m.  
PRESENTATION AND DISCUSSION: WATER INFRASTRUCTURE  
• Greg Ramon  
  CEO, Little Rock Water Reclamation Authority

• C. Tad Bohannon  
  CEO, Central Arkansas Water

Committee members will learn about water infrastructure challenges and opportunities in Little Rock. Committee members will discuss the concepts of longer permit terms and affordability and assistance programs.

Key questions for discussion:  
• Would longer permit terms (i.e. 10 years instead of 5 years) be beneficial for your community?  
• Does your community struggle with the issue of affordable water rates for segments of the population?
• Does your community offer any kind of water rate assistance program? If so, describe. If not, why?
• Should NLC develop policy or a resolution on either item?

3:30 p.m. – BREAK
3:45 p.m.

3:45 p.m. – EENR POLICY DISCUSSION AND RESOLUTIONS REVIEW
5:00 p.m.
Committee members will review and vote on changes to the current 2018 resolutions, as well as discuss any changes to policy.

5:00 p.m. WRAP UP

6:30 p.m. – HOST CITY EVENING OUT EVENT
9:00 p.m.
Clinton Library 42 bar and table
1200 President Clinton Avenue
In the Clinton Presidential Center
Little Rock, AR 72201

Shuttle pick up at 6 p.m. along Markham Street

Wednesday, June 27, 2018

7:00 a.m. – JOINT BREAKFAST (COMMITTEES, BOARD & COUNCILS)
8:30 a.m. Statehouse Convention Center
Wally Allen Ballroom B & C

9:00 a.m. – ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE MEETING
3:00 p.m. Statehouse Convention Center
Miller

9:00 a.m. – BEST PRACTICES PRESENTATION: SUSTAINABILITY IN LITTLE ROCK
9:45 a.m.
• Melinda Glasgow
  Sustainability Officer, City of Little Rock, Arkansas

Committee members will hear about innovative sustainability policy, programs and initiatives underway in Little Rock.

9:45 a.m. – BEST PRACTICES ROUND ROBIN
10:15 a.m.
Committee members will share one sustainability or climate-related initiative that their city is undertaking.
10:15 a.m. – BREAK
10:30 a.m.

10:30 a.m. – EMERGING ISSUE: CHINESE IMPORT RESTRICTIONS ON SOLID WASTE AND RECYCLABLE MATERIALS
11:15 a.m.

- Carolyn Berndt
  Program Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will discuss the local impacts of the Chinese import restrictions on their communities and provide input on NLC’s efforts to educate members about the impacts.

11:15 a.m. – LOOKING AHEAD: AUGUST RECESS ADVOCACY AND SEPTEMBER FLY-IN
12:00 p.m.

- Carolyn Berndt
  Program Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will learn about NLC’s August Recess advocacy plans and how they can effectively engage in in-district advocacy during this time. Committee members will also discuss plans for the September Fly-in and other ways members can be involved in advocating for infrastructure investment.

12:00 p.m. – JOINT LUNCH
1:30 p.m. Statehouse Convention Center
Wally Allen Ballroom B & C

1:15 p.m. – SITE TOUR: MURRAY LOCK AND DAM
3:00 p.m. Shuttle pick up at 1:15 p.m. along Markham Street

- Eric Gillespie, Tour Guide
  Lock Leader, Murray Lock and Dam

Committee members will tour the Murray Lock and Dam, part of the McClellan-Kerr Arkansas River Navigation System. Completed in 1969, the Murray Lock and Dam is one of 13 lock and dams within the state of Arkansas. Committee members will also walk along the Big Dam Bridge, touted as the longest pedestrian bridge in the world.

3:00 p.m. ADJOURNMENT
Enclosures

- NLC Policy Development and Advocacy Process
- EENR Resolutions
- Energy and Environment Legal Update
- Support Modernization of Clean Water Act NPDES Permit Terms, California Association of Sanitation Agencies
- NPDES Permit Terms Under the Clean Water Act, California Association of Sanitation Agencies
- “Water affordability is not just a local challenge, but a federal one too,” by Joseph Kane, Senior Research Associate and Associate Fellow, Metropolitan Policy Program, Brookings
- Office of Congresswoman Marcia L. Fudge, The Low-Income Sewer and Water Assistance Program (LISWAP) Act of 2017, FAQ
- Congresswoman Marcia L. Fudge, Statement for the Record
- Memo: Chinese Import Restrictions on Solid Waste and Recyclable Materials
- U.S. Army Corps of Engineers, Southwest Division White Paper: McClellan-Kerr Arkansas River Navigation System
- Energy, Environment and Natural Resources Committee Roster

Next EENR Committee Meeting:

City Summit
Los Angeles, California
November 7-10, 2018
NLC POLICY DEVELOPMENT AND ADVOCACY PROCESS

As a resource and advocate for more than 19,000 cities, towns and villages, the National League of Cities (NLC) brings municipal officials together to influence federal policy affecting local governments. NLC adopts positions on federal actions, programs and proposals that directly impact municipalities and formalizes those positions in the National Municipal Policy (NMP), which guides NLC’s federal advocacy efforts.

NLC divides its advocacy efforts into seven subject areas:
- Community and Economic Development
- Energy, Environment and Natural Resources
- Finance, Administration and Intergovernmental Relations
- Human Development
- Information Technology and Communications
- Public Safety and Crime Prevention
- Transportation and Infrastructure Services

For each of the seven issue areas, a Federal Advocacy Committee advocates in support of NLC’s federal policy positions. Members of each committee serve for one calendar year, and are appointed by the NLC President.

Federal Advocacy Committees
Federal Advocacy Committee members are responsible for advocating on legislative priorities, providing input on legislative priorities, and reviewing and approving policy proposals and resolutions. Additionally, Committee members engage in networking and sharing of best practices.

Federal Advocacy Committees are comprised of local elected and appointed city and town officials from NLC member cities. NLC members must apply annually for membership to a Federal Advocacy Committee. The NLC President makes appointments for chair, vice chairs, and general membership. In addition to leading the Federal Advocacy Committees, those appointed as committee chairs will also serve on NLC’s Board of Directors during their leadership year.

At the Congressional City Conference, Federal Advocacy Committee members are called upon to advocate for NLC’s legislative priorities on Capitol Hill, as well as develop the committee’s agenda and work plan for the year. Committee members meet throughout the year to further the plan, hear from guest presenters, discuss advocacy strategies and develop specific policy amendments and resolutions. At the City Summit, committee members review and approve policy proposals and resolutions. These action items are then forwarded to NLC’s Resolutions Committee and are considered at the Annual Business Meeting, also held during the City Summit.

Advocacy
Throughout the year, committee members participate in advocacy efforts to influence the federal decision-making process, focusing on actions concerning local governments and communities. During the Congressional City Conference, committee members have an opportunity, and are encouraged, to meet with their congressional representatives on Capitol Hill. When NLC members are involved in the legislative process and share their expertise and experiences with Congress, municipalities have a stronger national voice, affecting the outcomes of federal policy debates that impact cities and towns.
EENR RESOLUTIONS

NLC resolutions are annual statements of position that sunset at the end of the calendar year unless action is taken. The committee must review each of the 2018 resolutions that originated in the EENR Committee to determine recommendations for 2019. The committee has the following options:

1. Renew the resolution for the coming year (with or without edits)
2. Incorporate the resolution into permanent policy; or
3. Let the resolution expire.

The EENR resolutions that were approved for 2018 at the City Summit in Charlotte, North Carolina with NLC staff recommendations for 2019 are:

<table>
<thead>
<tr>
<th>Resolution</th>
<th>NLC Staff Recommendation</th>
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<tbody>
<tr>
<td><strong>NLC RESOLUTION #8:</strong> Congressional Action to Support PACE Programs</td>
<td>Renew with edits</td>
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<tr>
<td><strong>NLC RESOLUTION #9:</strong> Supporting and Advancing Resilient Communities to Prepare for Extreme Weather Events</td>
<td>Renew with edits</td>
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<td><strong>NLC RESOLUTION #10:</strong> Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change</td>
<td>Renew with edits</td>
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<td><strong>NLC RESOLUTION #11:</strong> Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure</td>
<td>Renew</td>
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<td><strong>NLC RESOLUTION #12:</strong> Increase Federal Investment in Water Infrastructure</td>
<td>Renew with edits</td>
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<tr>
<td><strong>NLC RESOLUTION #13:</strong> Support for Integrated Planning and New Affordability Consideration for Water</td>
<td>Renew</td>
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WHEREAS, utility bills represent a major part of operating costs for home and business owners; and

WHEREAS, the building sector accounts for 39 percent of the nation’s energy use, 72 percent of its electricity use, one third of all global greenhouse gas emissions and represents the single largest, most accessible opportunity for deep emission cuts in the United States; and

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can save energy, cut utility bills up to $140 billion per year, create thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas emissions; and

WHEREAS, a recent study that found default risks are on average 32 percent lower in energy efficient homes and recommends that the lower risks associated with energy efficiency should be taken into consideration when underwriting mortgages; and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative local government solution to help property owners finance energy efficiency and renewable energy improvements – such as energy efficient HVAC systems, upgraded insulation, new windows, solar installations, etc. – to their homes and businesses; and

WHEREAS, the PACE program removes many of the barriers of energy efficiency and renewable energy retrofits that otherwise exist for residential homeowners and businesses, particularly the high upfront cost of making such an investment and the long-term ability to reap the benefits of cost savings; and

WHEREAS, states plus the District of Columbia have passed laws enabling local governments to develop PACE programs; and

WHEREAS, in 2010 the U.S. Department of Energy dedicated $150 million to assist in the development of local PACE programs and in 2016 issued Best Practice Guidelines for Residential PACE Financing Programs to help state and local governments develop and implement programs and recommended protections that PACE programs should put in place for consumers and lenders; and

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WHEREAS, in July 2016, the U.S. Department of Housing and Urban Development released guidance allowing the Federal Housing Administration to insure mortgages on properties that include PACE assessments\(^3\), but which has since been withdrawn; and

WHEREAS, locally-administered PACE programs are an exercise of the traditional authority of local governments to utilize the tax code for public benefit; and

WHEREAS, PACE programs help local governments meet a core obligation to their citizens to maintain housing stock and improve housing opportunities for all citizens; and

WHEREAS, the PACE program is an achievement of the intergovernmental partnership to realize national policy goals, namely, reducing energy consumption, that will positively impact the fiscal conditions of every level of government; and

WHEREAS, PACE holds the potential to unlock private capital and jumpstart economic growth backed by the marketplace certainty of the federal government;

WHEREAS, despite PACE’s great promise, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency on July 6, 2010 issued statements that immediately forced existing PACE residential programs to halt operations and froze the development of dozens of other residential PACE programs nationwide; and

WHEREAS, despite the FHFA directive, many commercial and a few residential PACE programs are operating or are in development in hundreds of municipalities across the country;

and

WHEREAS, in 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) banking reform bill that recognizes PACE as a tax assessment and directs the Consumer Financial Protection Bureau to develop rules in consultation with state and local governments that ensure consumers have the ability to pay their residential PACE financing obligations.

NOW, THEREFORE, BE IT RESOLVED that locally-administered PACE programs operating in accord with state and federal guidelines are a safe and sound investment of public and private funds; and

BE IT FURTHER RESOLVED that locally-administered PACE programs represent an essential contribution of local governments to reduce greenhouse gas emissions and promote renewable energy; and

BE IT FURTHER RESOLVED that the National League of Cities (NLC) urges FHFA to work with local governments seeking to establish PACE programs that benefit from the same senior lien status of all other projects that are funded through municipal assessments that improve private property and meet public policy objectives; and

BE IT FURTHER RESOLVED that NLC urges the Administration Congress to adopt legislation regulating that clearly reaffirms the right of state and local governments to exercise liens or assess special taxes or other property obligations to protect and improve housing stock for the public good, including energy efficiency improvements, by directing federal regulators to enforce underwriting standards that are consistent with guidelines issued by the U.S. Department of Energy for PACE financing programs or by implementing any other appropriate measure; and

BE IT FURTHER RESOLVED that Congress should avoid unnecessary and burdensome regulations and not subject PACE programs to Truth in Lending Act (TILA) requirements.
NLC RESOLUTION #9

SUPPORTING AND ADVANCING RESILIENT COMMUNITIES TO PREPARE FOR EXTREME WEATHER EVENTS

[NLC STAFF RECOMMENDATION: RENEW WITH EDITS]

WHEREAS, across the country local governments are seeing the devastating effects associated with a changing climate and recent extreme weather events, such as heat waves, droughts, heavy downpours, floods, and hurricanes, and changes in other storms, have brought renewed attention to the need for cities to anticipate, prepare for and adapt to these events; and

WHEREAS, while all regions of the country are impacted by climate change, approximately one third of the U.S. population—more than 100 million people—live in coastal communities that are threatened by rising sea levels, which could impact economic development, land availability, property values, insurance rates, beaches and tourism, and critical water, transportation and energy infrastructure; and

WHEREAS, the recent National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen1; and

WHEREAS, extreme weather events can have severe impacts on local and regional infrastructure, economies, public safety, public health, natural landscapes and environmental quality; and

WHEREAS, the impacts of extreme weather events pose an especially pressing threat to persons with disabilities, economically disadvantaged households, the elderly and other vulnerable populations; and

WHEREAS, the capability of maintaining energy availability is a critical first order priority in maintaining critical infrastructure and building community resilience; and

WHEREAS, there is currently insufficient information, technical coordination or financial assessment of the costs and mechanisms to rapidly retrofit and redesign local energy systems to enable them to be more resilient to a range of potential disruptive events, such as extreme weather, terrorism, and energy price escalation; and

WHEREAS, the United States has seen 208-230 separate billion-dollar-plus disasters since 1980, including 159 in 2016 and 165 in 2017, with a cumulative cost exceeding $300 billion in 2017 (CPI-adjusted) which caused over $69.7 billion in economic damages2; and

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WHEREAS, in 2005 Hurricane Katrina led to 1,833 deaths and more than $153 billion in losses\(^3\), and a subsequent $120 billion in supplemental disaster assistance and in 2012 Hurricane Sandy led to 159 deaths and more than $67 billion in damages\(^4\), and a subsequent $60.4 billion in supplemental disaster assistance; and

WHEREAS, in 2017 three category 4 hurricanes made landfall in the U.S., with the death toll from Hurricane Maria, which made landfall in Puerto Rico, still undetermined; and

WHEREAS, rising temperatures are lengthening the wildfire season and increasing wildfire risks throughout the Western United States due to earlier snow melts and forests that are drier, longer\(^5\) and the costs of putting out wildfires has increased dramatically, from $560.37 million in 1985 to nearly $32 billion in 2017\(^6\) (2017 dollars\(^7\)), with the western wildfires costing over $18.2 billion (CPI-adjusted)\(^8\); and

WHEREAS, Congress approved over $130 billion in emergency disaster spending for FY18; and

WHEREAS, 2017\(^9\) was the third hottest year on record behind 2016 (warmest) and 2015 (second warmest)\(^9\), continuing a three-year streak of record warm years\(^10\) and extreme weather events including hurricanes, tornados, storm surges, severe weather, flooding, drought, wildfires, and blizzards\(^11\) affected every region of the country, and in 2017 hurricanes Harvey, Irma and Maria, as well as wildfires, will cost billions to U.S. economy and have left hundreds of people dead; and

\(^{3}\)Billion-Dollar Weather and Climate Disasters, National Centers for Environmental Information, National Oceanic and Atmospheric Administration, available at: http://www.ncdc.noaa.gov/billions/events


\(^{9}\)National Oceanic and Atmospheric Administration (Jan. 18, 2018), available at: http://www.noaa.gov/news/noaa-2017-was-3rd-warmest-year-on-record-for-globe


WHEREAS, as extreme weather events such as these become more common, local governments in all geographic and climatic regions require resources to assist them in anticipating, preparing for and adapting to these events; and

WHEREAS, a preparedness response fund would provide financial assistance to accelerate the development of adaptive success models and provide a far-reaching damage prevention initiative that would help reduce the ultimate financial pressure on the federal government; and

WHEREAS, local governments are first responders—preparing in advance of emergency situations, offering immediate assistance to those impacted, and identifying strategies, solutions, and partnerships to address situations quickly and efficiently; and

WHEREAS, taking action now to adapt to a changing environment and create community resilience will help save lives, strengthen local economies, save taxpayer dollars and build preparedness for future events; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on Congress and the Administration to partner with local governments and to support local action on climate change adaptation and resilience; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to help states and local governments conduct vulnerability assessments, develop and implement long-term mitigation, adaptation and resiliency action plans, and identify innovative financing opportunities to implement these assessments and plans in order to prepare, plan for and more quickly recover from extreme weather events; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to recognize the unique risks and opportunities communities face and to offer customized tools and incentives to local governments to encourage communities to plan for and rapidly respond to the effects of climate change and extreme weather; and

BE IT FURTHER RESOLVED that the federal government should develop a national strategy to assist communities in integrating the risks of extreme weather events into emergency management planning and responses to identify and quantify the economic value of regional infrastructure at risk under different scenarios; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to outline strategies and actions to reduce the vulnerability of federal programs to the impacts of climate change; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to better align federal funding with local preparedness and resilience-building efforts; and

BE IT FURTHER RESOLVED that NLC calls on Congress to fully fund grant programs that help local governments prepare, respond and recover from extreme weather events and establish
a preparedness and response fund to support local governments that are at the forefront of
developing adaptive solutions; and

BE IT FURTHER RESOLVED that the federal government develop grant and technical
assistance programs to enable communities to develop community energy transition plans that
insure the capability of cities to maintain critical energy and infrastructure during disruptions to
local, regional or national energy infrastructure; and

BE IT FURTHER RESOLVED that the federal government develop a national pilot project
initiative to conduct detailed assessments and designs for resilient city energy system retrofit and
redesign across a range of different regions and city sizes.
NLC RESOLUTION #10

SUPPORTING URGENT ACTION TO REDUCE CARBON EMISSIONS AND MITIGATE THE EFFECTS OF CLIMATE CHANGE

[ NLC STAFF RECOMMENDATION: RENEW WITH EDITS ]

WHEREAS, the recent National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen; and

WHEREAS, while some impacts of climate change are inevitable, sharp reductions in greenhouse gas emissions will reduce the severity of the impacts and limit the rate of climate change; and

WHEREAS, the U.S. Environmental Protection Agency’s 2015 Clean Power Plan sets state-specific carbon emissions reductions goals that if fully implemented will reduce carbon emissions from coal and natural gas fired power plants by 32 percent below 2005 levels by 2030; and

WHEREAS, in order to meet that goal and to help mitigate the effects of climate change on communities, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will be essential at the local, state and federal levels; and

WHEREAS, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will save taxpayer dollars, boost the national and local economy, enhance national security, increase our nation’s energy independence, and improve environmental quality; and

WHEREAS, buildings account for nearly 40 percent of the nation’s energy consumption, more than 70 percent of its electricity use, and nearly a third of all global greenhouse gas emissions; and

WHEREAS, indoor and outdoor lighting account for 8.3 percent of electricity consumed in the nation, and rapid conversion to efficient lighting would result in significant greenhouse gas reductions as well as a decrease in base load energy needs; and

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WHEREAS, cities have been laboratories of innovation, successfully pioneering and

demonstrating cost-effective clean energy solutions, including increasing energy efficiency for

public and private buildings, particularly through use of the American Recovery and

Reinvestment Act of 2009 Energy Efficiency and Conservation Block Grant (EECBG) funds,

and local strategies that create jobs, save energy and taxpayer dollars, promote renewable

sources, and cut greenhouse gas emissions; and

WHEREAS, all levels of government must work to become more resilient by achieving greater

energy independence based on a multi-pronged strategy of aggressively expanding renewable

energy, significantly increasing energy efficiency portfolio standards, and creating new financing

mechanisms; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience,

composed of state, local and tribal leaders, made recommendations to the President on ways the

federal government can assist local efforts to address and prepare for the impacts of climate

change.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on

Congress and the Administration to partner with local governments, to support local action on

climate change mitigation, and to provide essential tools, research, technology development,

data, and funding, as well as workforce development, job training and community assistance to

help transition to a clean energy economy; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take

urgent action to reduce carbon emissions across a broad sector of the economy to mitigate the

effects of climate change by supporting the Clean Power Plan and the U.S.’s engagement in the

Paris Climate Agreement; and

BE IT FURTHER RESOLVED that NLC opposes efforts to lower the CAFÉ standards or fuel
efficiency for all types of vehicles; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass energy efficiency

legislation to incentivize energy efficiency improvements in residential and commercial

buildings, schools and federal buildings located in communities; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a national renewable

portfolio standard that increases the share of energy from renewable sources; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a long-term extension of

the investment tax credit and the production tax credit for renewable energy as an incentive for

their development and deployment and to reauthorize and fully fund the EECBG; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to develop

a partnership with local governments and provide appropriate sufficient funding through the

energy block grant structure or other funding structures at the U.S. Department of Energy to

further incentivize clean energy at the local level.
WHEREAS, access to clean drinking water is fundamental to the health and well-being of America’s communities and families; and

WHEREAS, Flint, Michigan, and Sebring, Ohio, are two recent examples of cities where high levels of lead have been found in the city’s drinking water; and

WHEREAS, in the early 2000s, the District of Columbia experienced a similar crisis, as have many other cities; and

WHEREAS, lead has negative and long-term neurological effects, particularly in infants and children; and

WHEREAS, in Flint, the elevated blood lead level was discovered in children after the city’s water source was switched to the Flint River by the state-appointed emergency manager, a decision made without coordination or consultation with local officials; and

WHEREAS, a contributing factor to the Flint, Michigan, drinking water crisis is the city’s aging infrastructure and the lack of investment in infrastructure and the community; and

WHEREAS, in January 2016, President Obama signed an emergency declaration in the State of Michigan, ordering federal aid to supplement state and local response efforts due to the emergency conditions caused by lead-contaminated water; and

WHEREAS, corrosion control and testing are essential to preventing lead leaching and alerting the public to potential dangers; and

WHEREAS, recent analysis by the National Resources Defense Council found that over 5,300 water systems nationwide have elevated levels of lead¹ and a recent analysis by the American Water Works Association estimates 6.1 million lead service lines remain in U.S. communities, at an estimated $30 billion to replace²; and

WHEREAS, there is a need to invest in our aging water infrastructure nationwide and a failure to do so can have negative public health consequences; and

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WHEREAS, the U.S. Environmental Protection Agency (EPA) estimates the nation’s water infrastructure capital needs over the next 20 years to be approximately $655 billion in total; the American Society for Civil Engineers estimates the needed investment for water infrastructure to be $1.3 trillion over the next 20-25 years; and other estimates put the cost at more than $4 trillion to maintain and build a 21st century water system.

NOW, THEREFORE, BE IT RESOLVED that local planning and infrastructure decisions, including those related to clean drinking water, should not be preempted and should be made by locally elected leaders in coordination with state and federal officials; and

BE IT FURTHER RESOLVED that the National League of Cities (NLC) calls on Congress to provide direct assistance to the City of Flint, Michigan, and for EPA and the federal government to work directly with local officials, for as long as necessary, to resolve the drinking water crisis through the provision of safe drinking water and to support economic recovery; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to provide long-term support for the families affected by lead drinking water contamination in Flint, Sebring and nationwide, including in the areas of education and mental health; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support robust funding for all water infrastructure funding mechanisms, including the Clean Water and Drinking Water State Revolving Loan Fund programs and the Water Infrastructure Finance and Innovation Act (WIFIA); and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure funding, including protecting the tax-exempt status of municipal bonds; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support grants to local governments for the replacement of lead service lines, testing, planning, corrosion control, and education, for schools to test for lead in their drinking water, and to assist small and disadvantaged communities in complying with the Safe Drinking Water Act.

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4 “2017 Infrastructure Report Card,” American Society of Civil Engineers (March 2017), available at: https://www.infrastructurereportcard.org/
WHEREAS, the nation’s water infrastructure systems are significant assets that protect public health and the nation’s water resources and well-maintained systems contribute substantially to our citizens’ general welfare and the nation’s prosperity; and

WHEREAS, federal loan and grant assistance to cities and local governments to assist in maintaining and upgrading water infrastructure systems has continued to decline in real dollars since the mid-1990s; and

WHEREAS, local governments are responsible for the vast majority of investment in water and sewer infrastructure, investing over $1.7 trillion between 1956-2010\(^1\) (not adjusted for inflation) and over $115-118 billion in 2014-2015 alone\(^2\); and

WHEREAS, tax-exempt municipal bonds are the primary funding mechanism for state and local government infrastructure projects with three-quarters of the total United States investment in infrastructure being accomplished with tax-exempt financing; and

WHEREAS, an estimated $271 billion is needed to meet current and future demands over the next 20 years for upgrading the nation’s wastewater infrastructure and an estimated $1 trillion is necessary to maintain and expand service to meeting drinking water demands over the next 25 years\(^3\); and

WHEREAS, with much of our nation’s water infrastructure was built in the post-World War II period—and some of it is more than 100 years old—there are an estimated 240,000 water main breaks each year\(^4\);

WHEREAS, this funding gap does not include anticipated expenditures to comply with new Clean Water Act and Safe Drinking Water Act mandates, consent decrees, new responsibilities and costs relating to water security and source water protection, additional needs for re-use of treated effluent, or impacts due to climate change; and

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WHEREAS, municipal resources dedicated to water infrastructure are currently overwhelmingly directed to comply with new complex federal mandates and are therefore unavailable for critical maintenance, repair, and rehabilitation needs; and

WHEREAS, public-private partnerships can provide options for communities to access sources of private capital to meet water infrastructure needs, but are not a viable for all communities or all types of projects; and

WHEREAS, private activity bonds or tax exempt facility bonds are a form of tax-exempt financing that can be used for water infrastructure projects that utilize private capital instead of public debt and shift the risk and long-term obligation from the municipality to the private equity partner; and

WHEREAS, Congress provides to states a capped annual allocation ("volume cap") of tax exempt bonds, based on population, but historically, most of the tax-exempt bonds are issued to short-term projects such as housing and education loans; and

WHEREAS, Congress has previously enacted legislation eliminating the state volume cap for such municipal infrastructure projects such as airports, landfills, and ports; and

WHEREAS, eliminating the state volume cap is estimated to make available $5-6 billion in private capital for water projects, while the cost in foregone revenue to the federal government is nominal.5

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) continues to urge Congress and the Administration to reverse the decline in federal financial participation in funding municipal water infrastructure needs by developing a financial option that strikes the right balance between local responsibility and federal assistance; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support robust funding for water infrastructure funding through the Clean Water and Drinking Water State Revolving Loan Fund programs and to reauthorize the programs; and

BE IT FURTHER RESOLVED that Congress should provide full appropriation to the Water Infrastructure Finance and Innovation Act (WIFIA) for loans and loan guarantees for water infrastructure projects, as well as permanently establish the program beyond a pilot program; and

BE IT FURTHER RESOLVED that NLC supports legislation removing the federal volume cap on tax-exempt bonds for water and wastewater infrastructure projects; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure funding and financing, including protecting the tax-exempt status of municipal bonds; and

BE IT FURTHER RESOLVED that Congress and the Administration should enact new legislation which provides adequate and reliable long-term funding for municipal water infrastructure needs to help close the funding gap.
WHEREAS, in 2012 the U.S. Environmental Protection Agency (EPA) issued its *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (“Integrated Planning Framework”), which was intended to help local governments seek more efficient and affordable solutions to stormwater and wastewater issues and meet the requirements of the Clean Water Act (CWA) in a more flexible, affordable, and cost-effective manner; and

WHEREAS, in 2014 EPA issued its *Financial Capability Assessment Framework for Municipal Clean Water Act Requirements* (“Financial Capability Framework”), which allows the consideration of additional information, such as socio-economic factors, in determining the financial capability of residents and a community when developing compliance schedules for municipal projects necessary to meet CWA obligations; and

WHEREAS, these two policy frameworks demonstrate an awareness by EPA of the challenges local governments face in meeting CWA requirements, as well as the conflicts they face in balancing environmental protection with economic feasibility; and

WHEREAS, at a time where local financial resources are increasingly limited and the ability of local governments to raise revenue is also limited, local governments are facing costly unfunded federal and state regulatory requirements forcing them to make tough decisions about the services and maintenance that they can afford; and

WHEREAS, proposed federal budget cuts to critical local programs would further reduce the ability of cities and towns to meet the everyday needs of their community; and

WHEREAS, local water and sewer rates and stormwater fees are rapidly becoming unaffordable for many fixed- and low-income citizens, placing a disproportionate financial burden on these vulnerable populations who live at or below the poverty level; and

WHEREAS, the current reliance on two percent of median household income for wastewater and combined sewer overflows controls is a misleading indicator of a community’s ability to pay, and often places a particularly high burden on residents at the lower end of the economic scale; and

WHEREAS, green infrastructure, such as constructed swales, wetlands, green roofs, infiltration planters, rain gardens, and enhanced floodplains and riparian buffers, augmented by permeable pavers, rain barrels, and trees, is a valuable part of water infrastructure systems that can help local governments manage runoff, extend the life of local infrastructure, save the city and taxpayers money, and serve as an economic development tool.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) urges Congress to pass legislation to codify the U.S. Environmental Protection Agency’s 2012 *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*; and
BE IT FURTHER RESOLVED, that NLC calls on EPA to reaffirm its commitment to working with local governments as partners and co-regulators in achieving the goals of the Clean Water Act in a more affordable and flexible manner through the use of the permitting process, rather than consent decrees, and utilizing green infrastructure techniques; and

BE IT FURTHER RESOLVED, that EPA should work with local governments to develop local integrated plans through the permit process that prioritize investment in wet weather overflows and flooding collectively, rather than individually, and that comprehensively deal with wastewater and stormwater investments, as well as unfunded mandates; and

BE IT FURTHER RESOLVED, that NLC calls on EPA to share integrated planning best management practices from across the country with all communities that are interested in pursuing an integrated planning approach; and

BE IT FURTHER RESOLVED, that NLC calls on EPA to revise the “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (Feb. 1997) to eliminate reliance on median household income as the critical metric for determining investment level and to allow for the consideration of additional information, such as socio-economic factors, consistent with the Agency’s 2014 Financial Capability Framework.
ENERGY AND ENVIRONMENT LEGAL UPDATE

NOTE: The first three cases below, filed in three different circuit courts, as well as a fourth case filed in the Sixth Circuit, which NLC is not participating in, revolve around the question, should groundwater pollution be federally regulated under the Clean Water Act National Pollutant Discharge Elimination System program, rather than by the state, and, if so, under what circumstances? Even though all cases have different players, the base question is the same: Does the federal government have the authority and the responsibility to federally regulate groundwater pollutants that ultimately release to a “waters of the U.S.”?

These cases are relevant for local governments who oversee municipal wastewater and stormwater management responsibilities. It is possible the cases may result in a split decision, which raises the odds for Supreme Court review.

**Hawaii Wildlife Fund et al. v. County of Maui – Ninth Circuit**

In 2016, NLC joined an International Municipal Lawyers Association *amicus brief* in the case *Hawaii Wildlife Fund et al. v. County of Maui* arguing that groundwater is neither a “Waters of the U.S.” nor a point source and that expanding the National Pollutant Discharge Elimination System (NPDES) program to include the migration of pollutants through groundwater is an expansion of the existing Clean Water Act regulatory program. *Oral arguments* in the case were heard in October 2017.

In February, the Ninth Circuit Court of Appeals held that any discharge of pollutants to Waters of the United States through groundwater (or any other medium) that is “fairly traceable” to a point source falls within the NPDES program and requires a Clean Water Act permit. The Court also found that the County of Maui was liable for violating the Clean Water Act even though the State of Hawaii had declined to issue the county a permit. NLC supported the County of Maui in its request for a rehearing *en banc* with the 9th Circuit, which the court denied. As a next step, the County of Maui is planning to file a petition for appeal with the U.S. Supreme Court, which NLC intends to support.

**Local Government Impacts:** This case appears to expand the coverage of the CWA significantly by using a novel “conduit” theory of liability. Under the conduit theory, according to the district court, any release of pollutants into groundwater that migrates to hydrologically-connected navigable waters violates the CWA. This theory and the 9th Circuit decision could have far-reaching implications and greatly expand the types of facilities and projects that are required to obtain an NPDES permit. This could include water supply entities and municipalities that are pursuing groundwater recharge projects, rely on groundwater storage, or use retention basins to hold or treat water, as well as projects involving underground storage tanks, surface impoundments, landfills, and pipelines that may release pollutants to groundwater that is hydrologically connected to navigable waters.

The case could significantly change the CWA landscape as it applies to groundwater, and extend the interconnected adjacent waters theory to a point where the CWA is being applied to groundwater. This extension should be a concern for any city that discharges to groundwater.
Additional impacts of this extension include local water reuse and/or recycling projects, particularly in states where there are drought conditions, such as western states. Cities and water districts or utilities in Florida could also be impacted by the ruling in this case because of the state’s high groundwater table and the local use of injection wells.

**Background:** The County of Maui operates a wastewater treatment facility that filters and disinfects the sewage it receives then releases the wastewater into four onsite injection wells. The injection wells are long pipes into which the wastewater is pumped. The wastewater then travels approximately 200 feet underground into a shallow groundwater aquifer beneath the facility. It is undisputed that wastewater from these wells eventually makes its way into the Pacific Ocean and that the County was aware of that fact for some time. Specifically, a 2013 tracer study, conducted on behalf of the EPA, the Army Corps of Engineers and the Hawaii Department of Health, confirmed that treated wastewater from the County’s underground injection control wells reached the ocean roughly half a mile south of the treatment plant. On average, it took approximately 10 months for groundwater containing County wastewater to enter the ocean along approximately 2 miles of coastline.

Citizen groups sued, claiming the County needed a NPDES permit for its injection of treated wastewater into the underground injection control wells. The County did eventually apply for a NPDES permit.

**Upstate Forever and Savanna Riverkeeper v. Kinder Morgan Energy Partners – Fourth Circuit**

NLC signed onto an amicus brief in the case of *Upstate Forever and Savannah Riverkeeper v. Kinder Morgan Energy Partners*. The facts in the case are similar to that of *Hawai‘i Wildlife Fund et al v. County of Maui*. In April, the Fourth Circuit held that Kinder Morgan was liable for violating the Clean Water Act. NLC supported Kinder Morgan in its petition for a rehearing en banc before the Fourth Circuit, but that petition was denied. As a next step, Kinder Morgan is considering a petition for appeal with the U.S. Supreme Court, which NLC is likely to support.

**Background:** While the *Kinder Morgan* case does not involve a local government (as in the *Maui* case), the case has direct implications on local governments. In *Kinder Morgan*, environmental groups alleged that a leak from a gasoline pipeline caused petroleum to migrate through the subsurface into various creeks and wetlands. The environmental groups argue that the company was discharging pollutants without a Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES) permit into “waters of the U.S.” The district court ruled in favor of *Kinder Morgan*. In its decision, the district court ruled that the subsurface migration of pollutants was not a point source discharge. Furthermore, the court said that the CWA does not authorize citizen suits for nonpoint source pollution.

**26 Crown Associates v. Greater New Haven Regional Water Pollution Control Authority, City of New Haven – Second Circuit**

NLC signed onto an amicus brief in the case 26 *Crown Associates v. Greater New Haven Regional Water Pollution Control Authority, City of New Haven*, led by New York City, arguing
that groundwater is not a point source, nor is groundwater a water of the United States, and that any wastewater that may enter soil and groundwater is beyond the scope of Clean Water Act liability and permitting requirements. The 2nd Circuit heard oral arguments in the case in April and a decision is expected in the coming months.

**Background:** Plaintiffs, who own, lease, and manage an apartment building in downtown New Haven allege that the City’s sewer system resulted in continuing and chronic backflows of sewage into the basement of 26 Crown Street. The Plaintiffs argue that wastewater and untreated sewage seeps from basements into groundwater and then migrates into hydrologically-connected navigable waters, such as the Long Island Sound, resulting in a violation of the Clean Water Act (CWA).

**District Court Decision:** In July 2017, the federal district in Connecticut issued a strong rebuke to the groundwater conduit theory. The judge dismissed Plaintiffs’ CWA claims for the following reasons:

- The CWA requires that there be a discharge of pollutants to navigable waters, and the bare facts alleged by plaintiffs do not give rise to a plausible inference that any backflows of sewage onto their property have reached the Long Island Sound more than half a mile away.
- Allegations of the pollution of navigable waters by means of passive ground water migration do not suffice as a matter of law to state a claim under the CWA.

The court held that such an addition is a nonpoint source pollution. It explicitly addresses the key concepts NLC has advanced in the Fourth and Ninth Circuits cases.

**State of Ohio et al. v. U.S. Army Corps of Engineers et al. – Sixth Circuit**

**National Association of Manufacturers v. Department of Defense – U.S. Supreme Court ("Waters of the U.S.")**

The legal questions in the cases involve 1) a jurisdictional question over which court has the authority to review the merits of the 2015 Clean Water Rule and 2) a merits question over the 2015 Clean Water Rule. The U.S. Supreme Court recently ruled on the jurisdiction question, sending the case to the district court to hear merit arguments.

In October 2015, the U.S. Court of Appeals for the 6th Circuit issued a temporary nationwide stay of the U.S Environmental Protection Agency and U.S. Army corps of Engineers’ Clean Water Rule (aka “Waters of the U.S.”). In that 2-1 split decision, the court questioned not only the substantive nature of the rule, but also the rulemaking process. The decision put a temporary nationwide hold on implementation of the rule while the litigation against the rule proceeds. The nationwide stay followed a partial preliminary injunction of the rule in 13 states that was issued by a North Dakota District Court judge in August 2015.

However, before ruling on the merits of the “Waters of the U.S.” rule itself, the courts first had to decide if the district court or the appeals court had jurisdiction on the matter. In January, the U.S. Supreme Court unanimously ruled in the case National Association of Manufacturers v.
Since the Supreme Court’s decision, a North Dakota district court judge’s injunction went back into effect covering 13 states: North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, and New Mexico. Additionally, on June 8, a Georgia district court judge issued an injunction covering 11 states: Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia, Wisconsin and Kentucky. The rule is now halted in a total of 24 states.

The injunctions won’t have any immediate impact, however, as the Trump administration has already delayed the rule’s implementation by two years. The injunctions would serve as a backstop, should the two-year delay be overturned. It is currently being challenged in two district courts in New York and South Carolina.

**Local Government Impacts:** The question of jurisdiction is important to cities and towns because, as the state of Ohio, points out in its amicus brief asking the Court to hear this case, if these (and other) regulations must be reviewed by federal courts of appeals within 120 days following their enactment and are not, they cannot be challenged in a later enforcement proceeding. But whether states and local governments and others object to a regulation will often depend on how it is applied. So potential future litigants may have no reason to challenge a regulation until long after the 120-day window has passed, but will be barred from doing so in the future. The determination that the district courts have jurisdiction in these kinds of cases is a win for local governments.

[Read more](#) about what the Supreme Court’s ruling means for the future of the Clean Water rule.

**State of West Virginia et al. v. U.S. Environmental Protection Agency (Clean Power Plan) – DC Circuit**

In September 2016, the DC Circuit Court of Appeals heard oral argument in the case of West Virginia et. al. v. U.S. Environmental Protection Agency (EPA) on the Administration’s Clean Power Plan, which would reduce carbon emissions from power plants by 32 percent below 2005 levels by 2030. The rule is currently under a nationwide stay while under legal review. In April 2017, the court put the case in a temporary abeyance while the Trump administration rethinks the Clean Power Plan. As long as the case is on a court’s docket—active or in abeyance—the Clean Power Plan cannot take effect.

There are several legal questions that the DC Circuit will consider if and when the case moves forward, primarily 1) whether EPA has overstepped its jurisdictional bounds and b) whether, if EPA is acting within its authority, the Clean Power Plan is an impermissible interpretation of the Clean Air Act and/or is arbitrary and capricious.

NLC, the U.S. Conference of Mayors, more than 50 city and county governments from 28 states, and the mayors of Dallas, Knoxville, and Orlando, filed an amicus brief with the DC Circuit Court
of Appeals explaining why the Clean Power Plan is critical to the safety and economic security of local communities across the United States.

Ahead of oral argument, NLC issued a statement renewing support for the Clean Power Plan, and in particular the Clean Energy Incentive Program, a voluntary early-action program of the Clean Power Plan designed to encourage early investments in renewable energy and energy efficiency projects. In particular, it focuses these investments in low-income communities, where families carry a higher than average energy burden and are disproportionally affected by climate change.

**Background:** The U.S. Environmental Protection Agency’s Clean Power Plan sets national standards for greenhouse gas pollution from existing power plants, America’s largest source of emissions, and allocates each state a GHG emissions budget for its power sector. Twenty seven states filed lawsuits in the D.C. Circuit Court of Appeals challenging the Clean Power Plan, however, at least 11 of which started to develop state implementation plans to comply with the rule. NLC supported the proposed rule and urged Congress’s support for the rule and the Paris Climate Agreement. The Clean Power Plan rule formed the basis for NLC’s participation in COP21.

**Local Government Impacts:** Local governments have a tremendous stake in comprehensive climate protection because local governments are on the front lines of delivering services and protecting citizens. Moreover, local governments can speak directly to the benefits of climate protection: from the economic and public health benefits that have arisen from highly innovative, “bottom-up” clean energy efforts to the extensive cost of building more resilient infrastructure to support more climate secure communities. As the proving grounds for concrete clean energy initiatives, energy efficiency improvements, adaptation planning and numerous other experiments in climate governance—and as parties seeking a state and federal policy environment that will complement these efforts—local governments can provide an authoritative perspective on the cost-minimizing, flexible approach applied in the Clean Power Plan.

**Upper Missouri Waterkeeper v. EPA – District Court**

In 2014, Montana promulgated numeric nutrient criteria (NNC) for phosphorus and nitrogen for the state’s wadeable streams and certain additional specified waters. Both EPA and Montana understood that most NPDES dischargers would be unable to meet the very low in-stream limits. Thus, at the same time Montana submitted the criteria to EPA for approval, the state also submitted an application for a general variance. EPA approved both in Feb 2015.

The Montana general nutrient variance is not waterbody- or permittee-specific, but rather applies to all NPDES permittees discharging to the state’s wadeable streams and is based solely on substantial and widespread economic and social impact:

The EPA reviewed Montana’s basis for determining that it is reasonable to grant multiple public and multiple private dischargers throughout the state with general variances of up to 20 years based on demonstration that it is infeasible to meet water
quality-based effluent limits based on NNC (and by extension infeasible to attain the designated use for that limited time) “end-of-pipe” because meeting such limits would cause substantial and widespread economic and social impacts (see 40 CFR § 131.10(g)(6)) on a statewide basis.

In May 2016 an environmental activist group, Upper Missouri Waterkeeper, filed litigation against EPA challenging the approval of the variance. They seek to have EPA’s approval overturned as arbitrary and capricious and an abuse of discretion under the Administrative Procedure Act. Without the variance, all NDPES dischargers would be required to comply with the state’s low in-stream nutrient criteria concentrations for phosphorus and nitrogen. If the federal district court strikes down EPA’s approval of the variance, the precedent will have immediate impacts in Montana and far-reaching implications for variances across the country.

The Montana League of Cities and Towns is participating in this case as an intervening party supporting the EPA approved variance. A hearing on the case was held in July 2017, but since that time, the Montana Department of Environmental Quality adopted a revised rule that could render the case moot. A hearing in that regard was held before the District Court in November 2017. At that time, Waterkeeper filed a motion to amend its Complaint to reflect the same legal challenges to the new rule, and the court accepted that motion in February. The court has yet to issue a new briefing schedule. NLC is monitoring this case.
Support Modernization of Clean Water Act NPDES Permit Terms

CASA supports the extension of National Pollutant Discharge Elimination System (NPDES) permit terms from five to ten years. This change would significantly benefit local public agencies by allowing for enhanced planning and efficient permitting of facilities and, give agencies the time needed to comply with existing regulatory requirements before imposition of new mandates. The Trump Administration’s recent infrastructure proposal calls for extending NPDES permit terms from 5 to 15 years, a concept which CASA fully supports as a reasonable approach to reflect today’s challenges and priorities for Clean Water Act compliance.

BACKGROUND AND ISSUE STATEMENT

Today’s water quality needs require new ways of doing business and innovation in the way we achieve water quality improvements. NPDES permits are increasingly stringent, and the treatment technologies and approaches necessary to meet permit limits have become exceedingly expensive and time intensive to implement. Project construction timelines can extend more than a decade, as public agencies seek to implement massive clean water infrastructure projects. These improvements require extensive environmental review, as well as compliance with labor agreements, project design, scheduling, and technology acquisition. Given this reality, in many cases local public agencies have not yet completed the upgrades necessary to comply with their prior permit when they are hit with new terms and requirements. At the same time, it is widely understood that the nation’s most challenging water quality problems do not derive from traditional point source discharges. The five-year renewal cycle also results in resource burdens on local agencies, USEPA and the state permitting authorities, which must prepare and issue the permits.

SOLUTION

Congress should update NPDES permit terms to reflect the realities of today.

- Extended NPDES permit terms would allow for enhanced planning and efficient permitting of facilities. With this change, states could direct more resources to nonpoint and watershed-based solutions.
- This change would benefit local public agencies, states and the public. Agencies would have adequate time to comply with existing regulatory requirements before imposition of new mandates. Agencies could better plan and more efficiently construct new technologies and facilities. States could direct more resources to nonpoint and watershed-based solutions.
- Existing permit opener provisions allow for new conditions to be inserted where needed to protect water quality prior to permit expiration.

ACTION

CASA encourages incorporation of the Trump Administration’s proposal to extend NDDES permit terms as part of any forthcoming infrastructure package. In the alternative, we encourage introduction of an amendment to Clean Water Act Section 402(b)(1)(B) extending NPDES permit terms from five to ten years.
NPDES PERMIT TERMS UNDER THE CLEAN WATER ACT

ISSUE: Modernize the Administrative Process of Clean Water Act NPDES Permit Terms

The Clean Water Act requires publicly owned clean water agencies to secure a permit to discharge highly treated wastewater and serve their function of protecting the environment and public health. National Pollutant Discharge Elimination System (NPDES) permits expire five years from the time of issuance by either a state or USEPA. This five-year renewal cycle results in financial and technical burdens on local agencies and the permitting authorities, which must prepare and issue the permits. The five year term, established in 1972, does not reflect the realities of addressing today’s clean water challenges and restricts flexibility to address the highest clean water priorities.

RESPONSE: Update Permit Terms to Reflect Realities of Today

- Clean Water Act, Section 402(b)(1)(B) should be amended to allow for ten (10) year permit terms.
- Ten year permit terms would facilitate the effective use of our limited water quality resources, allowing local agencies and permitting authorities to focus on and address today’s water quality needs, which have moved beyond the traditional point sources that were the focus in 1972.
- This change would benefit local public agencies, states and the public. Agencies would have adequate time to comply with existing regulatory requirements before imposition of new mandates. Agencies could better plan and more efficiently construct new technologies and facilities. States could direct more resources to nonpoint and watershed-based solutions. At the same time, permit reopener provisions already provided by regulation would allow for new conditions to be inserted where needed to protect water quality prior to permit expiration.

BACKGROUND

In 1972, the Clean Water Act was enacted with provisions requiring permit terms of no more than five years for point source dischargers. These terms were predicated on the priority for agencies to upgrade treatment facilities to secondary treatment standards, and conformed with technology lifecycles and infrastructure expectations of the era. The water quality needs of today require new ways of doing business to bring innovation to the way we make water quality improvements. NPDES permits are becoming more restrictive, and the treatment technologies necessary to meet permit limits have become exceedingly expensive and time intensive to implement. Given this reality, local public agencies have often not yet completed the upgrades necessary to comply with their prior permit when they are hit with new terms and requirements. Examples of the policy disconnect between the realities of today’s water treatment needs and decades old administrative process abound:

- Project construction timelines can extend more than a decade as public agencies seek to implement massive clean water infrastructure projects that must meet extensive environmental, tribal, historical and antiquities reviews as well as labor agreements, project designs, scheduling, and technology acquisition.
- State and federal permitting agencies devote an overwhelming amount of resources to administrative reviews and approvals necessitated by a constant treadmill of permit applications. This diverts limited public resources from real problems such as nonpoint sources, enforcement, and other needs to improve water quality.
- This treadmill effect means that local agencies must expend time and money to prepare for permit renewals even as they try to comply with the existing permit. Permits can be administratively extended, but USEPA discourages states from having a backlog of pending renewed permits. In addition, the open-ended extension process lacks certainty for the permitted entity and the public alike.
**Water affordability is not just a local challenge, but a federal one too**

*By: Joseph Kane, Senior Research Associate and Associate Fellow, Metropolitan Policy Program, Brookings*

America is facing a water infrastructure crisis.

From [overwhelmed sewers](#) in Houston to [leaking pipes](#) in Chicago to [water main breaks](#) in Boston, the scale is national, and the challenge is growing. Local water utilities face [billions of dollars in costs](#) to replace pipes, upgrade plants, and address other failures in their systems, all while dealing with increasingly extreme storms and mounting concerns regarding water quality and quantity.

Investing more in the country’s water infrastructure would help—which the Trump administration and other federal leaders *appear to be considering in 2018*—but simply throwing more money at these problems does not necessarily address another enormous challenge facing utilities and the communities they serve: water affordability.

To keep up with mounting infrastructure costs, utilities have been scrambling to generate more revenue. And in many places, that has meant significantly higher water rates for households, with the average monthly residential bill rising by nearly 50 percent since 2010 and far faster than incomes. As those rates rise, water affordability becomes a core issue—not just in specific cities like Flint, but for lower-income households in *all types of regions*.

With states and localities responsible for more than 95 percent of public spending on water infrastructure each year, it’s not surprising that conversations concerning water investment and affordability *often start and end at a regional level*. However, at a moment when infrastructure is gaining more national visibility, federal leaders have an opportunity to provide greater policy direction and financial support.

They can do so in two primary ways: *(1) by establishing clearer metrics and guidelines for utilities as they strive for more reliable, affordable service,* and *(2) by offering additional financial and technical support for utilities to develop customer assistance programs.*

The first federal strategy would mark a crucial step in defining the extent of the affordability challenge nationally, including greater consistency in monitoring and addressing it. Since the nation’s 52,000 water utilities are so highly localized and fragmented, they can struggle to measure what water affordability means in their communities and *develop strategies in support of more affordable service*. At the same time, utilities may not always weigh their revenue needs alongside broader equity concerns when considering rate adjustments, including the effects on customers across all income levels.

While some utilities are already taking the lead to improve their asset management and better quantify water affordability, many others are not. Instead, utilities may follow what little guidance exists at the federal level, namely from the U.S. Environmental Protection Agency (EPA), which *narrowly and inaccurately* focuses on water bills as a share of median household income (MHI). For instance, according to current EPA guidance, combined drinking water and
wastewater bills are affordable if they do not exceed 4.5 percent of MHI; however, that may not be the case in reality, particularly for lower-income households.

This approach has increasingly come under fire among academics and practitioners alike, and the time is ripe for federal leaders—in EPA and Congress—to devise a new approach. A recent congressionally-directed report from the National Academy of Public Administration has offered some practical recommendations, including the need to consider a broad range of social and economic concerns to gauge water affordability in different neighborhoods. Likewise, the House and Senate have introduced bills to more clearly articulate the types of metrics, tools, and policy frameworks that will help communities provide more affordable water. EPA needs to finalize and implement new guidelines, working in concert with utilities, researchers, and other local groups in their development.

The second federal strategy—focused on customer assistance programs—would help build additional financial capacity for utilities as they look to accelerate their affordability efforts. CAPs, in short, are utility-sponsored programs aimed at helping lower-income customers pay their water bills, and have taken on greater importance in several cities, including Philadelphia, Washington, and Detroit. In some cities like Baltimore, CAPs can represent a lifeline to customers who may even lose their homes after falling behind on their water bills.

However, the creation and proliferation of CAPs remains slow and uneven across the country. For example, utilities often form CAPs on an ad-hoc basis with minimal guidance or financial support. Meanwhile, some states have legal barriers in place that preempt the local formation of CAPs. Finally, while EPA provides technical resources regarding CAPs and has partnered with communities in support of greater financial capacity, little federal action appears elsewhere to strengthen CAPs.

Congress, in particular, is well-positioned to provide more robust support for CAPs. Although some isolated proposals have emerged over the past couple years addressing CAPs, they have not gained traction up to this point; over the coming months, however, renewed conversations on federal infrastructure investment may provide an opportunity to re-consider these ideas. Models from other sectors, such as the Low Income Home Energy Assistance Program, would offer a good place to start. While LIHEAP depends on annual appropriations to the U.S. Department of Health and Human Services, which then distributes funding to states, developing and applying a similar approach for targeted water assistance could work.

Undertaking all of these steps, of course, is easier said than done, and federal leaders will not be able to address the country’s water affordability challenge by themselves. The nuance of this challenge ultimately depends on local action; utilities, along with other civic and community partners, need to carefully evaluate affordability concerns in their own markets, as they consider different types of financial assistance and rate adjustments.[i]

However, the federal role should not be easily dismissed either, particularly as Congress considers more infrastructure investment and, ideally, develops a vision for how infrastructure can support greater economic opportunity. An influx of federal funding for water
infrastructure—through targeted project support, state revolving funds, or the nascent WIFIA program—would help reduce the financial burden many utilities are confronting and shifting to their ratepayers. Beyond additional direct financial support, federal leaders can also establish a clearer national policy direction and make it easier for utilities and communities to pioneer new programs in support of affordable water.

[i] For more background on new ways in which cities are measuring water affordability and considering rate adjustments, see this excellent analysis by Manny Teodoro from Texas A&M.
Frequently Asked Questions

What is the purpose of the Low-Income Sewer and Water Assistance Program (LISWAP) Act of 2017?
- LISWAP aims to help low-income families across America pay for high sewer and water bills. The Act does this by directing the Environmental Protection Agency (EPA) to establish a pilot program awarding at least ten grants to assist low-income households with bill repayment.

Who may apply for grants under LISWAP?
- Any public utility that owns or operates a public water system through a consent decree to remain in compliance with section 301(a) of The Clean Water Act.

Which households are eligible for LISWAP Assistance?
- Household eligibility is based on income or receipt of other federal benefits.
  - *Eligibility Based on Income:* Grantees have the option of setting LISWAP eligibility for households at or below 150% of the federal poverty income guidelines, or if greater, 60% of the state median income. States can adopt lower income limits, but no household with income below 110% of the poverty guidelines may be considered ineligible.
  - *Eligibility Based on Receipt of Other Benefits:* Grantees may separately choose to make eligible for LISWAP assistance any household of which at least one member is a recipient of Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), benefits under the Supplemental Nutrition Assistance Program (SNAP), or certain needs-tested veterans’ programs.

Is LISWAP necessary?
- Yes. As municipalities work to comply with The Clean Water Act and fulfill the terms and conditions outlined in consent decrees entered with the EPA, the cost of compliance will place a high burden on low-income ratepayers. In Ohio, the Northeast Ohio Regional Sewer District approved a rate increase of 75 percent in Cuyahoga County over a five-year period. Sewer rates in the City of Akron (Summit County) increased by 69 percent in 2015 alone.

Will the program be evaluated?
- Yes. No later than one year after the date of enactment, the EPA administrator shall transmit a report to Congress on the results of the pilot program.

Spread the word: #LISWAP2017
www.fudge.house.gov
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Statement for the Record
House Committee on Transportation & Infrastructure
Subcommittee on Water Resources and Environment
Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning

May 18, 2017

Chairman Graves and Ranking Member Napolitano:

Every American deserves access to clean, affordable water. Without hesitation, clean water should be viewed as a basic human right. For too long America has neglected our water infrastructure, leading to breakdowns in clean water access and skyrocketing water bills for too many people. As municipalities work to comply with the Clean Water Act and fulfill the terms and conditions of Environmental Protection Agency (EPA) consent decrees, the cost of critical infrastructure updates are passed onto the ratepayer, placing a high burden on low-income households.

I greatly appreciate the opportunity to discuss the issue of affordability as you discuss integrated planning and the need for incorporation of green, cost-effective technologies in sewer and wastewater upgrades. In the wake of the poisoning of residents in Flint, Michigan, and the increasing number of reports of water rapidly becoming unaffordable, there are serious concerns about the ability of communities with large numbers of low-income households to afford needed improvements to their sewer and wastewater systems. Recent numbers show that 14 million U.S. households cannot afford their water bills. Tens of thousands of homes in Detroit have had their water shut off due to inability to pay the water bills. Thousands of homes in Flint are facing the prospect of having their water shut off for unpaid bills, bills for water that has and is poisoning them. In my own district, the City of Cleveland faces a 41 percent, five-year rate hike that began in summer 2016. Sewer rates in the City of Akron (Summit County) increased by 69 percent in 2015 alone. threatening the ability of many to afford water.

This unconscionable crisis is the reason I introduced the Low-Income Sewer and Wastewater Assistance Program (LISWAP) Act of 2017. LISWAP would establish a pilot program within EPA to award grants to assist low-income households with their water bills. Socioeconomic status should in no way determine one’s ability to access clean, safe drinking water or sanitation. Congress must find a way to alleviate the crippling costs borne by American households, all for the failure to properly invest in water infrastructure over the last several decades.

Urban districts are not alone in this. According to a recent paper from researchers at Michigan State University, water prices will have to increase by 41 percent in the next five years to cover the costs of infrastructure improvements and climate change adaptation. A number of recent surveys of wastewater and drinking water utilities throughout the country show that utilities have
been increasing their rates at double the rate of inflation for several consecutive years in an effort to keep pace with new environmental compliance obligations and to upgrade outdated infrastructure. These rising costs will mean nearly 41 million households – nearly one-third of U.S. households – will not be able to afford a basic life necessity.

**More than a third of Americans are at risk of losing affordable drinking water**

LISWAP addresses the growing water affordability challenge and provides a sustainable path forward for community investment in their water and wastewater infrastructure, while also ensuring low-income households do not bear a disproportionate financial burden. I look forward to working with the Committee to improve our water and wastewater infrastructure, and ensure that all families can afford safe, clean water.

*Sincerely,*

Marcia L. Fudge
TO: Energy, Environment and Natural Resources Committee Members

FROM: Corinne Rico, Fellow, Sustainable Cities Institute, National League of Cities

RE: Chinese Import Restrictions on Solid Waste and Recyclable Materials

Earlier this year China began enforcing a series of regulations that dramatically limit the contamination of the recyclable materials it will import. The new rules have unsettled global recycling markets since China previously received more than half of the world’s exports of recyclable commodities. Contamination is limited to just 0.5% by weight for commodities such as mixed paper and mixed plastics, the two types of commodities whose restriction most affects municipal recycling systems.

While China’s new policy is not an outright ban on recycling imports, the contamination limits are so low that no American processors are realistically able to meet the new standards. As a result prices have plummeted for many types of recyclable commodities and revenues are dropping for cities, haulers, and processors who rely on these sales. Across the United States, bales of recyclable commodities are piling up because they are too dirty to meet the new requirements. There remains a great deal of uncertainty as the recycling industry grapples with these rule changes, but China is not likely to reverse these policies.

There is no doubt that the cost of processing recyclable materials is increasing, and someone will need to pay for it. Cities throughout the US will need to reevaluate their solid waste and recycling policies in order to maintain viable municipal materials management systems.

The impact of the new policy is beginning to trickle down to municipalities across the country. The issue is affecting different cities in different ways, depending on the structure of the existing local or regional waste management and recycling system, how much of the system is private versus public, the type of contracts cities have with their haulers and processors, and the local or regional opportunities for the processing and sale of commodities. Our research to-date shows that early outcomes include:

- Short-term contracts and risk-sharing contract modifications in an effort to minimize losses. In some cases the existing contract is simply untenable. Cities and governments have had to make adjustments in order to provide waste and recycling services at all.
- Development of unconventional markets. In China’s absence other markets are beginning to import dirtier recyclables, primarily in less developed and less well-regulated countries in Southeast Asia.
- Stockpiling materials and hoping for positive future revenue. Some processors have the space necessary to hold excess material while the market continues to adjust.
- Landfilling or incinerating materials for energy. When the excess commodities truly becomes a cost burden instead of a potential revenue source, some more desperate processors have resorted to landfilling or incinerating materials for energy.
- Cleaning up contamination. Some cities have revised their lists of accepted recyclables to eliminate non-marketable materials and to minimize contamination in commingled bins, while others have added more staff to collection and sorting operations. Almost all cities have significantly increased efforts to educate residents on proper recycling methods.
Local governments are struggling to balance a desire (and in some cases, a mandate) to divert more materials from waste to recycling streams while the cost of cleaning and marketing existing recycling streams has skyrocketed. For U.S. cities, this is both a challenge and an opportunity.

**Questions for Discussion**

1. Has your city experienced significant problems as a result of National Sword, the Chinese restrictions on recycling imports? If so please describe.

2. What, if anything, has your city done in response (this may include contract modification, new or different fees, incineration, landfilling, additional resources for sorting, finding new purchasers, other?)

3. What tools, research, or other resources would you like to see from the NLC to help your city address these issues and promote more sustainable waste management?
**Why is this system so important to the region?**

The MKARNS provides year-round navigation, hydropower, recreation, environmental and other benefits. The system’s eighteen locks and dams enable average annual shipments of 11.6 million tons of cargo at 3.03 billion ton-miles. The system’s economic strength, looking just at ports and shippers, generates $4.7B in annual sales and supports over 27,100 jobs. When hydropower, recreation and other benefits are included these numbers climb to $8.5B in annual sales, over 55,800 jobs and $289M in tax revenues for the region. In 2018 the MKARNS achieved a USACE “high use system” designation due to the amount of ton-miles, which improves the system’s competitive status during budget development.

**How is this value-added to our stakeholders?**

Shipping through the navigation system is more economical than other means such as rail and commercial trucking, and reduces traffic congestion on our interstates. One 15 barge tow can carry up to 22,500 tons of cargo, which is equivalent to 870 semi-trucks. That tow is less than a quarter mile in length on the river in comparison to a line of trucks over 34 miles in length on the roadway. This waterway is the gateway from the central plains and Midwest to the Mississippi River and down to the Gulf of Mexico, through New Orleans.

**What does the FY19 hold for SWD in this area?**

For navigation, the MKARNS will receive $46.3M in FY19 ($36.3M SWL, $10.0M SWT) for operations and maintenance. Within this amount are funds for limited tainter gate repairs at Mayo, and restoring the failed dewatering capability at some SWL locations. SWT is also receiving $4M in Joint funds to rehabilitate 4 of the 12 tainter gates at Webbers Falls L&D. In FY19 both Districts plan to train their personnel in the assembly and installation of temporary lock miter gates, should any of the current ones become inoperable from a barge strike or other causes. SWL and SWT are also working with SWD to develop a strategy to establish the need and scope for CG-funded major rehabilitations, including the ability to create rehabs focused on common system-level assets (such as miter or tainter gates) instead of being exclusively focused on a single location. Both districts will continue engaging stakeholders on current and future maintenance priorities, possible contributed funding opportunities, and a possible emergency response table-top exercise involving other government agencies and stakeholders. Planning will also start for celebrating the MKARNS’ 50th anniversary, to be conducted in 2021.

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1 Executive Summary, Regional Economic Impact Study for the McClellan-Kerr Arkansas River Navigation System, University of Arkansas Maritime Transportation Research and Education Center, October 2015.
**What are some areas of emphasis within this focus area?**
The Three Rivers Study is a main emphasis as the necessary maintenance for this project provides navigation for the MKARNS. The Three Rivers area is located at the convergence of the Mississippi, White, and Arkansas Rivers. It is the on/off switch to the MKARNS. Essentially, when the navigation channel is maintained in the Three Rivers area, the MKARNS system is on and providing benefits. If the navigation channel is lost as a result of damage to structures, the MKARNS system is off and not navigable.

Other areas of emphasis include rehabilitation of the dam tainter gates and fixing the lock centerpost receivers (this enables dewatering of a lock chamber). Both of these are part of the O&M critical maintenance backlog.

The 12-foot channel is also an emphasis of the MKARNS. This project has been authorized but has yet to receive any construction appropriations.

**How can we impact the nation in this area?**
The focus areas mentioned in question #4 (above) and as reflected in the FY19 budget in question #3 (above), impact the nation. We need to ensure that the MKARNS endures, is resilient, reliable and available for its varied purposes.

**How do we know when we’ve been successful?**
In examining the USACE Campaign Plan, there is an Objective that states: A Civil Works Program that provides sustainable and resilient solutions in collaboration with partners and stakeholders. This Objective will be complete when USACE has implemented a guidance improvement program that produces timely, relevant and efficient guidance updates to ensure effective implementation of integrated water resources management.

In examining the USACE Campaign Plan, there is an Objective that states: Manage the life cycle of water resources infrastructure system (MKARNS) to consistently deliver reliable and sustainable performance. This Objective will also be complete when USACE Civil Works can clearly articulate the life cycle strategy for each constructed asset and associated components using a system and risk informed perspective and can demonstrate those life cycle strategies create an increase or sustain a planned level of benefit delivery to the nation.

We can also measure success in the amount of system availability to our stakeholders which is an indicator of the resilience of the system and whether the proper investment strategy has been employed to reverse the historic trend of capital consumption of our infrastructure.
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