

CITIES STRONG TOGETHER

# Energy, Environment, & Natural Resources

2022 Summer Board and Leadership Meeting Atlanta, GA Omni Atlanta Hotel at CNN Center Thursday, July 28, 2022 1:30-5:00 p.m.



Summer Board & Leadership Meeting

#### Agenda: Energy, Environment and Natural Resources Federal Advocacy Committee Thursday, July 28, 2022

#### 12:15 p.m. – JOINT LUNCH

**1:15 p.m.** Atrium Terrace A (South Tower – Atrium Level)

# The Honorable Vince Williams, President, National League of Cities

Mayor, City of Union City, Georgia

#### The Honorable José Alvarez

Regional Administrator, U.S. Department of Housing and Urban Development, Atlanta Regional Office

#### The Honorable Jon Ossoff (video) Senator, United States Senate

#### 1:30 p.m. – ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE 5:00 p.m. MEETING

*Room: Pine (South Tower – Atrium Level)* 

#### 1:30 p.m. – WELCOME, INTRODUCTIONS AND MEETING OVERVIEW

1:45 p.m.

#### **The Honorable Cindy Dyballa, Vice Chair** *Councilmember, City of Takoma Park, Maryland*

Councilmember Dyballa will welcome committee members and provide an overview of the agenda.

#### 1:45 p.m. – FEDERAL ADVOCACY AND SUSTAINABILITY PROGRAM UPDATE

2:05 p.m.

#### Carolyn Berndt

Legislative Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will hear an update on energy and environment issues before Congress and the Administration, an update on NLC's sustainability initiatives, and how NLC is supporting local leaders with new resources and technical assistance on access to funds from the Bipartisan Infrastructure Bill.

#### 2:05 p.m. – EENR POLICY AND RESOLUTIONS DISCUSSION

2:25 p.m.

#### **Carolyn Berndt**

Legislative Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will review recommendations for amending the National Municipal Policy and EENR Committee Resolutions.

#### 2:25 p.m. – ROUND ROBIN ON SUSTAINABILITY AND CLIMATE INITIATIVES

2:55 p.m.

Committee members will share a sustainability or climate initiative in their community or a project they hope to pursue with funding from the Bipartisan Infrastructure Law or the American Rescue Plan Act.

#### 2:55 p.m. – ICE CREAM SOCIAL BREAK

**3:10 p.m.** Spruce Foyer

#### 3:10 p.m. – REDUCING GREENHOUSE GAS EMISSIONS THROUGH

# 3:55 p.m. TRANSPORTATION: ELECTRIC VEHICLES AND OTHER FEDERAL PROGRAMS

#### Patrice S. Ruffin

Assistant City Manager, City of Brookhaven, Georgia

#### Kyle Funk

Senior Program Specialist, Center for City Solutions, National League of Cities

The Bipartisan Infrastructure Law (BIL) provides significant funding to reduce greenhouse gas emissions through the transportation sector, including \$7.5 billion to build a national electric vehicle charging infrastructure network. With EVs coming to communities, local leaders in cities, towns and villages of all sizes need to be ready to ask the necessary questions about EVs and the electric charging infrastructure that they require. This session will feature a discussion on local practices to equitably support EVs and EV infrastructure. Committee members will learn about other BIL programs to reduce greenhouse gas emissions from the transportation sector.

#### 3:55 p.m. – BREAK

**4:00 p.m.** Members of the Information Technology and Communications (ITC) Committee will join the EENR room for a joint discussion.

#### 4:00 p.m. – EENR and ITC JOINT SESSION: PROTECTING MUNICIPAL WATER 5:00 p.m. SYSTEMS AND INFRASTRUCTURE FROM CYBERTHREATS

#### Tara L. Frost

Commander, U.S. Public Health Service and Acting Chief, Drinking Water Section, Water Sector Security and Resilience Liaison & R4 Alternate Unit Dive Officer, U.S. Environmental Protection Agency

#### **Stanton Gatewood**

Georgia Cybersecurity State Coordinator, Cybersecurity and Infrastructure Security Agency

Increased use of technology and a rise in sophisticated cyber criminals have combined to put municipal water systems and other municipal infrastructure at serious risk of cyberattack. These attacks could cost your community money, operational time, resident trust and/or threaten public safety and the ability to provide clean and safe water. In this joint session of the Information Technology and Communications Committee and the Energy, Environment and Natural Resources Committee, participants will learn about the current cyberthreat landscape, hear from federal experts on what resources are available to communities, and better understand what steps to take in their own hometowns to protect infrastructure from attack.

#### 5:00 p.m. CLOSING AND ADJOURN

#### The Honorable Cindy Dyballa, Vice Chair, EENR

Councilmember, City of Takoma Park, Maryland

The Honorable Chrelle Booker, Chair, ITC Mayor Pro Tempore, Town of Tryon, North Carolina

6:00 p.m. – JOINT EVENING EVENT

8:00 p.m. Georgia Municipal Association

#### Enclosures:

- NLC Policy Development and Advocacy Process
- EENR Proposed Policy Revisions and Resolutions
- Energy and Environment Legal Update
- NLC Blog: Building an Electric Vehicle Program: Where Should Cities Start?
- EPA Brief: Water Sector Cybersecurity Brief for States
- Speaker Bios
- 2022 Energy, Environment and Natural Resources Committee Roster

#### Upcoming EENR Committee Meetings:

September 12, 2-3 p.m. eastern – Conference Call September 20, 4-5 p.m. eastern – Conference Call October 11, 3-4 p.m. eastern – Joint EENR & ITC Conference Call November 16, 3-5 p.m. – Kansas City

> Don't forget to register for <u>City Summit</u>! Kansas City, Missouri November 16-19, 2022

#### 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 <u>National Municipal Policy</u> (<u>NMP</u>), 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 are appointed by the NLC President and serve for one calendar year.

#### 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 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 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 POLICY PROPOSALS

3	A. Goals	
4	NLC urges the federal government to work with local governments to develop and implement a	
5	sustainable energy policy that is reliable, equitable, environmentally responsible and evidence-	
6	based and that will:	
7	• Continue to assess the future of our nation's energy requirements to ensure that our	
8	energy policy adequately addresses the future needs of the country;	
9	<ul> <li>Promote the most efficient and affordable use of renewable and sustainable energy</li> </ul>	
10	sources to protect the environment and the health of communities;	Co
11	• Encourage the transition to a clean energy economy that increases the use of carbon	
12	neutral energy and promotes energy efficiency, with a goal of at least 50 percent carbon	
13	neutral energy by 2030 and 100 percent by 2050 or sooner;	
14	• Protect the supply of energy by promoting the use of renewable energy sources, while	
15	implementing measures to minimize the environmental impact of fossil fuels;	
16	• Protect our economic and national security by reducing our dependence on foreign oil	
17	and minimizing the environmental impact of the domestic production of energy sources;	
18	• Ensure a national energy supply that decreases greenhouse gas emissions;	
19	• Encourage conservation and increased energy efficiency across the country and sectors of	
20	the economy;	
21	• Encourage the widespread use and deployment of both distributed energy sources and	
22	utility scale generation of renewable energy as a component of energy infrastructure to	
23	help communities withstand impacts from disruptions in regional supply systems;	
24	Promote community resilience by strengthening and modernizing energy infrastructure to	
25	reduce vulnerability to disruptions, improve health outcomes and withstand the impacts	Co
26	of climate change;	_
27	• Support local economies with job training and workforce development as the nation	
28	transitions to clean energy; and	
29	• Ensure that low-income households do not face unaffordable costs related to the	
30	transition away from fossil fuels.	
1	E. Energy Sources	
2		
3	2. Fossil Fuels	
4	NLC supports the transition toward a clean energy economy that increases the use of carbon	
5	neutral energy and promotes energy efficiency. During this transition, the federal government	

6 <u>should ensure that:</u>

7

8 9 2.02 Energy

1 2

- Fossil fuel use minimally impacts the environment;
- Communities with a reliance on the fossil fuel industry are supported with job training and workforce development;
- 10 Low-income households do not face unaffordable energy costs;

Commented [CB1]: From Leslie Pool

ommented [CB2]: From Leslie Pool

11	<ul> <li>Advancement in research and development supports technologies that will reduce</li> </ul>	
12	greenhouse gas emissions, such as carbon sequestration, hydrogen production and others.	
13	Carbon capture technologies should minimize environmental impacts and harm and	
14	reduce greenhouse gas emissions. Clean hydrogen regional hubs can advance the	
15	production, transport and use of clean hydrogen as a fuel source to decarbonize major	
16	industries across the U.S.: and	Commented [CB3]: From Kwasi Fraser
17	• Nature-based carbon removal approaches, such as increasing and maintaining forests and	
18	trees, wetland preservation and restoration, and changes in farming practices that increase	
19	soil carbon canture, are utilized	
20	son euroon euptare, ure united.	
21	a Coal	
22	The use of clean coal technology (as defined by DOF standards) will help.NI C supports use of	
23	measures to decrease emissions from coal utilization while helping cities affected by such	
24	emissions to reach and maintain attainment of air quality standards. Therefore, NI C urges the	
25	federal government to:	
20	Minimize environmental immedia and harm from meduation and use of each	
20	<ul> <li>Winninge environmental impacts and nation production and use of coar,</li> <li>Deals's it diseased of mining angula in streams and materials to material to an environmental to an environmen</li></ul>	
27	<ul> <li>Prohibit disposal of mining spoils in streams and watersheds to protect water quality and</li> </ul>	
28	water sources;	
29	• Continue to support and enhance efforts to minimize ongoing harm to environmental	
30	quality and threats to public safety associated with abandoned coal mines, and support the	
31	reuse of former mines for clean energy technology, such as solar, wind or geothermal	
32	energy, to benefit communities and the local economy by creating jobs and reducing	
33	carbon pollution; and	Commented [CB4]: From Kwasi Fraser
34	<ul> <li>Provide appropriate guidance and standard for the safe management of coal combustion</li> </ul>	
35	<u>ash.</u>	
36	<ul> <li>Support research programs to develop the most efficient, environmentally responsible</li> </ul>	
37	methods to extract, transport, and utilize coal for energy production;	
38	<ul> <li>Streamline requirements for development and retention of leases for coal reserves on</li> </ul>	
39	federal land in an environmentally responsible manner;	
40	<ul> <li>Research the use and storage of coal byproducts, such as methane, as a future energy</li> </ul>	
41	source;	
42	<ul> <li>Develop incentives for the use of clean coal technology and Best Available Control</li> </ul>	
43	Technologies for new and existing plants: and	
44	<ul> <li>Increase research and development for carbon conture and storage technology and fund</li> </ul>	
45	large scale integrated demonstration projects for earbon capture transportation and	
46	storage that reduce emissions from existing coal plants.	
40	storage that reduce emissions nonrexisting coar plants.	
47	h Natural Gas	
40	The federal government should encourage ensure the domestic production of natural gas occurs	
43 50	in an environmentally responsible manner that minimizes environmental impacts and harm	
50	In an environmentary responsible manner in an infinitizes environmental impacts and fiarm.	
51	Therefore, t_nic reactar government should.	
52 52	<ul> <li>Promote measures to avoid leakage and other accidental release of methane during mechanism and transport of natural account development of neuronation for the standard for the stan</li></ul>	
53	production and transport of natural gas and support development of new technologies for	
54	ieak detection;	
55	• Ensure that water quality and water resources are protected;	
56	Require the disclosure of chemicals used in hydraulic fracturing; and	

6

57 58 59 60	• Study the relationship of the oil and natural gas production and extraction process on drinking water resources and air quality, the impacts on land and aquatic ecosystems, seismic risks and public safety.	
61	c. Petroleum	
62	While the nation continues to rely on petroleum as an energy source, T the federal government	
63	should promote the ensure domestic production occurs in a manner that minimizes	
64	environmental impacts and harm. of domestic petroleum in an environmentally responsible	
65	manner.	
66		
67	In the event of a supply disruption, there should be no action by the federal government that	
68	causes the depletion of the Strategic Petroleum Reserve simply to mitigate oil prices. The federal	
69	government should not reinstate price controls on domestically produced crude oil.	<b>Commented [CB5]:</b> Possible to move to PSCP chapter?

#### 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 2022 resolutions that originated in the EENR Committee to determine recommendations for 2023. 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 2022 at the City Summit with NLC staff recommendations for 2023 are:

Resolution	NLC Staff Recommendation
NLC RESOLUTION #9: Supporting Local PACE	Renew with edits
Programs	
NLC RESOLUTION #10: Supporting and Advancing	Renew with edits
Resilient Communities to Prepare for Changing Climate	
and Extreme weather Events	
NLC RESOLUTION #11: Supporting Urgent Action to	Renew with edits
Reduce Carbon Emissions and Mitigate the Effects of	
Climate Change	
NIC RESOLUTION #12: Addressing Lead Contamination	Renew with edits
and Calling for Nationwide Federal Support for Water	
Infrastructure	
NLC RESOLUTION #13: Increase Federal Investment in	Renew with edits
Water Infrastructure	
NLC RESOLUTION #14: Support for Integrated Planning	Renew with edits
and New Affordability Consideration for Water	
NLC RESOLUTION #15: Calling on the Federal	Renew with edits
Government to Take Action to Address PFAS	
Contamination	
NI C RESOI UTION #16: Improve the Benefit-Cost	Renew
Analysis for Federally Funded Flood Control Projects and	
Supporting Beneficial Reuse of Dredged Material	

<b>NLC RESOLUTION #17:</b> Increase Funding for Border Water Infrastructure Projects	Renew with edits
<b>NLC RESOLUTION #18:</b> Supporting Local Control of Water Infrastructure Projects	Renew with edits

1	NLC RESOLUTION #09
2	
3	SUPPORTING LOCAL PACE PROGRAMS
4	INT C CT A FF DECOMMENDATION, DENEW WITH EDITCI
5	[NLC STAFF RECOMMENDATION: RENEW WITH EDITS]
7	WHEREAS utility hills represent a major part of operating costs for home and husiness owners:
8	and
9	
10	WHEREAS, the building sector accounts for 39 percent of the nation's energy use, 72 percent
11	of its electricity use, one third of all global greenhouse gas emissions and represents the single
12	largest, most accessible opportunity for deep emission cuts in the United States; and
13	
14	WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements
15	to homes and businesses can save energy, cut utility bills up to \$140 billion per year, create
16	thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas
1/	emissions; and
10	WHEREAS a 2013 study that found default risks are on average 32 percent lower in energy
20	efficient homes and recommends that the lower risks associated with energy efficiency should be
21	taken into consideration when underwriting mortgages; <sup>1</sup> and
22	······································
23	WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative
24	local government solution to help property owners finance energy efficiency and renewable
25	energy improvements - such as energy efficient HVAC systems, upgraded insulation, new
26	windows, solar installations, etc to their homes and businesses; and
27	
28	WHEREAS, PACE programs can also be used for other types of projects that provide public
29	and community benefits, such as improving community resilience to hurricanes and wildfires
30	and managing stormwater and tidal flooding; and
<b>১।</b> ৫০	WHEREAS the PACE program removes many of the barriers of energy efficiency and
32 33	renewable energy retrofits that otherwise exist for residential homeowners and businesses
34	particularly the high upfront cost of making such an investment and the long-term ability to reap
35	the benefits of cost savings; and
36	

<sup>&</sup>lt;sup>1</sup> *Home Energy Efficiency and Mortgage Risk*, UNC Center for Community Capital and Institute for Market Transformation, (March 2013), *available at:* http://www.imt.org/resources/detail/home-energy-efficiency-and-mortgage-risks

37	WHEREAS, 387 states plus the District of Columbia have passed laws enabling local
38	governments to develop PACE programs; and
39	
40	WHEREAS, locally-administered PACE programs are an exercise of the traditional authority of
41	local governments to utilize the tax code for public benefit; and
42	
43	WHEREAS, PACE programs help local governments meet a core obligation to their citizens to
44	maintain housing stock and improve housing opportunities for all citizens; and
45	
46	WHEREAS, the PACE program is an achievement of the intergovernmental partnership to
47	realize national policy goals, namely, reducing energy consumption, that will positively impact
48	the fiscal conditions of every level of government; and
49	
50	WHEREAS, PACE holds the potential to unlock private capital and jumpstart economic growth
51	backed by the marketplace certainty of the federal government; and
52	
53	WHEREAS, in communities that have enabled PACE, investments have had significant effects
54	on local job creation and economic activity, energy savings and carbon abatement. Over the
55	lifetime of the measures installed to date, estimates show that those PACE projects will result in
56 57	\$19 billion in economic impact, 152,000 job-years created, 11 million metric tons CO2
57 58	emissions avoided and 50 officin k will energy saved, and
59	WHEREAS, despite PACE's great promise, in July 2010 the Federal Housing Finance Agency
60	(FHFA), as conservator of the government-sponsored enterprises (GSEs) following the 2008
61	financial crisis, and the Office of the Comptroller of the Currency issued guidance that directed
62	the GSEs not to purchase mortgages with a PACE assessment, which statements that
63	immediately slowed the advancement of forced existing PACE residential programs to halt
64	operations and froze the development of dozens of other residential PACE programs
65	nationwide across the country; and
66	
67	WHEREAS, despite the FHFA directive, many commercial and a few residential PACE
68	programs are operating or are in development in hundreds of municipalities across the country;
69	and
70	
71	WHEREAS, in 2010 the U.S. Department of Energy dedicated \$150 million to assist in the
72	development of local PACE programs and in 2016 issued Best Practice Guidelines for
73	Residential PACE Financing Programs to help state and local governments develop and

<sup>&</sup>lt;sup>2</sup> A PACE Enabled World, PACENation, (Jan. 2022), available at: https://paceenabledworld.pacenation.org/#top

- 74 implement programs and recommended protections that PACE programs should put in place for
- 75 consumers and lenders;<sup>3</sup> and
- 76
- 77 WHEREAS, in July 2016, the U.S. Department of Housing and Urban Development released
- 78 guidance allowing the Federal Housing Administration to insure mortgages on properties that
- 79 include PACE assessments,<sup>4</sup> which has since been withdrawn; and
- 80
- 81 WHEREAS, in 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer
- 82 Protection Act banking reform bill that recognizes PACE as a tax assessment and directs the
- 83 Consumer Financial Protection Bureau (CFPB) to develop rules in consultation with state and
- local governments that ensure consumers have the ability to pay their residential PACE financingobligations.
- 86
- 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
- 90
- 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
- 94
- 95 **BE IT FURTHER RESOLVED** that the National League of Cities (NLC) urges FHFA to
- 96 reconsider the 2010 guidance that prohibits government-sponsored entities from purchasing
- 97 <u>mortgages with a PACE assessment and to work with local governments seeking to establish</u>
- 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
- 101
- **BE IT FURTHER RESOLVED** that NLC urges the CFPB to work with local governments to adopt regulations 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, and establishes 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.

 <sup>&</sup>lt;sup>3</sup> Best Practice Guidelines for Residential PACE Financing Programs, U.S. Department of Energy, (Nov. 18, 2016), available at: https://energy.gov/eere/slsc/downloads/updated-guidelines-residential-pace-financing-programs
 <sup>4</sup> "FHA to Insure Mortgages on Certain Properties with PACE Assessments," U.S. Department of Housing and Urban Development, (July 19, 2016), available at:

https://portal.hud.gov/hudportal/HUD?src=/press/press\_releases\_media\_advisories/2016/HUDNo\_16-110

1	NLC RESOLUTION #10
2	
3	SUPPORTING AND ADVANCING RESILIENT COMMUNITIES TO PREPARE FOR
4	CHANGING CLIMATE AND EXTREME WEATHER EVENTS
5	
6	[NLC STAFF RECOMMENDATION: RENEW WITH EDITS]
7	
8	WHEREAS, across the country local governments are seeing the devastating effects associated
9	with a changing climate and recent extreme weather events, such as heat waves, droughts, heavy
10	downpours, floods, hurricanes, and changes in other storms have brought renewed attention to
11	the need for cities, towns and villages to anticipate, prepare for and adapt to these events; and
12	
13	WHEREAS, these challenges are larger than individual communities can address on their own,
14	making it beneficial to coordinate regionally and across levels of government; and
15	
16	WHEREAS, while all regions of the country are impacted by climate change, approximately
17	one third of the U.S. population – more than 100 million people – live in coastal communities
18	that are threatened by rising sea levels, which could impact economic development, land
19	availability, property values, insurance rates, beaches and tourism, and critical water,
20	transportation and energy infrastructure; and
21	
22	WHEREAS, the Fourth National Climate Assessment reports that current evidence of climate
23	change appears in every region and impacts are currently visible in every state, and concludes
24	that the evidence of human-induced climate change continues to strengthen; <sup>1</sup> and
25	
26	WHEREAS, the effects of a changing climate are a national security issue with potential
27	impacts to the U.S. Department of Defense (DoD) missions, operations plans and installations
28	and the DoD must be able to adapt to current and future operations to address the impacts of a
29	variety of threats and conditions, including those from weather and natural events <sup>2</sup> ; and
30	
31	WHEREAS, a report by the Intergovernmental Panel on Climate Change indicates that limiting
32	global warming to 1.5° C is necessary to avoid the worst impacts of climate change; <sup>3</sup> and
33	

<sup>&</sup>lt;sup>1</sup> National Climate Assessment (Volume I, 2017; Volume II, 2018), *available at:* https://nca2018.globalchange.gov/ <sup>2</sup> Report on Effects of a Changing Climate to the Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment (Jan. 2019), *available at:* <u>https://partner-mco-</u> <u>archive.s3.amazonaws.com/client\_files/1547826612.pdf</u> <sup>3</sup> "Special Report on Global Warming of 1.5°C," Intergovernmental Panel on Climate Change, (Oct. 2018),

available at: https://www.ipcc.ch/sr15/

34	WHEREAS, climate change and extreme weather events can have severe impacts on local and
35	regional infrastructure, economies, public safety, national security, public health, population
36	migration, natural landscapes, water resources, and environmental quality; and
37	
38	WHEREAS, the impacts of climate change and extreme weather events pose an especially
39	pressing threat to persons with disabilities, economically disadvantaged households, the elderly,
40	Black, Indigenous and People of Color (BIPOC), and other vulnerable and underrepresented
41	populations; and
42	
43	WHEREAS, as local governments continue to recover from the coronavirus pandemic,
44	hurricanes, wildfires, floods and other disasters continue to threaten communities across the U.S.
45	and present new challenges for communities in protecting residents, particularly those that are
46	most affected and least able to prepare, <u>or</u> respond or recover; and
47	
48	WHEREAS, the capability of maintaining energy availability is a critical first order priority in
49	maintaining critical infrastructure and building community resilience; and
50	
51	WHEREAS, there is currently insufficient information, technical coordination or financial
52	assessment of the costs and mechanisms to rapidly retrofit and redesign local energy systems to
53	enable them to be more resilient to a range of potential disruptive events, such as extreme
54	weather, terrorism, and energy price escalation; and
55	
56	WHEREAS, the United States has seen 290-323 separate billion-dollar-plus weather and climate
57	disasters since 1980, including $14-22$ in $2019-2020$ and $22-20$ in $20202021$ , with a cumulative
58	cost exceeding $\frac{1.92.195}{2.195}$ trillion (CPI-adjusted) and a total death toll of $\frac{14,49215,347}{15,347}$ ; <sup>4</sup> and
59	
60	WHEREAS, in 2005 Hurricane Katrina led to 1,833 deaths and more than \$167.5 billion (CPI-
61	adjusted) in losses, and a subsequent \$120 billion in supplemental disaster assistance and in 2012
62	Hurricane Sandy led to 159 deaths and more than \$73.5 billion in damages (CPI-adjusted), and a
63	subsequent \$60.4 billion in supplemental disaster assistance; <sup>5</sup> and
64	
65	WHEREAS, in 2017 three Category 4 hurricanes made landfall in the U.S. totaling more than
66	\$275 billion (CPI-adjusted) in damages and a death toll of 3,167, including 2,981 from Hurricane
67	Maria, which made landfall in Puerto Rico; <sup>o</sup> and

<sup>2020</sup>https://www.ncei.noaa.gov/access/billions/events/US/1980-2021 <sup>5</sup> National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:* https://www.ncdc.noaa.gov/billions/events/US/1980-2018

<sup>&</sup>lt;sup>6</sup> National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:* <u>https://www.ncdc.noaa.gov/billions/events/US/1980-2018</u>

- 68 WHEREAS, in 2019 historic flooding hit the Midwest and southern plains significantly 69 affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets and industries, 70 resulting in 12 deaths and \$20.3 billion (CPI-adjusted) in economic costs;<sup>7</sup> and 71 72 73 WHEREAS, 2020 sets thea new annual record of 22 billion-dollar-plus weather or climate 74 events – shattering the previous annual record of 16 events that occurred in 2011 and 2017, and is-was the sixth consecutive year (2015-2020) in which 10 or more billion-dollar weather 75 and climate disaster events have impacted the United States;<sup>8</sup> and 76 77 78 WHEREAS, rising temperatures are lengthening the wildfire season, causing more radical fire behavior and increasing wildfire risks throughout the Western United States due to earlier snow 79 melts and forests that are drier longer,<sup>9</sup> the costs of putting out wildfires has increased 80 dramatically, from \$571 million in 1985 to over \$2.2 billion in 2020<sup>10</sup> (2020 dollars<sup>11</sup>), and the 81 economic losses associated with wildfire continues to grow, with the 2018 western wildfires 82 costing over \$24.5 billion (CPI-adjusted)<sup>12</sup> and the 2020 western wildfires, the most active fire 83 season on record, costing over \$16.6 billion (CPI-adjusted);<sup>13</sup> and 84 85 WHEREAS, Congress approved over \$62 billion in disaster relief in FY20;<sup>14</sup> and 86 87 88 WHEREAS, 2020 was the second warmest year on record behind 2016 (warmest), followed by 2019 (third warmest), 2015 (fourth warmest), 2017 (fifth warmest) and 2018-2021 (sixth 89 warmest);15 and 90
- 91

<sup>9</sup> Infographic: Western Wildfires and Climate Change, Union of Concerned Scientists, *available at:* <u>http://www.ucsusa.org/global\_warming/science\_and\_impacts/impacts/infographic-wildfires-climate-change.html</u>
 <sup>10</sup> Federal Firefighting Costs (Suppression Only), National Interagency Fire Center, *available at:*

https://www.nifc.gov/fire-information/statistics/suppression-costs

<sup>&</sup>lt;sup>7</sup> National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:* <u>https://www.ncdc.noaa.gov/billions/events/US/2019</u>

<sup>&</sup>lt;sup>8</sup> "Billion-Dollar Weather and Climate Disasters: Overview," National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:* https://www.ncdc.noaa.gov/billions/overview

<sup>&</sup>lt;sup>11</sup> CPI Inflation Calculator, Bureau of Labor Statistics, U.S. Department of Labor, *available at:* <u>http://www.bls.gov/data/inflation\_calculator.htm</u>

<sup>&</sup>lt;sup>12</sup> "Assessing the U.S. Climate in 2018," National Centers for Environmental Information, National Oceanic and Atmospheric Administration, *available at:* <u>https://www.ncei.noaa.gov/news/national-climate-201812</u>

<sup>&</sup>lt;sup>13</sup> "Billion-Dollar Weather and Climate Disasters: <u>Overview</u>," National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:* <u>https://www.ncei.noaa.gov/access/billions/events/US/2020</u> <u>https://www.ncdc.noaa.gov/billions/overview</u>

<sup>&</sup>lt;sup>14</sup> The Disaster Relief Fund: Overview and Issues, Congressional Research Service (Nov. 13, 2020), *available at:* https://fas.org/sgp/crs/homesec/R45484.pdf

<sup>&</sup>lt;sup>15</sup> National Oceanic and Atmospheric Administration (Jan. 1<u>3</u>4, 202<u>1</u>+), *available at:* <u>https://www.noaa.gov/news/2020-was-earth-s-2nd-hottest-year-just-behind-2016</u> <u>https://www.noaa.gov/news/2021-was-worlds-6th-warmest-year-on-record</u>

- WHEREAS, as extreme weather events become more common, local governments in all
   geographic and climatic regions require resources to assist them in anticipating, preparing for
- 94 and adapting to these events; and
- 95
- 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
- 99
- 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
- 102
- WHEREAS, firefighters and other local essential personnel, who risk their lives responding to
   natural disasters and extreme weather events, are put at even greater risk of contracting
   coronavirus as they respond to emergency situations; and
- 107
- 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
- 111
- 112 WHEREAS, in 2014 the President's Task Force on Climate Preparedness and Resilience,
- 113 comprised of state, local and tribal leaders, including representatives from the National League
- of Cities (NLC) made recommendations to the President on ways the federal government can
- assist local efforts to address and prepare for the impacts of climate change; and-
- 116
- 117 WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 makes significant
- 118 progress toward strengthening infrastructure and communities against extreme weather events by
- 119 <u>investing in pre-disaster mitigation and flood and wildfire mitigation, but additional federal</u>
- 120 policies and local government support is needed.
- 121
- NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration
   to partner with local governments and to support local action on climate change adaptation and
   resilience; and
- 125
- 126 **BE IT FURTHER RESOLVED** that NLC urges Congress and the Administration to take
- 127 urgent action to help states and local governments conduct vulnerability assessments, develop
- and implement long-term mitigation, adaptation and resiliency action plans, and identify
- 129 innovative financing opportunities to implement these assessments and plans in order to prepare,
- 130 plan for and more quickly recover from extreme weather events; and
- 131

132	BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to
133	recognize the unique risks and opportunities communities face and to offer customized tools and
134	incentives to local governments to encourage communities to plan for and rapidly respond to the
135	effects of climate change and extreme weather; and
136	
137	BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national
138	strategy to assist communities in integrating the risks of climate change and extreme weather
139	events into emergency management planning and responses to identify and quantify the
140	economic value of regional infrastructure at risk under different scenarios; and
141	
142	BE IT FURTHER RESOLVED that NLC urges the federal government to work with state and
143	local governments, the insurance industry, and other stakeholders to develop an incentive-based
144	disaster insurance and mitigation system that would encourage property owners to retrofit
145	existing structures to reduce future losses from natural disasters; and
146	
147	BE IT FURTHER RESOLVED that returning to the status quo is not sufficient in meeting the
148	challenges of climate change and inequities in our society; and
149	
150	<b>BE IT FURTHER RESOLVED</b> that NLC calls on the federal government to outline strategies
151	and actions to reduce the vulnerability of federal programs to the impacts of climate change and
152	extreme weather; and
153	
154	BE IT FURTHER RESOLVED that NLC calls on the federal government to better align
155	federal funding with local preparedness and resilience-building efforts; and
156	
157	<b>BE IT FURTHER RESOLVED</b> that NLC calls on Congress to fully fund grant programs that
158	help local governments prepare, respond and recover from climate change and extreme weather
159	events and establish a preparedness and response fund to support local governments that are at
160	the forefront of developing adaptive solutions; and
161	
162	<b>BE IT FURTHER RESOLVED</b> that NLC urges the federal government to develop grant and
163	technical assistance programs to enable communities to develop community energy transition
164	plans that ensure the capability of cities to maintain critical energy and infrastructure during
165	disruptions to local, regional or national energy infrastructure; and
166	
167	<b>BE IT FURTHER RESOLVED</b> that NLC urges the federal government to develop a national
168	pilot project initiative to conduct detailed assessments and designs for resilient city energy
169	system retrofit and redesign across a range of different regions and city sizes; and
170	

- 171 **BE IT FURTHER RESOLVED** that federal investments in communities must prioritize those
- 172 communities that have been left behind and BIPOC communities, which have been
- disproportionately impacted by the effects of climate change and COVID-19.

1	NLC RESOLUTION #11
2	SUPPORTING URGENT ACTION TO REDUCE CARRON EMISSIONS AND
3 4	MITIGATE THE FEFECTS OF CLIMATE CHANGE
5	WITTOWTE THE EFFECTS OF CERMITE CHANGE
6	[NLC STAFF RECOMMENDATION: RENEW WITH EDITS]
7	
8	WHEREAS, climate change mitigation is a global problem that demands a global solution; and
9	
10	WHEREAS, the Fourth National Climate Assessment reports that current evidence of climate
11	change appears in every region and impacts are currently visible in every state, and concludes
12	that the evidence of human-induced climate change continues to strengthen; <sup>1</sup> and
13	
14	WHEREAS, a report by the Intergovernmental Panel on Climate Change (IPCC) indicates that
15	limiting global warming to 1.5° C is necessary to avoid the worst impacts of climate change; <sup>2</sup>
16	and
1/	WITEDEAC automotive hast will have more serious has 1th some such as a needle living in law
18	where the second more serious health consequences on people living in low-
19 20	communities have been disproportionately impacted by coronavirus and high rates of underlying
20 21	health conditions, both of which can be exacerbated by extreme heat and
22	neurin conditions, cour of which can be chapping of children by children hear, and
23	WHEREAS, according to the American Lung Association's 2022 <sup>1</sup> State of the Air report, more
24	than 40 percent or 1375 million people live in counties with unhealthy air, which is especially
25	concerning as research shows that people with long-term exposure to air pollution are more
26	likely to die from COVID-19 <sup>3</sup> ; and
27	
28	WHEREAS, while some impacts of climate change are inevitable, sharp reductions in
29	greenhouse gas emissions will reduce the severity of the impacts and limit the rate of climate
30	change; and
31	
32	WHEREAS, in order to meet the carbon emissions reductions goals necessary to help mitigate
33	the effects of climate change on communities, improving energy efficiency, increasing energy
34 25	conservation and deploying renewable energy systems will be essential at the local, state and
30 36	iederai ieveis, and
30	

<sup>&</sup>lt;sup>1</sup> National Climate Assessment (Volume I, 2017; Volume II, 2018), *available at:* https://nca2018.globalchange.gov/
<sup>2</sup> "Special Report on Global Warming of 1.5°C," Intergovernmental Panel on Climate Change, (Oct. 2018), *available at:* <u>https://www.ipcc.ch/sr15/</u>
<sup>3</sup> "State of the Air," American Lung Association (2021), *available at:* <u>https://www.lung.org/research/sota/key-</u>

findings

37	WHEREAS, improving energy efficiency, increasing energy conservation and deploying
38	renewable energy systems will save taxpayer dollars, boost the national and local economy,
39	enhance national security, increase our nation's energy independence, and improve
40	environmental quality; and
41	
42	WHEREAS, technology exists and continues to be developed that will help families, businesses
43	and communities reduce energy use, but without standards to encourage adoption of new
44	technology, many of these technology options will be unavailable or unaffordable; and
45	
46	WHEREAS, the transportation sector generates the largest share of greenhouse gas emissions,
47	279 percent of 2019-2020 greenhouse gas emissions, in the United States; <sup>4</sup> and
48	
49	WHEREAS, buildings account for nearly 40 percent of the nation's energy consumption <sup>5</sup> and
50	more than 70 percent of its electricity use, <sup>6</sup> and electricity production represents the second
51	largest share of greenhouse gas emissions, 25 percent of 202019 greenhouse gas emissions, in
52	the United States; <sup>7</sup> and
53	
54	WHEREAS, indoor and outdoor lighting account for $56$ percent of electricity consumed in the
55	nation, <sup>8</sup> and rapid conversion to efficient lighting would result in significant greenhouse gas
56	reductions as well as a decrease in base load energy needs; and
57	
58	WHEREAS, communities large and small nationwide are laboratories of innovation and are
59	taking action on climate mitigation, including adopting greenhouse gas reduction goals,
60	successfully pioneering and demonstrating cost-effective clean energy solutions, and pursuing
61	local strategies that create jobs, save energy and taxpayer dollars, and promote renewable
62	sources; and
63	
64	WHEREAS, the Energy Efficiency and Conservation Block Grant (EECBG) helped local
65	governments undertake projects to reduce energy use, diversify energy supplies and improve air
66	quality and the environment; and
67	
68	WHEREAS, all levels of government must work to become more resilient by achieving greater
69	energy independence based on a multi-pronged strategy of aggressively expanding renewable

<sup>&</sup>lt;sup>4</sup> Sources of Greenhouse Gas Emissions, U.S. Environmental Protection Agency, *available at:* https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions

<sup>&</sup>lt;sup>5</sup> U.S. Energy Information Administration, *available at:* http://www.eia.gov/tools/faqs/faq.cfm?id=86&t=1

<sup>&</sup>lt;sup>6</sup> Environmental and Energy Study Institute, Buildings and Climate Change, *available at:* http://www.eesi.org/files/climate.pdf

<sup>&</sup>lt;sup>7</sup> Sources of Greenhouse Gas Emissions, U.S. Environmental Protection Agency, *available at:* https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions

<sup>&</sup>lt;sup>8</sup> FAQ: How much electricity is used for lighting in the United States, U.S. Energy Information Administration, *available at:* https://www.eia.gov/tools/faqs/faq.php?id=99&t=3

- 70 energy, significantly increasing energy efficiency portfolio standards, and creating new financing
- 71 mechanisms; and
- 72

77

- 73 WHEREAS, in 2014 the President's Task Force on Climate Preparedness and Resilience,
- 74 comprised of state, local and tribal leaders, including representatives from the National League
- of Cities (NLC), made recommendations to the President on ways the federal government can
- assist local efforts to address and prepare for the impacts of climate change; and
- **WHEREAS**, the bipartisan Infrastructure Investment and Jobs Act of 2021 makes significant
- 79 progress toward reducing greenhouse gas emissions throughout the transportation sector and
- 80 investing in clean energy and energy efficiency and conservation, but additional federal policies,
- 81 <u>funding and resources are needed to support local governments.</u>
- 82
- NOW, THEREFORE, BE IT RESOLVED that 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 local governments
- workforce development, job training and community assistance, to help local governments
  achieve their greenhouse gas reduction targets and transition to a clean energy economy; and
- 88
- 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 and become
  carbon neutral to mitigate the effects of climate change; and
- 92

97

- BE IT FURTHER RESOLVED that NLC supports the U.S.'s engagement in the Paris Climate
   Agreement and calls on Congress to position the U.S. as a climate leader and adopt nationwide
   greenhouse gas emission goals and policies that exceed the IPCC 1.5°C targets of 45% emissions
   reduction from 2010 levels by 2030 and net zero by 2050; and
- 98 **BE IT FURTHER RESOLVED** that NLC supports the U.S.'s reengagement in the Paris
- 99 Climate Agreement; and
- BE IT FURTHER RESOLVED that NLC supports efforts to increase the CAFE standards or
   fuel efficiency for all types of vehicles; and
- 103

100

- BE IT FURTHER RESOLVED that NLC calls on Congress to pass energy efficiency and
   conservation legislation to incentivize energy efficiency improvements in residential and
   commercial buildings, schools and federal buildings located in communities; and
- 107
- BE IT FURTHER RESOLVED that NLC calls on Congress to pass a national renewable
   portfolio standard that increases the use of carbon neutral energy and promotes energy

- efficiency, with the goal of at least 50 percent carbon neutral energy by 2030 and 100 percent by
- 111 2050 or sooner; and
- 112
- 113 **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
- 115 their development and deployment; and
- 116
- **BE IT FURTHER RESOLVED** that NLC calls on Congress to reauthorize and fully fund the
- 118 EECBG or other funding structure at the U.S. Department of Energy to further incentivize clean
- 119 energy at the local level; and
- 120
- 121 **BE IT FURTHER RESOLVED** that federal investments in communities must prioritize those
- 122 communities that have been left behind and Black, Indigenous and People of Color (BIPOC)
- 123 who have been disproportionately impacted by the effects of climate change and COVID-19.

1	NLC RESOLUTION #12
2	A DEDECCINC LEAD CONTANTATION AND CALLING FOR MATIONWIDE
3 1	ADDRESSING LEAD CONTAMINATION AND CALLING FOR NATION WIDE FEDERAL SUPPORT FOR WATER INFRASTRUCTURE
4 5	FEDERAL SUITORI FOR WATER INFRASTRUCTURE
6	INLC STAFF RECOMMENDATION: RENEW WITH EDITS
7	
8	WHEREAS, access to clean drinking water is fundamental to the health and well-being of
9	America's communities and families; and
10	
11	WHEREAS, Flint, Michigan, and Sebring, Ohio, are two recent examples of cities where high
12	levels of lead have been found in the city's drinking water; and
13	
14	WHEREAS, in the early 2000s, the District of Columbia experienced a similar crisis, as have
15	many other cities; and
16 17	WHEREAS load has a sortive and long terms nounal scient offects, norticularly in inforts and
17	children: and
10	
20	WHEREAS, in Flint, the elevated blood lead level was discovered in children after the city's
21	water source was switched to the Flint River by the state-appointed emergency manager, a
22	decision made without coordination or consultation with local officials; and
23	
24	WHEREAS, a contributing factor to the Flint, Michigan, drinking water crisis was the city's
25 26	aging infrastructure and the lack of investment in infrastructure and the community; and
27	WHEREAS, incidents like these can undermine citizens' confidence in the safety and quality of
28	the drinking water supply and water infrastructure of every community; and
29	
30	WHEREAS, in January 2016, President Obama signed an emergency declaration in the State of
31	Michigan, ordering federal aid to supplement state and local response efforts due to the
32	emergency conditions caused by lead-contaminated water; and
33	
34	WHEREAS, corrosion control and testing are essential to preventing lead leaching and alerting
35	the public to potential dangers; and
36	WHEDEAS mount analyzing by the National Descurres Defense Council form 1 that see 5 200
31 20	where systems notion wide have alcusted levels of load a recent analysis by the American
30	water systems nation where have elevated levers of lead and a recent analysis by the American

<sup>&</sup>lt;sup>1</sup> "What's in your Water? Flint and Beyond," National Resource Defense Council (June 2016), *available at:* <u>https://www.nrdc.org/sites/default/files/whats-in-your-water-flint-beyond-report.pdf</u>

- Water Works Association estimates 6.1 million lead service lines remain in U.S. communities, at 39 an estimated \$30 billion to replace;<sup>2</sup> and 40
- 41
- 42 WHEREAS, there is a need to invest in our aging water infrastructure nationwide and a failure 43 to do so can have negative public health consequences; and
- 44
- 45 WHEREAS, the U.S. Environmental Protection Agency (EPA) estimates the nation's water
- infrastructure capital needs over the next 20 years to be approximately \$743 billion in total,<sup>3</sup> the 46
- American Society for Civil Engineers estimates that over the next 20 years, the cumulative water 47
- and wastewater capital investment need will soar to \$3.27 trillion and the cumulative capital 48 investment gap will total \$2.2 trillion,<sup>4</sup> and other estimates put the cost at more than \$4 trillion to 49
- maintain and build a 21st century water system; and-50
- 51
- 52 WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 provided federal
- funding for lead service line replacement projects, but additional federal funding is needed to 53
- fully replace all lead service lines in the country. 54
- 56 **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 57 58
- 59

55

- locally elected leaders in coordination with state and federal officials; and
- 60 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 61 to work directly with local officials, for as long as necessary, to resolve the drinking water crisis 62 through the provision of safe drinking water and to support economic recovery; and 63
- 64
- 65 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 and 66
- nationwide, including in the areas of education and mental health; and 67
- 68

<sup>&</sup>lt;sup>2</sup> "National Survey of Lead Service Line Occurrence," American Water Works Association (March 10, 2016), available at: http://www.awwa.org/resources-tools/public-affairs/press-room/press-release/articleid/4074/leadservice-line-analysis-examines-scope-of-challenge.aspx

<sup>&</sup>lt;sup>3</sup> "Clean Watershed Needs Survey," U.S. Environmental Protection Agency, (Jan. 2016), available at: https://www.epa.gov/cwns and "Drinking Water Needs Survey," U.S. Environmental Protection Agency, (March 2018), available at: https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-andassessment

<sup>&</sup>lt;sup>4</sup> "The Economic Benefits of Investing in Water Infrastructure," Value of Water Campaign and American Society of Civil Engineers (Nov. 2020), available at:

http://www.uswateralliance.org/sites/uswateralliance.org/files/publications/The%20Economic%20Benefits%20of%2 0Investing%20in%20Water%20Infrastructure final.pdf

- 69 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support 70 robust funding for all water infrastructure financing mechanisms, including the Clean Water and Drinking Water State Revolving Loan Fund programs and the Water Infrastructure Finance and 71 Innovation Act (WIFIA); and 72 73 74 BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure financing, including protecting the tax-exempt status of 75 municipal bonds and reinstating the tax exemption for advance refunding bonds; and 76 77
- 78 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support 79
- grants to local governments, as well as school systems and daycare centers, for the replacement
- of lead service lines, testing, inventories, planning, corrosion control, and public education 80
- campaigns, and to assist small and disadvantaged communities in complying with the Safe 81
- 82 Drinking Water Act.

1	NLC RESOLUTION #13
2	
3	INCREASE FEDERAL INVESTMENT IN WATER INFRASTRUCTURE
4	
5	[NLC STAFF RECOMMENDATION: RENEW WITH EDITS]
6	
7	WHEREAS, the nation's water infrastructure systems, both built and natural, are significant
8	assets that protect public health and the nation's water resources and well-maintained systems
9	are essential to our citizens' general welfare and the nation's prosperity; and
10	
11	WHEREAS, with much of our nation's physical water infrastructure built in the post-World
12	War II period – and some of it more than 100 years old – there are an estimated 240,000-250,000
13	to 300,000 water main breaks each year; <sup>1</sup> and
14	
15	WHEREAS, cities, and towns and villages nationwide are finding that decentralized water
16	solutions such as water use efficiency measures and green stormwater installations can
17	effectively and affordably serve many of the same functions as conventional water infrastructure
18	and can supplement and extend their existing centralized systems; <sup>2</sup> and
19	
20	WHEREAS, federal loan and grant assistance to cities and local governments to assist in
21	maintaining and upgrading water infrastructure systems has continued to decline in real dollars
22	<del>over the past decades<sup>2</sup>; and</del>
23	
24	WHEREAS, local governments are responsible for the vast majority of investment in water and
25	sewer infrastructure, investing over \$1.7 trillion between 1956-2010 <sup>4</sup> 2.38 trillion between 1993-
26	2019 (not adjusted for inflation) and over \$134 billion in 2019 alone; <sup>5</sup> and
27	
28	WHEREAS, tax-exempt municipal bonds are the primary funding mechanism for state and local
29	government infrastructure projects with three-quarters of the total United States investment in
30	infrastructure being accomplished with tax-exempt financing; and

<sup>&</sup>lt;sup>1</sup> 2019-2021 Infrastructure Report Card, American Society of Civil Engineers, available at: https://www.infrastructurereportcard.org/cat-item/drinking-water/

<sup>&</sup>lt;sup>2</sup> Koehler, Cynthia and Caroline Koch, Public Water Utilities Deploy 21<sup>st</sup> Century Water Infrastructure to Build a Resilient Future (2019), *available at:* <u>https://tapin.waternow.org/resources/innovation-in-action-21st-century-water-infrastructure-solutions/</u>

<sup>&</sup>lt;sup>3</sup>*Federal Investment, 1962 2018,* Congressional Budget Office (June 2019), *available at:* Error! Hyperlink reference not valid.

<sup>&</sup>lt;sup>4</sup> Anderson, Richard F., *Growth in Local Government Spending on Public Water and Wastewater — But How Much Progress Can American Households Afford?* The U.S. Conference of Mayors (April. 2013), *available at:* http://www.circleofblue.org/wp content/uploads/2013/06/USMayors\_Growth in Local Government Spending on Water and Wastewater.pdf

<sup>&</sup>lt;sup>5</sup> 2019 Annual Surveys of State and Local Government Finances, U.S. Census Bureau (October, 2021), available at: https://www.census.gov/programs-surveys/gov-finances.html

31 WHEREAS, an economic analysis by the American Society of Civil Engineers shows a water-32 related infrastructure investment gap of \$434 billion over 10 years for drinking water, 33 wastewater, and stormwater combined;<sup>6</sup> and 34 35 36 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 37 and costs relating to water security and source water protection, additional needs for re-use of 38 39 treated effluent, or impacts due to climate change; and 40 WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 (IIJA) provided a 41 42 significant boost in federal funding for drinking water and wastewater infrastructure, but not 43 enough to close the needs gap; and 44 45 WHEREAS, aside from the IIJA, annual appropriations for federal loan and grant assistance to cities and local governments to assist in maintaining and upgrading water infrastructure systems 46 has continued to decline in real dollars over the past decades<sup>7</sup>; and 47 48 WHEREAS, municipal resources dedicated to water infrastructure are currently overwhelmingly 49 directed to comply with new complex federal mandates and are therefore unavailable for critical 50 maintenance, repair, and rehabilitation needs; and 51 52 53 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 54 all types of projects; and 55 56 57 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 58 59 public debt and shift the risk and long-term obligation from the municipality to the private equity 60 partner; and 61 62 WHEREAS, Congress provides to states a capped annual allocation ("volume cap") of taxexempt bonds, based on population, but historically, most of the tax-exempt bonds are issued to 63 64 short-term projects such as housing and education loans; and 65 WHEREAS, Congress has previously enacted legislation eliminating the state volume cap for 66 67 such municipal infrastructure projects such as airports, landfills, and ports; and

<sup>&</sup>lt;sup>6</sup> 20<u>1921</u> Infrastructure Report Card, American Society of Civil Engineers, available at: <u>https://infrastructurereportcard.org/cat-item/stormwater/http://www.infrastructurereportcard.org/</u> <u>7 Federal Investment, 1962-2018, Congressional Budget Office (June 2019), available at:</u> <u>https://www.cbo.gov/system/files/2019-06/55375-Federal\_Investment.pdf</u>

68 69 WHEREAS, eliminating the state volume cap is estimated to make available \$5-6 billion in 70 private capital for water projects, while the cost in foregone revenue to the federal government is nominal.8 71 72 73 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 74 75 in funding municipal water infrastructure needs by developing a financial option that strikes the 76 right balance between local responsibility and federal assistance; and 77 78 BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support 79 robust funding for water infrastructure financing through the Clean Water and Drinking Water 80 State Revolving Loan Fund programs and to reauthorize the programs; and 81 82 **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 83 84 infrastructure projects; and 85 86 **BE IT FURTHER RESOLVED** that Congress should provide funding to local governments through grant programs such as for sewer overflow and stormwater management, lead pipe 87 replacement, water infrastructure resilience/sustainability to protect and reduce risk to extreme 88 weather events, new/emerging technologies for cybersecurity improvements and water 89 90 efficiency, workforce development in the water sector, and other programs; and 91 BE IT FURTHER RESOLVED that Congress should exempt from federal taxation rebates 92 issued to consumers by local governments to pay for consumer-installed decentralized water 93 94 infrastructure that benefits their communities; and 95 96 **BE IT FURTHER RESOLVED** that NLC supports legislation removing the federal volume 97 cap on tax-exempt bonds for water and wastewater infrastructure projects; and 98 99 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support 100 other mechanisms of infrastructure financing, including protecting the tax-exempt status of 101 municipal bonds and reinstating the tax exemption for advance refunding bonds; and 102 103 BE IT FURTHER RESOLVED that Congress and the Administration should enact new 104 legislation which provides adequate and reliable long-term funding for municipal water infrastructure needs to help close the funding gap. 105

<sup>&</sup>lt;sup>8</sup> Testimony of Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency, before the Senate Appropriations Committee, March 4, 2008.

1	NLC RESOLUTION #14			
2				
3	SUPPORT FOR INTEGRATED PLANNING AND NEW AFFORDABILITY			
4 5	CONSIDERATION FOR WATER			
6	INLC STAFF RECOMMENDATION: RENEW WITH EDITS			
7				
8	WHEREAS, in 2012 the U.S. Environmental Protection Agency (EPA) issued its Integrated			
9	Municipal Stormwater and Wastewater Planning Approach Framework ("Integrated Planning			
10	Framework"), which was intended to help local governments seek more efficient and affordable			
11	solutions to stormwater and wastewater issues and meet the requirements of the Clean Water Act			
12	(CWA) in a more flexible, affordable, and cost-effective manner; and			
13				
14	WHEREAS, in 2014 EPA issued its Financial Capability Assessment Framework for Municipal			
15	Clean Water Act Requirements ("Financial Capability Framework"), which allows the			
16	consideration of additional information, such as socio-economic factors, in determining the			
17	financial capability of residents and a community when developing compliance schedules for			
18	municipal projects necessary to meet CWA obligations; and			
19				
20	WHEREAS, these two policy frameworks demonstrate an awareness by EPA of the challenges			
21	local governments face in meeting CWA requirements, as well as the conflicts they face in			
22	balancing environmental protection with economic feasibility; and			
23				
24	WHEREAS, at a time where local financial resources are increasingly limited and the ability of			
25	local governments to raise revenue is also limited, local governments are facing costly unfunded			
26	federal and state regulatory requirements forcing them to make tough decisions about the			
27	services and maintenance that they can afford; and			
20 20	WHEREAS proposed federal budget cuts to critical local programs would further reduce the			
29	ability of cities and towns to meet the everyday needs of their community; and			
31	donity of chies and towns to meet the everyday needs of their community, and			
32	WHEREAS local water and sewer rates and stormwater fees are rapidly becoming unaffordable			
33	for many fixed- and low-income citizens, placing a disproportionate financial burden on these			
34	vulnerable populations who live at or below the poverty level: and			
35	vanieracie populations who have as of color and poverty rever, and			
36	WHEREAS, the current reliance on two percent of median household income for wastewater			
37	and combined sewer overflows controls is a misleading indicator of a community's ability to			
38	pay, and often places a particularly high burden on residents at the lower end of the economic			
39	scale; and			
40				

41 WHEREAS, green infrastructure, such as constructed swales, wetlands, green roofs, infiltration planters, rain gardens, cisterns, and enhanced floodplains and riparian buffers, augmented by 42 permeable pavers, rain barrels, and trees, is a valuable part of water infrastructure systems and 43 provides a multitude of community benefits such as helping local governments manage runoff, 44 45 extending the life of local infrastructure, saving the city and taxpayers money, providing outdoor recreation opportunities through parks and green spaces and promoting the joint use of city and 46 school facilities, and serve as an economic development tool; and 47 48 49 WHEREAS, National Pollutant Discharge Elimination System (NPDES) permits are 50 increasingly stringent, the treatment technologies and approaches necessary to meet permit limits have become exceedingly expensive and time-intensive to implement, and project construction 51 52 timelines for clean water infrastructure projects can extend more than a decade. 53 54 NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on 55 EPA to work with local governments to develop local integrated plans through the permit process to comprehensively and collectively manage wastewater and stormwater needs, prioritize 56 investments in wet weather overflows and flooding, incorporate green infrastructure components, 57 58 and to ease the burden of unfunded mandates; and 59 60 **BE IT FURTHER RESOLVED** that NLC calls on EPA to share integrated planning best management practices, including those that take a regional watershed approach, from across the 61 country with all communities that are interested in pursuing an integrated planning approach; and 62 63 64 BE IT FURTHER RESOLVED that NLC calls on Congress to modernize the NPDES permitting process to approve legislation to allow states with delegated authority to administer 65 the NPDES permitting program to issue permits of up to ten years; and 66 67 68 BE IT FURTHER RESOLVED that NLC calls on EPA to work with local governments to revise the "Combined Sewer Overflows-Guidance for Financial Capability Assessment and 69 Schedule Development" (Feb. 1997) to eliminate reliance on median household income as the 70 71 critical metric for determining investment level and to allow for the consideration of additional 72 information, such as socio-economic factors, consistent with the Agency's 2014 Financial 73 Capability Framework; and 74 75 **BE IT FURTHER RESOLVED** that NLC calls on the federal government to explore options 76 for providing ratepayer assistance, such as through a consumer assistance program modeled on 77 the Low Income Home Energy Assistance Program.

1	NLC RESOLUTION #15
2	CALLING ON THE FEDERAL COVERNMENT TO TAKE A CTION TO ADDRESS
3	CALLING ON THE FEDERAL GOVERNMENT TO TAKE ACTION TO ADDRESS DEAS CONTAMINATION
4 5	TTAS CONTAMINATION
6	INLC STAFF RECOMMENDATION: RENEW WITH EDITSI
7	
8	WHEREAS, Per- and polyfluoroalkyl substances (PFAS) are a class of nearly 5,000 man-made
9	chemicals that includes PFOA, PFOS, PFBS and GenX manufactured and used in a variety of
10	industries; and
11	
12	WHEREAS, PFAS chemicals are known as "forever" chemicals because they are persistent in
13	the environment and in the human body; and
14	
15	WHEREAS, PFAS chemicals have been known to cause adverse health outcomes in humans
16	including effects on prenatal development, low infant birth weights, early onset of puberty,
1/	negative effect on the immune system, cancer, liver damage, and thyroid disruption'; and
18	WHEDEAS, while gaigned predicts that the entire class of DEAS chemical may be appointed
20	with adverse health effects and many such chemicals are in industrial and commercial use only a
20	small fraction of these chemicals have been investigated sufficiently to establish quantitative
22	measures of toxicity: and
23	
24	WHEREAS, in 2016-2022 the U.S. Environmental Protection Agency (EPA) lowered the
25	established a lifetime exposure health advisory level for PFOA and PFOS from of 70 parts per
26	trillion to near zero and established new health advisories for GenX and PFBS for the combined
27	concentration of PFOA and PFOS in drinking water; <sup>2</sup> and
29	WHEREAS, in 2018 the U.S. Department of Health and Human Services Agency for Toxic
30	Substances and Disease Registry released a draft report warning that PFAS chemicals could pose
31	a health risk at levels lower than currently recommended by the EPA; <sup>3</sup> and
32	
33	WHEREAS, in 2019 2021 EPA announced a PFAS Strategic Roadmap that outlines a
34	comprehensive nationwide action plan for addressing PFAS, including identifying both short-
35	term solutions for addressing these chemicals and long-term strategies that will help states, tribes

06/documents/drinkingwaterhealthadvisories\_pfoa\_pfos\_updated\_5.31.16.pdf

<sup>&</sup>lt;sup>1</sup> Fact Sheet: PFOA & PFOS Drinking Water Health Advisories, U.S. Environmental Protection Agency (Nov. 2016); *available at:* https://www.epa.gov/sites/production/files/2016-

<sup>&</sup>lt;sup>2</sup> Drinking Water Health Advisories, U.S. Environmental Protection Agency (June 2022); *available at:* https://www.epa.gov/sdwa/drinking-water-health-advisories-has

<sup>&</sup>lt;sup>3</sup> Toxicological Profile for Perfluoroalkyls, Draft for Public Comment, U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (June 2018); *available at:* https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf

- 36 and local communities provide clean and safe drinking water to residents and address PFAS at
- 37 the source before it gets into the water;<sup>4</sup> and
- 38
- 39 WHEREAS, in February 2020 EPA issued a proposed regulatory determination to regulate
- 40 PFOS and PFOA, is currently undergoing a rulemaking process to the first step in the regulatory
- 41 process of setting a propose a National Drinking Water Regulation and set a Maximum
- 42 Contaminant Level <u>for PFOA and PFOS</u> under the Safe Drinking Water Act; and
- 43
- 44 WHEREAS, there are significant technical challenges in detecting, and measuring and
- removing PFAS in water and other environmental media at the levels where health effects can
  occur, and analytical methodologies are still under development or are not yet generally
  available; and
- 48
- 49 WHEREAS, the Environmental Working Group and the Social Science Environmental Health
- 50 Research Institute at Northeastern University updated maintains an interactive map of known
- 51 contamination of communities from PFAS, which; and WHEREAS, as of March 2019October
- 52 <u>2021</u>, the interactive map shows <u>2,854at least 610</u> locations in 43-<u>50</u> states <u>and two territories</u>
- 53 with known contaminationare known to be contaminated, including drinking water systems
- 54 serving an estimated 19 million people;<sup>5</sup> and
- 56 WHEREAS, in February 2019, EPA and United States Geological Survey scientists published 57 results on analysis for 17 PFAS compounds in water samples from 25 public drinking water
- supplies in 24 states (locations confidential) that detected PFAS in every sample tested,
- 59 suggesting that PFAS is ubiquitous in our water;<sup>6</sup> and
- 60

55

- 61 WHEREAS, PFAS chemicals were widely used in firefighting foams, particularly for airports,
- 62 and were used in frequent training exercises at military air bases; and
- 63
- 64 WHEREAS, PFAS chemicals were required in firefighting foams used at airports to meet
- 65 federal performance standards for extinguishing agents, but currently the Federal Aviation
- 66 Administration is updating its standards to allow for a non-fluorinated option for airports; and

2024https://www.epa.gov/sites/production/files/2019-02/documents/pfas\_action\_plan\_021319\_508compliant\_1.pdf <sup>5</sup> EWG: PFAS Chemicals Must be Regulated as a Class, Not One by OnePFAS Contamination in the U.S., Environmental Working Group (May 6, 2019Oct. 4, 2021), available at: https://www.ewg.org/interactivemaps/pfas\_contamination/?\_ga=2.126851653.953206521.1656102607-

<sup>&</sup>lt;sup>4</sup> EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan, PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024, U.S. Environmental Protection Agency (Feb. 2019Oct. 2021); available at: https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-

<sup>517534629.1656102607</sup>https://www.ewg.org/release/mapping-pfas-contamination-crisis-new-data-show-610-sites-43-states

<sup>&</sup>lt;sup>6</sup> "Per- and polyfluoroalkyl substances in source and treated drinking waters of the United States," Science of the Total Environment, Volume 653 (February 25, 2019), pages 359-369, *available at:* https://www.sciencedirect.com/science/article/pii/S004896971834141X

67	
68	WHEREAS, the U.S. Department of Defense has ended its use of the foam in training exercises;
69	and
70	
71	WHEREAS, PFAS contamination is found at and around military bases, airports, manufacturing
72	sites, landfills, and in local water supplies obtained from both rivers and groundwater; and
73	
74	WHEREAS, local governments are responsible for protecting the health, safety and welfare of
75	residents, including providing clean and safe water; and
76	
77	WHEREAS, while treatment technology for removing PFAS from water is not well-developed,
78	the more effective methods use technologies that are not conventionally available in existing
79	water treatment plants, so removing these PFAS chemicals from water could require costly
80	investments by local governments and other local water suppliers, which would be passed onto
81	ratepayers; and
82	
83	WHEREAS, local governments are owners and operators of airports and landfills and employ
84	firefighters, some of whom may have been exposed to PFAS chemicals on the job through
85	inhalation or skin absorption, and therefore present a pension and liability concern for local
86	budgets; and
87	
88	WHEREAS, PFAS contamination not only poses health risks, but also economic impacts on
89	communities, including in the agriculture and fishing industries by contamination of food
90	sources; and
91	
92	WHEREAS, a number of states have adopted PFAS policies pertaining to prohibiting use,
93	monitoring, notification and reporting, cleanup, health studies, testing, liability provisions, and
94	contamination limits <del>, including Michigan, New Jersey and Vermont that have set maximum</del>
95	contamination levels lower than EPA health advisory levels;7 and
96	
97	WHEREAS, a number of bills have been introduced in both the U.S. House of Representatives
98	and U.S. Senate to survey, regulate, mitigate and phaseout the use of PFAS.
99	
100	NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on
101	Congress and the Administration to holistically examine PFAS contamination and to take
102	comprehensive action to address the problem, including through nationwide testing, monitoring,
103	mapping, public education, and water supply treatment; and
104	

<sup>&</sup>lt;sup>7</sup> States Forge Ahead with PFAS Regulations, PoliticoPro Datapoint on Energy (Feb. 28, 2019)

**BE IT FURTHER RESOLVED** that NLC calls on the federal government to ensure that the 105 106 parties responsible for PFAS contamination, including the federal government but excluding local governments, are held fully liable for costs of cleanup and mitigation and to ensure that 107 sites are cleaned up in a timely manner and to standards sufficiently stringent to permit reuse of 108 109 the site and to obviate the need for additional cleanup and mitigation costs by affected local 110 governments; and 111 BE IT FURTHER RESOLVED that local governments, including municipal airports and fire 112 113 departments, were required by federal law to use firefighting foam containing PFAS chemicals, and therefore should not be held liable for PFAS contamination or cleanup costs; and 114 115 BE IT FURTHER RESOLVED that local governments, including drinking water and 116 117 wastewater utilities and municipal landfills, serve as receivers of PFAS chemicals and did not cause or contribute to contamination, and therefore should not be held liable for PFAS 118 119 contamination or cleanup costs; and 120 121 BE IT FURTHER RESOLVED that NLC calls on the federal government to accelerate research and technology development to advance the science needed to understand the health 122 123 consequences of exposure to PFAS chemicals, detect and measure PFAS chemicals in water and 124 other environmental media, treat water supplies to remove these substances, and find safe substitutes for PFAS chemicals; and 125 126 127 **BE IT FURTHER RESOLVED** that NLC calls on the federal government to set drinking water 128 standards, including for PFAS chemicals, based on sound science, public health protection, 129 occurrence of the contaminant in drinking water supplies at levels of public health concern, risk reduction and cost; and 130 131 132 **BE IT FURTHER RESOLVED** that NLC calls for the federal government to avoid passing costs onto local ratepayers and to provide financial and technical assistance to communities for 133 testing, monitoring, mapping, public education, water supply treatment, and pursuit of alternative 134 135 water supplies if necessary; and 136 137 **BE IT FURTHER RESOLVED** that NLC calls on the federal government to prevent further exposure to PFAS through multiple means, including promoting and funding the development 138 139 and use of firefighting alternatives and the phasing out the use of PFAS; and 140 141 **BE IT FURTHER RESOLVED** that the federal government should thoroughly study and test 142 alternative PFAS and other long-chain chemicals before they are put into circulation to make 143 sure they are safe; and 144

- 145 **BE IT FURTHER RESOLVED** that NLC should update the "Assessing the State Firefighter
- 146 Cancer Presumption Laws and Current Cancer Firefighter Cancer Research" that it conducted in
- 147 2009 to determine what linkages there are between firefighting and an elevated incidence of
- 148 cancer.

1	NLC RESOLUTION #16
2 3	IMPROVE THE BENEFIT-COST ANALYSIS FOR FEDERALLY FUNDED FLOOD
4 5	CONTROL PROJECTS AND SUPPORTING BENEFICIAL REUSE OF DREDGED MATERIAL
6	
7	[NLC STAFF RECOMMENDATION: RENEW]
8	
9	WHEREAS, the U.S. Army Corps of Engineers (Army Corps) at the U.S. Department of
10	Defense has responsibilities for development and maintenance of waterways and harbors and for
11	other water resource projects across the nation, and is the primary federal agency associated with
12	the design and construction of flood damage reduction projects across the country; and
13	
14	WHEREAS, the White House Office of Management and Budget (OMB) works with the Army
15	Corps to determine what water resource projects are funded with the budget allocation for the
16	Army Corps enacted by Congress each year; and
17	
18	WHEREAS, the Army Corps and OMB rely heavily on a benefit-cost analysis to determine
19	which projects receive federal funding each year; and
20	
21	WHEREAS, since Congress traditionally provides the Army Corps with far fewer resources
22	than are necessary to fund the significant backlog of projects under their jurisdiction, the benefit-
23 24	cost analysis has become a de facto filter for the Army Corps and OMB; and
24 25	WHEREAS as a result, projects that have a benefit cost ratio below a certain level are often not
20 26	considered for funding at all: and
20 27	considered for funding at an, and
28	WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios is
29	narrowly focused on traditional economic and financial costs and benefits, largely overlooking
30	environmental costs and benefits, social equity and potential for secondary benefits of interest to
31	local communities; and
32	
33	WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios does
34	not effectively reflect the potential value of projects for low-income communities, including the
35	benefits of replacement of structures that protect low-income, low-cost of living communities;
36	and
37	
38	WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios does
39	not adequately consider the impacts of the loss of a community's livelihood associated with
40	agricultural land; and
41	

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratio at the 42 U.S. Army Corps of Engineers does not consider the value of federal lands; and 43 44 45 WHEREAS, dredged materials produced from Army Corps waterway and harbor maintenance activities may be suitable for beneficial reuse, but often are disposed as waste; and 46 47 48 WHEREAS, there is a lack of sediment available for the habitat restoration and flood protection 49 needed along our coasts and waterways. 50 51 NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on 52 the U.S. Army Corps of Engineers and the White House Office of Management and Budget to 53 revise the benefit-cost analysis system used for projects to reflect the values of the nation to 54 protect communities from flooding in ways that are environmentally protective and foster social 55 equity; 56 57 BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a 58 quantitative indexed value to life and safety to determine the benefit of federal investments in 59 flood control projects; and 60 61 BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to agricultural land value and the impacts of crop flooding to 62 determine the benefit of federal investments in flood control projects; and 63 64 BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a 65 quantitative indexed value to protection of low-income communities and environmental benefits 66 67 to determine the benefit of federal investments in water resources projects, including projects for flood control: and 68 69 70 BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a 71 quantitative indexed value to potential benefits of projects on federal properties, as well as 72 benefits to military readiness when developing coastal storm protection projects in the adjacent 73 community; 74 75 **BE IT FURTHER RESOLVED** that NLC calls on the Army Corps to increase the quantity of 76 dredged materials put to environmentally beneficial uses, especially related to marsh restoration 77 and sea level rise protection, by allowing a national beneficial reuse policy that considers dredged materials to be a potential resource (instead of a waste product) and establishes a 78 79 realistic economic value of environmentally-suitable dredged material that takes into account its 80 use for storm or flood risk reduction and habitat restoration; and 81

- 82 **BE IT FURTHER RESOLVED** that the cost of offshore disposal of dredged materials should
- 83 include the full future economic value of that sediment that would be lost if it is deposited
- 84 offshore.

1	NLC RESOLUTION #17		
2			
3	INCREASE FUNDING FOR BORDER WATER INFRASTRUCTURE PROJECTS		
4 5	INLC STAFF RECOMMENDATION: RENEW WITH EDITS!		
6	[ILLE STAFT RECOMMENDATION, REILEW WITH EDITS]		
7	WHEREAS, international transboundary rivers on the southern border of the United States are a		
8	major source of sewage, trash, chemicals, heavy metals and toxins; and		
9			
10	WHEREAS, transboundary flows threaten the health of 18 million residents in the United States		
11	and Mexico, harm important estuarine land and water of international significance, force closure		
12	of beaches, damage farmland, compromise border security, and directly affect U.S. military		
13	readiness; and		
14			
15	WHEREAS, a significant amount of untreated sewage, sediment, hazardous chemicals and trash		
16	have entered United States waters, via the Tijuana and New Rivers in southern California, the		
17	Santa Cruz and San Pedro Rivers in Arizona and the Rio Grande in Texas, eventually draining		
18	into coastal waterways, waterbodies and inland waters, such as the Salton Sea; and		
19			
20	WHEREAS, the presence of pollution on state and federal public lands is creating unsafe		
21	conditions for visitors and residents—these lands are taxpayer supported and intended to be		
22	managed for recreation, resource conservation and the enjoyment by the public, and		
23	WHEDEAS the evenent in sufficient and do not dive informations in the bonder more passes		
24 25	where the subject of the second secon		
20	the border, and places the economic stress on cities that are struggling to mitigate the negative		
20	impacts of pollution: and		
28			
29	WHEREAS, the 1944 treaty between the United States and Mexico regarding Utilization of		
30	Waters of the Colorado and Tijuana Rivers and of the Rio Grande allocates flows on transborder		
31	rivers between Mexico and the United States, and provides that the nations, through their		
32	respective sections of the International Boundary Water Commission shall give control of		
33	sanitation in cross border flows the highest priority; and		
34			
35	WHEREAS, in 1993, the United States and Mexico entered into the Agreement Between the		
36	Government of the United States of America and the Government of the United Mexican States		
37	Concerning the Establishment of a North American Development Bank which created the North		
38	American Development Bank (NADB) to certify and fund environmental infrastructure projects		
39	in border-area communities; and		
40			
41	WHEREAS, on November 30, 2018 the United States, Mexico and Canada entered into the		
42	Agreement Between The United States of America, The United Mexican States, And Canada to		

43	replace the North American Free Trade Agreement, and on December 10, 2019 the United
44	States, Mexico and Canada agreed to a protocol of amendment to the U.SMexico-Canada
45	Agreement (USMCA), which became effective in the United States on January 29, 2020; and
46	
47	WHEREAS, the implementing language of USMCA authorizes and allocates funding for grants
48	under the U.SMexico Border Water Infrastructure Program (BWIP), the Trade Enforcement
49	Trust Fund and recapitalization of the NADB, including \$300 million to address the problem of
50	toxic sewage flowing from the Tijuana River watershed; and
51	WHEREAS, the funding package included \$300 million to be available to address the problem
52	of toxic sewage flowing from the Tijuana River watershed; and
53	
54	WHEREAS, the increase in commerce and traffic across the border has resulted in economic
55	benefits for both the U.S. and Mexico; and
56	
57	WHEREAS, the ease of trade and commerce has resulted in increased vehicle and factory
58	emissions, which negatively impact the water quality, land quality and air quality of the areas
59	along the southern border; and
60	
61	WHEREAS, border communities need modernized and innovative water infrastructure to
62	provide clean and sanitary drinking water to improve the quality of living and support the
63	expanding communities; and
64	
65	WHEREAS, the adverse environmental impact will worsen existing environmental issues and
66	the strain on aging infrastructure, while also creating new environmental issues in the future; and
67	
68	WHEREAS, the widespread threat to public health and safety, damage to fish and wildlife
69	resources and degradation to the environment caused by transboundary pollution in the border
70	states requires urgent action by the federal and state governments; and
71	
72	WHEREAS, Congress authorized funding under the Safe Drinking Water Act and established
73	the State and Tribal Assistance Grants (STAG) program for the U.SMexico Border Water
74	Infrastructure Program in 1996 to provide grants for high-priority water, wastewater, and
75	stormwater infrastructure projects within 100 kilometers of the southern border; and
76	
77	WHEREAS, the EPA administers the STAG and BWIP, and coordinates with the NADB to
78	allocate BWIP grant funds to projects in the border zone; and
79	
80	WHEREAS, since its inception, the BWIP has provided funding for projects in California,
81	Arizona, New Mexico and Texas that would not have been constructed without the grant
82	program; and
83	

84	WHEREAS, the BWIP program was initially funded at \$100 million per year, but, over the last
85	20 years, the program has been significantly reduced to $\frac{15}{20}$ million in FY19 FY21 and $25$
86 87	<u>32</u> million in $FY20FY22$ ; and
88	WHEREAS in its EV 2021 Budget Request the Administration proposed to eliminate the
89	BWIP program and recommends that state revolving funds be used as a source of infrastructure
90	funding; and
91	
92	WHEREAS, officials from EPA Region 6 and 9 identified a multitude of BWIP-eligible projects
93	along the southern border totaling over \$300 million; and
94	
95	WHEREAS, Mexico has identified multiple projects totaling hundreds of millions of dollars that
96	would benefit from BWIP funding; and
97	
98	WHEREAS, without federal partnership through the BWIP and state support to address
99	pollution, cities that are impacted by transboundary sewage and toxic waste flows are left with
100	limited resources to address a critical pollution and public health issue and limited legal remedies
101	to address the problem; and
102	
103	WHEREAS, Mexico benefits from the bi-national funding program and relies on the North
104	American Development Bank to assist in funding projects on the Mexico side of the border,
105	which have an immediate and long-term environmental impact along the border in the U.S. due
106	to the upstream, transboundary flows of the major rivers; and
107	
108	WHEREAS, local governments and the public support the State's primary objectives in
109	complying with environmental laws including the Clean Water Act and Endangered Species Act,
110	and their state law analogues, and are supported by substantial public investments at all levels of
111	government to maintain a healthy and sustainable environment for the future.
112	
113	NOW, THEREFORE, BE IT RESOLVED that the National League of Cities urges the
114	Federal government to continue to fund the Border Water Infrastructure Program, and to
115	recommit to working bi-nationally to develop and implement long-term solutions to address
116	serious water quality and contamination issues, such as discharges of untreated sewage and
117	polluted sediment and trash-laden transboundary flows originating from Mexico, that result in
440	

significant health, environmental, and safety concerns of affected communities.

1	NLC RESOLUTION #18
2	
3	SUPPORTING LOCAL CONTROL OF WATER INFRASTRUCTURE PROJECTS
4 5	INLC STAFF RECOMMENDATION: RENEW WITH EDITS
6	
7	WHEREAS, local leaders have a strong commitment to ensuring that our citizenstheir residents
8	have access to clean and reliable drinking water and wastewater systems; and
9	
10	WHEREAS, local leaders have an obligation to protect public health, to use limited public
11	resources in the most efficient manner possible, and to promote economic development; and
12	
13	WHEREAS, local public and private engineers and water professionals also have an obligation
14	to protect public health, to use limited public resources in the most efficient manner possible, and
15	to promote economic development; and
16	
17	WHEREAS, there are efforts at the federal level and in various states that would undermine
18	these goals, supersede engineering judgment and impose new mandates on local communities;
19	and
20 21	WHEREAS the design of drinking water and wastewater systems is an inherently local process
27	and local communities are in the best position to select infrastructure materials as each
23	community's needs are unique: and
24	
25	WHEREAS, infrastructure materials all have different service lives, durability, reliability,
26	economic, health and safety characteristics and engineers and communities need to retain local
27	control to select infrastructure materials based on factors important to the local community; and
28	
29	WHEREAS, communities should remain free to adopt system-wide best management practices
30	and uniform design specifications in the development and maintenance of their water systems to
31	maximize efficiency and control costs; and
32	
33	WHEREAS, restricting local control increases costs, interferes with sound engineering
34	judgment, limits the ability of communities to manage their systems as efficiently as possible and
35	delays projects.
36	
37	NOW, I HEKEFOKE, BE II KESULVED that the National League of Cities (NLC) supports
38 20	iocal control of drinking water and wastewater systems and the ability of local governments to
39 40	make water infrastructure decisions based on engineering and design, not solely based on cost;
40	

- 41
- 42 **BE IT FURTHER RESOLVED** that NLC opposes federal and state policies that mandate, or in
- 43 any way promote, material preferences or otherwise undermine local autonomy for local water
- 44 and wastewater infrastructure systems.

#### **ENERGY AND ENVIRONMENT LEGAL UPDATE**

**<u>NOTE</u>**: At issue in cases 1-9 below is whether cities and counties may bring state common law claims seeking damages or compensation for climate change impacts. Given the long history of local government reliance on public nuisance and other state common law claims to address widespread social problems affecting the public health and welfare, it is imperative that the courts recognize the viability of this type of claim. Local governments everywhere have an interest in affirming the principles of federalism underlying state common law.

Cities and counties across the United States have brought lawsuits against major oil and gas companies claiming they knew for decades their products caused climate change but denied or downplayed the threat. These lawsuits have been brought under state common law (including public and private nuisance, trespass, negligence, design defect and failure to warn). The suits seek damages or compensation for current and future costs associated with climate change.

Lawsuits have been filed in California (eight separate lawsuits), Colorado, Delaware, Hawaii, Minnesota, New Jersey, New York, Rhode Island, Washington and Washington, DC, among others. There are at least 15 similar cases being litigated at various stages, of which NLC is/was participating in 10. (Not listed below is the New York City case.) The circuit courts have ruled on five cases, with the local government position upheld in all.

The lower courts all consider the following two cases: In *American Electric Power v. Connecticut* (2011) the Supreme Court held a federal common law public nuisance lawsuit seeking an injunction against power companies to reduce greenhouse gas emissions (GHGs), brought by cities and states, was displaced by the Clean Air Act, which delegates authority to regulate GHGs to the U.S. Environmental Protection Agency (EPA). In *Native Village of Kivalina v. ExxonMobil* (2012) the Ninth Circuit held that a federal common law public nuisance lawsuit seeking damages for climate change brought by a Native village in Alaska was also displaced by the Clean Air Act. (Displacement of federal common law by a federal statute is, in essence, the same as preemption of state common law by a federal statute.)

#### 1. Mayor and City Council of Baltimore v. BP et al. – Fourth Circuit

**Update since the Congressional City Conference:** *In April, the Fourth Circuit remanded the case to state court. In May, the Fourth Circuit denied a petition for rehearing en banc.* 

On June 10, 2019, the U.S. District Court for Maryland granted the City of Baltimore's motion to remand to Maryland state court the City's case against fossil fuel companies for climate change-related damages. In a lengthy and comprehensive opinion, the judge rejected each of defendants' "proverbial 'laundry list' of grounds for removal." The court held that the City's public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit.

Federal law allows defendants to "remove" a case brought in state court into federal court if the federal court has jurisdiction over the case. BP claims that the federal court has jurisdiction to hear this case on eight grounds, including the federal officer removal statute. This statute allows federal courts to hear cases involving a private defendant who can show that it "acted under" a federal officer, has a "colorable federal defense," and that the "charged conduct was carried out for [or] in relation to the asserted official authority."

A federal district court rejected all eight grounds BP alleged supported removing this case to federal court. The federal district court remanded the case back to Maryland state court.

28 U.S.C. §1447(d) generally disallows federal courts of appeals to review federal district court orders remanding a case back to state court which was removed to federal court. The statute creates an exception for "an order remanding a case to the State court for which it was removed pursuant to" the federal officer removal statute or the civil-rights removal statute (not at issue in this case).

BP asked the Fourth Circuit to review all eight of its grounds for removing the case to federal court because one of the grounds it alleged--federal officer removal--is an exception allowing federal appellate court review.

The Fourth Circuit refused to review all eight grounds. It cited to a Fourth Circuit case decided in 1976, *Noel v. McCain*, holding that "when a case is removed on several grounds, appellate courts lack jurisdiction to review any ground other than the one specifically exempted from §1447(d)'s bar on review." BP argued that a 1996 Supreme Court case and the Removal Clarification Act of 2011 "effectively abrogated" the 4<sup>th</sup> Circuit decision. The Fourth Circuit disagreed but acknowledged other courts have reached different conclusions.

NLC filed an <u>amicus brief</u> in this case in the Fourth Circuit. Oral arguments were held in December 2019. In March, the Fourth Circuit upheld the district court's ruling to remand the case to state court, consistent with NLC's amicus brief. Later in March, the defendants filed a certiorari petition in the U.S. Supreme Court.

On July 31, 2019, the judge denied defendants' motion for a stay pending appeal of her remand order. The 4th Circuit declined to stay the district court's remand of the case to state court pending the appeal. This then caused the defendants to ask the district court to extend its stay of the remand, pending a petition for an emergency stay to the U.S. Supreme Court. The district court agreed, but also gave plaintiffs the opportunity to move to rescind the stay. The petition for an emergency stay was denied by the U.S. Supreme Court in October. The only precedent for anything like this would be the Supreme Court's stay of the Clean Power Plan.

In Oct. 2020, the U.S. Supreme Court decided to take up the case. The Court will decide whether a federal appellate court may review all the grounds upon which a defendant claims its case should not be sent back to state court when only one of the grounds the defendant alleges is specifically listed in federal statute as a basis for federal appellate court review. The U.S.

Supreme Court heard oral argument in this case in January 2021. The State and Local Legal Center filed a <u>brief</u> in the case, with NLC participating.

In June 2021, the U.S. Supreme Court held that a federal court of appeals may review any grounds the district court considered for trying to remove a case to federal court where one of the grounds was federal officer or civil rights removal. In September 2021, NLC filed an <u>amicus</u> <u>brief</u> in the remand of the case by the U.S. Supreme Court back to the Fourth Circuit. The Fourth Circuit heard oral argument in this case in January 2022 on the question of jurisdiction. Read more <u>here</u>.

#### 2. <u>City of Oakland v. BP et al. – Ninth Circuit</u>

**Update since the Congressional City Conference:** *None – In June 2021, the U.S. Supreme Court denied cert. The case was remanded to the lower court to act on the original motion. No action to date from the Ninth Circuit.* 

In the case <u>City of Oakland v BP et al. the district court ruled that cities and counties may not</u> bring state common law claims and dismissed the lawsuit. Similar to New York City case, in this <u>case, the district court</u> concluded that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. NLC filed an <u>amicus brief</u> in this case. In May, the Ninth Circuit reversed the district court's ruling to dismiss the case and remanded it back to the district court for further analysis and action, consistent with NLC's amicus brief. In August 2020, the Ninth Circuit denied a request for a rehearing en banc.

In January 2021, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The petition for cert posed the following different questions from the other cases below: "Whether putative state-law tort claims alleging harm from global climate change are removable because they arise under federal law" and "Whether a plaintiff is barred from challenging removal on appeal after curing any jurisdictional defect and litigating the case to final judgment." On June 14, the Court denied cert on that question, so the case goes back to the district court to act on Oakland's original motion to remand the case to state court. Oakland also filed a motion to amend its complaint to withdraw federal common law public nuisance claims, which they added only conditionally after the district court originally denied remand so that any trial that took place in federal court considered that issue as well.

#### 3. County of San Mateo v. Chevron et al. – Ninth Circuit

**Update since the Congressional City Conference:** In April, on remand from the Supreme Court, the Ninth Circuit affirmed the district court's order remanding global-warming related complaints to state court after they were removed by the energy company defendants. In May, the defendants filed a petition for rehearing en banc.

In the case <u>County of San Mateo v. Chevron et al.</u> the district court ruled cities and counties may bring state common law claims and ordered the case remanded to state court. In contrast

to the New York City and Oakland cases, the district court concluded that the existence of a federal common law claim does not eliminate the state common law claim, and that the Clean Air Act's delegation of regulatory authority to EPA doesn't preempt state law claims. NLC filed an <u>amicus brief</u> in the case. In May, the Ninth Circuit upheld the district court's ruling, consistent with NLC's amicus brief.

The district court stated:

"To the contrary, the Clean Air Act and the Clean Water Act both contain savings clauses that preserve state causes of action and suggest that Congress did not intend the federal causes of action under those statutes "to be exclusive.""

In August 2020, the Ninth Circuit denied a request for a rehearing en banc. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The U.S. Supreme Court remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.

#### 4. <u>Board of County Commissioners of Boulder County v. Suncor Energy et al. – Tenth</u> <u>Circuit</u>

**Update since the Congressional City Conference:** *In June, defendants filed a cert petition with the U.S. Supreme Court. Boulder's response in opposition to certiorari is due August 10. The Supreme Court is likely to consider this case during the "long conference," which usually takes place during the third week of September when the Court attempts to address most of the pending petitions from the summer.* 

On Sept. 5, 2019, the U.S. District Court for Colorado granted the City and County of Boulder's motion to remand to Colorado state court the local governments' case against fossil fuel companies for climate change-related damages. The decision closely resembles the San Mateo, Baltimore, and Rhode Island decisions. Defendants have filed an appeal in the 10th Circuit Court of Appeals. NLC filed an <u>amicus brief</u> in this case. Oral argument was heard in May. In July 2020, the Tenth Circuit <u>ruled</u> in favor of the local government position. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.

#### 5. State of Rhode Island v. Chevron et. al – First Circuit

**Update since the Congressional City Conference:** *In May, the First Circuit remanded the case to state court. In July, the First Circuit denied rehearing or rehearing en banc.* 

On July 22, 2019, the U.S. District Court for Rhode Island granted the State of Rhode Island's motion to remand to Rhode Island state court the State's case against fossil fuel companies for climate change-related damages. The decision rejected each of defendants' grounds for removal. The court held that the State's public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a

similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit, and as well as a similar order granting remand in Baltimore's case, currently pending in the Fourth Circuit. The defendants have filed an appeal in the 1st Circuit Court of Appeals. NLC filed an <u>amicus brief</u> in this case.

Oral argument was heard in the First Circuit in September 2020. In October 2020, the First Circuit issued its <u>decision</u>, holding that federal officer removal only permits interlocutory appeal of that one issue and not other grounds for removal, agreeing with the local government position. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. NLC filed an <u>amicus brief</u> in this case in September 2021. The U.S. Supreme Court remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.

#### 6. State of Minnesota v. American Petroleum Institute, et al. – Eighth Circuit

**Update since the Congressional City Conference:** None – In August 2021, NLC filed an <u>amicus brief</u> in this case. The Eighth Circuit heard oral argument on March 15. A decision is expected later this year.

The NLC brief focuses on the right of state and local governments to be the masters of their complaints, just as any other plaintiff is, that doing so and choosing to litigate state law issues in state court is not "artful pleading," and that there is no relevant federal cause of action that supplants the state causes of action pleaded.

It is important that each circuit is aware that there are important federalism issues in removal to federal court as articulated by groups that have a stake in federalism concerns.

#### 7. City and County of Honolulu v. Sonoco LP, et al. – Ninth Circuit

**Update since the Congressional City Conference:** *In July, the Ninth Circuit upheld the District Court's ruling, ordering the case remanded to state court.* 

While the Ninth Circuit is familiar with the Federalism arguments NLC has made in similar cases, it is possible that *Honolulu* will be heard by a new panel unfamiliar with the arguments. The brief serves as a "raise the flag" effort to make sure the Court understands that local government groups support the right of cities to pursue state law causes of action as plaintiffs like this in state court. NLC filed an <u>amicus brief</u> in this case in September. The Ninth Circuit heard oral argument in February. Shortly after, the court put the case in abeyance pending the issuance in the San Mateo case.

#### 8. City of Hoboken v. Exxon Mobil Corp. et. al. – Third Circuit

**Update since the Congressional City Conference:** None – NLC filed an <u>amicus brief</u> in this case in December 2021. The Third Circuit heard oral argument in June. A decision is expected later this year.

This is the first case for NLC to be on record with in the Third Circuit. The brief is similar to that for Minnesota and Rhode Island. One key difference, however, is a short section that addresses

an argument made by the National Association of Manufacturers that these lawsuits cost other local governments money by causing prices to rise.

#### 9. State of Delaware v. BP et. al. – Third Circuit

*New:* NLC filed an <u>amicus brief</u> in this case in April. The Third Circuit heard oral argument in June. A decision is expected later this year.

The local government brief in this case is similar to that filed in support of the City of Hoboken. The brief includes some updated citations, including to the recent Baltimore decision.

**NOTE:** Cases 10-12 below relate to the U.S. Environmental Protection Agency and U.S. Department of Transportation's joint rulemakings to rollback fuel economy standards and preempt the State of California and others from issuing more stringent greenhouse gas regulations on vehicles. In September 2019 the Trump Administration finalized two related actions that are collectively referred to as "Part 1" of the SAFE Rule: EPA withdrew California's authority to set its own motor vehicle standards, and NHTSA issued a rule holding that any state or local regulation on tailpipe greenhouse gas emissions is preempted by federal law. NHTSA's rule was challenged in *California v. Chao* and both actions were challenged in *Union of Concerned Scientists*.

#### 10. <u>California v. Chao et al. – DC District Court – Preemption</u>

**Update since the Congressional City Conference:** *None – In February 2020, the federal district court for the District of Columbia stayed this case pending resolution of* <u>related</u> <u>litigation</u> *in the DC Circuit (see Union of Concerned Scientists v. National Highway Traffic Safety Administration below).* 

Final regulations of the National Highway Traffic Safety Administration (NHTSA) called the "Preemption Regulation" declare that the Energy Policy and Conservation Act of 1975 (EPCA) preempts state laws that regulate greenhouse gas emissions from new passenger cars and light trucks. California has had emissions standards for light-duty vehicles for 60 years. The federal government has repeatedly granted California and other states who have adopted California's standards waivers of preemption the Clean Air Act.

At issue in this case is whether the Preemption Regulation is unlawful, exceeds NHTSA's authority, contravenes Congressional intent, and is arbitrary and capricious because the NHTSA has failed to conduct the analysis required under the National Environmental Policy Act (NEPA). In September, 23 states, the District of Columbia, and the cities of Los Angeles and New York, filed a <u>lawsuit</u> in federal district court in DC making numerous arguments against the U.S. Department of Transportation pursuant to the Administrative Procedures Act.

First, the states argue that the Preemption Regulation exceeds NHTSA's statutory authority because "Congress has not delegated to NHTSA any authority to issue a regulation or other legally effective determination under EPCA regarding express or implied preemption under EPCA, nor to adopt regulations declaring particular state laws, or categories of state laws, preempted by EPCA."

Second, the Preemption Regulation is ultra vires, meaning beyond NHTSA's scope of authority because NHTSA "does not identify any statute or other authority that authorizes the regulation."

Third, the lawsuit offers numerous arguments for why the Preemption Regulation is arbitrary and capricious including that it "interprets EPCA as expressly and implicitly preempting state laws regulating or prohibiting—or "having the direct or substantial effect of regulating or prohibiting," p. 224—tailpipe greenhouse gas emissions, regardless of whether EPA has waived Clean Air Act preemption of those laws under Section 209(b) of the Clean Air Act."

Finally, the lawsuit describes NHTSA's assertion that NEPA does not apply to the Preemption Regulation so it didn't comply with it as "arbitrary, capricious, and an abuse of discretion." The lawsuit notes that NEPA "requires the preparation of a detailed environmental impact statement for any "major Federal actions significantly affecting the quality of the human environment."

#### 11. <u>Union of Concerned Scientists v. National Highway Traffic Safety Administration – DC</u> <u>Circuit – California Waiver</u>

**Update since the Congressional City Conference:** None – This case remains in abeyance. While NHTSA has finalized their repeal of the preemption rule, EPA still has not. In January, <u>state and local government petitioners</u> and <u>respondents</u> requested that the cases remain in abeyance while EPA continues its reconsideration of the challenged rule.

**Background:** In September 2019, EPA and the National Highway Traffic Safety Administration (NHTSA) issued a withdrawal of waiver it had previously provided to California for that State's greenhouse gas and zero-emissions vehicle programs under section 209 of the Clean Air Act.

Before this withdrawal of waiver, California had adopted emissions standards for passenger cars and light trucks for 60 years that were more rigorous than the federal standard. The federal government had repeatedly granted California and other states who have adopted California's standards waivers under the Clean Air Act.

**Litigation Status:** To date, revocation of this waiver has generated four lawsuits: <u>California and other states</u>; three California air districts; the National Coalition for Advanced Transportation, which represents Tesla and other electric vehicle-aligned companies; and eleven environmental groups. NLC filed an <u>amicus brief</u> in the *Union of Concerned Scientists* case in July 2020 and the DC Circuit had planned to take briefing on both the California waiver and NHSTA preemption issues.

The waiver lawsuit brought by California and other states has been filed in the D.C. Circuit. The Trump administration asked the court to combine the waiver lawsuit and a related preemption lawsuit against the National Highway Traffic Safety Association (<u>California vs. Chao</u> above).

Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. The DC Circuit has granted DOJ's request, placing the case on hold.

#### 12. California v. Wheeler – DC Circuit – Fuel Economy Standards Rollback

**Update since the Congressional City Conference:** None – This case remains in abeyance. January, respondents <u>requested</u> that the cases remain in abeyance until NHTSA concludes reconsideration of its part of the joint SAFE II Rule, with a motion to govern the case due 30 days after that action.

This case is the challenge to the Safer Affordable Fuel Efficient (SAFE) Vehicles Rule. The SAFE Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) in March 2020. The rule significantly weakens greenhouse gas and fuel economy standards for new passenger motor vehicle rules and light trucks. In 2012 the Obama Administration issued standards that would have required a 5% improvement in both greenhouse gas emissions and fuel economy every year – the SAFE Rule replaces those standards and requires only a 1.5% improvement in each, and is expected to result in an additional 867-923 million metric tons of carbon dioxide. The SAFE Rule was challenged in the D.C. Circuit by 23 states, several cities, and a coalition of public interest groups, as well as some other petitioners. (Because the case is actually a number of consolidated cases it has a number of titles and is also referred to as *Competitive Enterprise Institute v. NHTSA*). NLC filed an <u>amicus</u> brief in this case in January 2021.

Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. In April 2021, the DC Circuit granted DOJ's request, placing the case on hold.

#### 13. <u>New York v. EPA – DC Circuit – ACE Rule and West Virginia v. EPA – U.S Supreme</u> <u>Court – Clean Power Plan</u>

**Update since the Congressional City Conference:** In June, the Supreme Court held that the U.S. Environmental Protection Agency lacked the statutory authority to issue the Clean Power Plan.

NLC is participating in two related cases: *New York v. EPA* and *West Virginia v. EPA*. *New York* is on hold while the U.S. Supreme Court considers <u>West Virginia v. EPA</u>, which is a collection of appeals asking the court to overturn the D.C. Circuit's January ruling that struck down the Trump administration's Affordable Clean Energy rule.

In *New York v. EPA* states and cities, environmental groups, and other organizations have filed a lawsuit challenging the Trump Administration's repeal of the Clean Power Plan (CPP) and issuance of the Affordable Clean Energy (ACE) Rule, which establishes greenhouse gas emissions standards for existing power plants. The repeal of the CPP and the promulgation of the ACE Rule represent the Trump Administration's most significant climate rollback to date.

In April 2020, NLC filed an <u>amicus brief</u> in *New York*. The goal of the local government amicus brief, as with our previous efforts in the EPA climate regulation cases, is to highlight the perspective of localities as the first responders to the impacts of climate change and as

climate policy innovators. The brief reflects signatory associations' and local governments' priority concerns related to climate impacts, to highlight local sustainability and climate action plans, and to support the legal arguments set forth by petitioners challenging the regulatory rollback. The brief largely resembles the <u>one filed</u> in support of the Clean Power Plan in terms of its approach, although of course the legal arguments will be different, focusing on the arbitrary and capricious nature of the new rule and its lack of a rational basis.

Twenty-three cities, counties and mayors have signed onto the brief. For comparison, about <u>50</u> signed onto the brief supporting the Clean Power Plan.

The U.S. Court of Appeals for the District of Columbia Circuit found that the ACE rule failed to provide adequate environmental and public health protections. The court ruled that EPA relied on a "fundamental misconstruction" of the Clean Air Act. "The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), as a means of regulating power plants' emissions of greenhouse gases. It did not," the court wrote. In January 2021, the U.S. Court of Appeals for the District of Columbia Circuit <u>vacated and remanded</u> the Trump Administration Affordable Clean Energy (ACE) Rule.

In January 2022, NLC filed an <u>amicus brief</u> (read more <u>here</u>.) before the U.S. Supreme Court. The Supreme Court's ruling in June <u>greatly limited</u> EPA's ability to regulate greenhouse gas emissions from power plants by curtailing its long-standing authority under the Clean Air Act.

#### 14. Illinois Commerce Commission v. FERC – Seventh Circuit – Market Capacity Order

**Update since the Congressional City Conference:** *None* – *This case is being held in abeyance until a related case in the Third Circuit is decided or Oct.* 31 *if no final order has been issued. NLC will file an amicus brief in this case.* 

In Dec. 2019, the Federal Energy Regulatory Commission (FERC) <u>directed</u> PJM, a regional wholesale electricity market covering 13 states in much of the mid-Atlantic and Ohio River Valley, to establish a price floor for state subsidized resources in PJM's capacity market, seeking to ensure grid reliability by auctioning power delivery obligations three years before the electricity is needed. That price floor, called the Minimum Offer Price Rule (MOPR), would block many wind, solar and nuclear plants from clearing those auctions.

The MOPR would increase the price of certain wind, solar, and nuclear power generation that receives subsidies from almost every state in PJM's region, thereby removing the impact of the state's subsidy. Specifically, three states in PJM's territory—Ohio, Illinois and New Jersey—have nuclear subsidies, and eleven have renewable energy mandates that would make new clean energy subject to the MOPR. FERC Chairman Neil Chatterjee did note the MOPR will not apply to existing renewable energy plants, energy storage resources, or power generators that are already under ratepayer-funded "self supply" contracts, like those owned by municipal

utilities. This is forecast to exempt about 5,000 MW, a small percentage of the total power usage in the region.

**Current status:** Following the rule's publication, many states that participate in PJM, the nuclear industry and renewable energy groups asked FERC to rehear the subsidy case. In April 2020, FERC declined to review its Dec. 2019 decision to limit participation of state-subsidized renewable and nuclear energy in PJM, setting the stage for a raft of legal challenges and potential state exits from the region's long-term electricity auctions.

FERC's decision to toss out appeal requests allows opponents of the decision to file legal challenges at the D.C. Circuit Court. Illinois utility regulators, environmental groups and municipal utilities are filing suit. The case was initially held in abeyance pending FERC's ruling on several petitions for rehearing that were filed with it. FERC has now resolved those petitions and the abeyance will expire on December 14. The court is expected to issue a scheduling order around that time.

The Illinois filing in the U.S. 7th Circuit Court of Appeals was followed by a challenge from the American Public Power Association and American Municipal Power in the D.C. Circuit Court of Appeals. <u>New Jersey and Maryland have also filed in the DC Circuit</u>. The Sierra Club, Natural Resources Defense Council and Environmental Defense Fund also plan to file at the D.C. Circuit. The National Rural Electric Cooperative Association is also planning to formally file suit against the PJM decision.

**Local government impact:** FERC's decision to deny a rehearing could also push some PJM states with nuclear power subsidies and renewable energy mandates to end their participation in the region's capacity market, while continuing to utilize its shorter-term real-time and day-ahead markets. This could make meeting local or state renewable energy goals or carbon mitigation goals difficult. PJM has proposed a June deadline for states to leave the market as part of its compliance filing, but some states are concerned that coronavirus complications will make that timeline unworkable.

**Related:** In June, PJM proposed changes to the MOPR that effectively exempt "statesubsidized" renewables from the rule (see <u>here</u> for a brief overview). PJM requested FERC approval to implement the change but the Commission took no action. As a result, in accordance with section 205 of the Federal Power Act, the changes automatically took effect in September. This would seem to moot the case, but it hasn't been formally dismissed, and actions challenging the revised MOPR are expected. Requests for rehearing have already been filed with FERC.

#### 15. California Restaurant Association v. Berkeley – Ninth Circuit

**Update since City Summit:** *NLC filed an* <u>amicus brief</u> *in this case in February. Oral argument was heard in May. A decision is expected later this year.* 

In this case, a restaurant trade group plaintiff brought suit against the city of Berkeley, California, claiming that Berkeley's 2019 "natural gas ban," which prohibited or restricted gas connections to many new buildings within the city, was preempted by both the U.S. Energy Policy & Conservation Act (EPCA) and state law. The federal district court dismissed the EPCA preemption claims (i.e., all claims under federal law), holding that EPCA -- which preempts state and local standards relating to the energy efficiency or energy use of many appliances -- did not preempt the Berkeley gas ban. (More information about the case can be found on the Sabin Center blog.)

The Restaurant Association has filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit. The *amicus* brief would address the perspective of cities advocating for the less expansive reading of EPCA preemption, consistent with the view of the district court. This less expansive reading would give cities more confidence that many of their policies would not be preempted simply because they have a very tangential relation to the energy efficiency or energy use of an appliance. Read the City of Berkely's <u>amicus</u> brief.

#### 16. California River Watch v. City of Vacaville – Ninth Circuit

**Update since the Congressional City Conference:** *In June, the Ninth Circuit withdrew its previous opinion and issued a superseding opinion holding that the City of Vacaville could not be held liable as a RCRA transporter. It is not yet known if California River Watch will appeal.* 

The City of Vacaville, CA draws groundwater from wells and distributes it to city residents. The City's water complies with federal and state drinking water standards, but also contains hexavalent chromium. California River Watch (CRW) sued the city in federal district court under the citizen-suit provision of the Resource Conservation and Recovery Act of 1976 (RCRA), claiming the city's distribution of this water violated RCRA because it constituted the generation and transportation of dangerous solid waste. The district court granted summary judgment to the city on the grounds that the water containing hexavalent chromium was "discarded material" under RCRA.

The Ninth Circuit reversed. The panel's reversal rested on two holdings. First, it held there was a genuine issue of material fact that the hexavalent chromium was "discarded material." Second, the panel held "nothing in RCRA's text suggests that" the city had to "play some role in 'discarding' the waste" to be held liable. "While the City may be distributing groundwater contaminated by others, RCRA's endangerment provision broadly applies to any person, including a governmental instrumentality, like the City, that contributes to the transportation of any waste. So, a transporter of waste need not also be the cause of the waste's existence." As the dissent pointed out the panel thus partly overruled *Hinds Investments, L.P. v. Angioli*, where the Ninth Circuit "require[d] that a defendant be actively involved in or have some degree of control over the waste disposal process to be liable under RCRA."

The panel decision disturbs Ninth Circuit case law and could significantly increase liability risks for municipal and other public water suppliers that are complying with applicable maximum contaminant levels (MCLs) and had no role in introducing contaminants into their water supplies. Indeed, public suppliers could be subject to RCRA litigation for merely conveying contaminants through their distribution systems at levels deemed otherwise acceptable under

the Safe Drinking Water Act and implementing federal and state regulations.

The City of Vacaville sought rehearing. NLC filed an <u>amicus brief</u> in this case in November in support of rehearing to underscore the disruptive impacts of the Ninth Circuit's decision. The amicus brief communicates the consequences of the panel's decision on water suppliers. The brief argues that when a water supplier extracts groundwater containing a contaminant and distributes it to the public, the supplier's actions should be protected by the safe harbor that MCLs are intended to provide, consistent with the Safe Drinking Water Act. The brief argues for an alternative basis for affirmance of the district court's decision, and the brief takes no position on some of the major issues being argued in the case (namely, the RCRA definitions).

In June, the Ninth Circuit withdrew its previous opinion and issued a superseding opinion holding that the City of Vacaville could not be held liable as a RCRA transporter. The Ninth Circuit reasoned that a RCRA transporter must have some direct connection with the waste disposal process, and that the City of Vacaville lacked the requisite connection. The Ninth Circuit's superseding opinion is a substantial victory for public water suppliers in California and elsewhere in the Ninth Circuit. It prevents innocent public water suppliers from being held liable under RCRA for distributing drinking water that happens to contain manmade contaminants.

#### 17. <u>Sackett v. EPA – U.S. Supreme Court – "Waters of the U.S."</u>

**Update since the Congressional City Conference:** *NLC, via the State and Local Legal Center, filed an <u>amicus brief</u> in this case in April in support of neither party. The Supreme Court will hear oral argument in October.* 

The U.S. Supreme Court has agreed to take up a case pertaining to the definition of "waters of the U.S." under the Clean Water Act (*Sackett v. EPA* – read more <u>here</u>). While NLC has weighed in on this issue through the regulatory process going back to <u>2013</u>, this is the first case in which NLC will participate in any of the legal challenges to date against either the 2015 Obama Clean Water Rule or the 2020 Trump Navigable Waters Protection Rule.

The proposed SLLC brief in *Sackett* would be narrow in protecting municipal functions and responsibilities as owners and operators of drinking water, wastewater and stormwater systems in whatever definition of "waters of the US" the court decides.

<u>Facts:</u> The Sackett's purchased a "soggy residential lot" near Idaho's Priest Lake. To the north of their lot, with a road in between, is a wetland that drains to a tributary that feed into a creek that flows southwest of the Sacketts' property and empties into Priest Lake. The Sackett's property is 300 feet from the lake.

After obtaining permits from the county the Sacketts began backfilling the property with sand and gravel to create a stable grade. EPA ultimately issued the Sacketts a "formal administrative compliance order" explaining that "the Sacketts' placement of fill material onto half an acre of their property without a discharge permit constituted a violation of the CWA." The order also informed the Sacketts that failure to comply could result in civil and administrative penalties of over \$40,000 per day. (In March 2020 the EPA withdrew the compliance order but the Ninth Circuit said the case isn't moot).

<u>Issue:</u> Whether the Ninth Circuit set forth the proper test for determining whether wetlands are "waters of the United States" under the Clean Water Act, 33 U. S. C. §1362(7).

<u>Holding and Reasoning</u>: The Ninth Circuit held that Justice Kennedy's definition of "waters of the United States" from *Rapanos v. United States* (2006) is controlling. The Sacketts argued that Justice Scalia's definition is controlling.

The Clean Water Act (CWA) extends to all "navigable waters," defined as "waters of the United States, including the territorial seas," and it prohibits any person who lacks a permit from discharging pollutants, including rocks and sand, into those waters.

CWA regulations define "waters of the United States" to include "wetlands" that are "adjacent" to traditional navigable waters and their tributaries.

Rapanos concerns the "governing standard for determining CWA jurisdiction over wetlands."

Justice Scalia, writing for four Justices, stated that "waters of the United States" extends only to "relatively permanent, standing or flowing bodies of water" and to wetlands with a "continuous surface connection" to such permanent waters.

According to Justice Kennedy, writing alone, "jurisdiction over wetlands depends upon the existence of a significant nexus between the wetlands in question and navigable waters in the traditional sense." This "significant nexus" inquiry would turn on whether the wetlands, "either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable."

According to the Ninth Circuit, while the Scalia plurality did not entirely reject the concept of a "significant nexus," it opined that only wetlands with a "physical connection" to traditional navigable waters had the requisite nexus to qualify as "waters of the United States."

It is fair to say that the Kennedy opinion is more pro-wetland that the Scalia opinion.

The question before the Ninth Circuit was whether the Kennedy or the Scalia opinion controlled. The Ninth Circuit held that the Kennedy opinion controlled. In *Marks v. United States* (1977) the Court said if there aren't five votes for one rationale the holding of the case is "the narrowest ground to which a majority of the Justices would assent if forced to choose in almost all cases." The Ninth Circuit agreed with the Seventh Circuit that the Kennedy concurrence supplied the controlling rule in *Rapanos*.

#### Building an Electric Vehicle Program: Where Should Cities Start?

#### Three Takeaways for Cities from the Congressional City Conference

We recently had the opportunity to facilitate a conversation with local leaders from across the country about electric vehicles (EVs) at the National League of Cities — Congressional City Conference. Throughout the conversation, we heard a similar refrain: electric vehicles are here to stay, we are aware of their potential and want to support the electric transition, but we don't know where to start.

Luckily, with the Infrastructure Investment and Jobs Act (IIJA) and a nationwide focus on reducing emissions in the transportation sector, there are several resources that cities can leverage as they begin to build out the policies and procedures to grow an EV program.

#### 1. Get Familiar with Federal EV Guidance and Funding

The most popular topic of conversation in the world of EVs these days is the federal government's state DOT-focused National Electric Vehicle Infrastructure (NEVI) program. But the federal offering — in finance and technical assistance — is much broader than that. As a first step, we recommend visiting <u>driveelectric.gov</u> to keep updated on new guidance coming from the Joint Office of Energy and Transportation. The site has useful links to data and tools that can be used by local jurisdictions as well as state Departments of Transportation (DOTs). This is important not least because there is \$1.25 billion in discretionary funding set aside for community charging grants that will be coming out later in 2022.

Additional Resources:

- <u>Alternative Fuels Data Center</u>: View existing locations of publicly available charging stations, Alternative Fuel Corridors, and laws and incentives for EVs in your state.
- <u>Rural EV Toolkit</u>: Learn more about vehicle electrification and find resources for rural and other communities just starting out with EVs.

#### 2. Plan your EV Strategy

To be competitive for federal grants, it is helpful to have a plan in place that you can point to as evidence of your locality's commitment to EVs. The planning process also helps you understand potential policies and educational outreach that may be necessary to further expand the deployment of EVs, whether for your community's municipal fleet or its public charging infrastructure. A strategic plan or roadmap for EVs is an important step in the process, and we recommend looking to neighboring jurisdictions, the state, and your local utilities for help and advice in the process. Planning for EVs is a cycle of discovery, and it is likely that some nearby jurisdictions are further along in the process and can share their lessons learned. Also, with state DOTs actively in the process of drafting their EV plans for NEVI, there may be procurement mechanisms and public-private partnerships for charging that localities within the state can use. Finally, local utilities may have additional financial or in-kind support available and can help ensure that the siting of stations works from a grid capacity perspective. These sorts of partnerships are integral for planning and then implementing EV infrastructure.

Additional Resources:

• <u>Clean Cities Coalition Network</u>: Join a local coalition focused on building partnerships and programs to support alternative fuels.

#### 3. Incorporate EV Considerations into Everything You Do

As your program grows, remember that EV infrastructure does not need to be a standalone project. Many grant programs include EV charging stations as eligible expenses within larger projects, and those larger projects often allow you to leverage low-cost federal loans with grants to get the most out of your investment. Your community can then start a positive feedback loop in which the initial public investment in infrastructure leads to additional investment from the private sector, thus creating a cost-effective way to bring new amenities to your city.

#### Additional Resources:

• <u>EV Infrastructure Funding Program Matrix</u>: Review all funding programs in which EVs are an eligible expense and filter for ones that apply to you.

Planning for EVs will ensure that your city is well positioned to take advantage of future EV infrastructure opportunities. It also allows you to proactively support the needs of residents as they transition to EVs. By taking these initial steps, you're creating a foundation that prepares your city for the future of transportation.

#### About the Authors:

Ann McGrane is a Senior Mobility Policy Advisor with Stantec's <u>Smart(ER) Mobility</u> team.

John Bachmann leads Stantec's community development group in the Mid-Atlantic region.



# WATER SECTOR CYBERSECURITY BRIEF FOR STATES

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### Introduction

Implementing cybersecurity best practices is critical for water and wastewater utilities. Cyber-attacks are a growing threat to critical infrastructure sectors, including water and wastewater systems. Many critical infrastructure facilities have experienced cybersecurity incidents that led to the disruption of a business process or critical operation.

### **Cyber Threats to Water and Wastewater Systems**

Cyber-attacks on water or wastewater utility business enterprise or process control systems can cause significant harm, such as:

- Upset treatment and conveyance processes by opening and closing valves, overriding alarms or disabling pumps or other equipment;
- · Deface the utility's website or compromise the email system;
- Steal customers' personal data or credit card information from the utility's billing system; and
- Install malicious programs like ransomware, which can disable business enterprise or process control
  operations.

These attacks can: compromise the ability of water and wastewater utilities to provide clean and safe water to customers, erode customer confidence, and result in financial and legal liabilities.

### **Benefits of a Cybersecurity Program**

The good news is that cybersecurity best practices can be very effective in eliminating the vulnerabilities that cyber-attacks exploit. Implementing a basic cybersecurity program can:

- · Ensure the integrity of process control systems;
- · Protect sensitive utility and customer information;
- · Reduce legal liabilities if customer or employee personal information is stolen; and
- · Maintain customer confidence.

### **Challenges for Utilities in Starting a Cybersecurity Program**

Many water and wastewater utilities, particularly small systems, lack the resources for information technology (IT) and security specialists to assist them with starting a cybersecurity program. Utility personnel may believe that cyber-attacks do not present a risk to their systems or feel that they lack the technical capability to improve their cybersecurity.

Be assured, however, that basic cybersecurity best practices can be carried out by utility personnel without specialized training, and user-friendly resources are available to help. You just have to know how to start and where to look!



# WATER SECTOR CYBERSECURITY BRIEF FOR STATES

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### How to Use This Brief

EPA developed this brief in cooperation with the Association of State Drinking Water Administrators' Security Committee to help state staff (or their designated assistance providers) start a conversation with utilities about cybersecurity. Information gathered from the questions on this page can help you to understand a utility's current cybersecurity practices and point them toward resources to enhance their program. You may also leave the next two pages with the utility as a reminder of your discussions. Those pages provide recommendations for building a cybersecurity program and responding to cyber-attacks.

## **10** Questions for a Cybersecurity Dialogue with a Utility\*

#### Does your utility ...

- 1. Keep an inventory of control system devices and ensure this equipment is not exposed to networks outside the utility?
  - Never allow any machine on the control network to "talk" directly to a machine on the business network or on the Internet.
- 2. Segregate networks and apply firewalls?
  - Classify IT assets, data, and personnel into specific groups, and restrict access to these groups.
- 3. Use secure remote access methods?
  - A secure method, like a virtual private network, should be used if remote access is required.
- 4. Establish roles to control access to different networks and log system users?
  - Role-based controls will grant or deny access to network resources based on job functions.
- 5. Require strong passwords and password management practices?
  - Use strong passwords and have different passwords for different accounts.
- 6. Stay aware of vulnerabilities and implement patches and updates when needed?
  - Monitor for and apply IT system patches and updates.
- 7. Enforce policies for the security of mobile devices?
  - Limit the use of mobile devices on your networks and ensure devices are password protected.
- 8. Have an employee cybersecurity training program?
  - All employees should receive regular cybersecurity training.
- 9. Involve utility executives in cybersecurity?
  - Organizational leaders are often unaware of cybersecurity threats and needs.
- 10. Monitor for network intrusions and have a plan in place to respond?
  - Be capable of detecting a compromise quickly and executing an incident response plan.
- **11.** For more information about each of these questions, see WaterISAC *15 Cybersecurity Fundamentals for Water and Wastewater Utilities* at <a href="https://www.waterisac.org/fundamentals">https://www.waterisac.org/fundamentals</a>.

### Taking the Next Step with a Utility

If utility staff can knock each of these questions/answers out of the park, then the utility has a good cybersecurity program in place. However, if the response to these questions is "No," "Not sure," or "How about this weather?" then encourage the utility to use the next page to start building a cybersecurity program.



# IMPLEMENTING A CYBERSECURITY PROGRAM AT YOUR WATER OR WASTEWATER UTILITY

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# **Cybersecurity Worksheet**

Use this worksheet as recommendations for an effective cybersecurity program. Talk to your IT service providers and others who manage your IT systems about how to carry out these actions at your utility.

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Action	Notes	Date Completed
Audit IT systems and identify vulnerabilities		
Keep a list of the highest cybersecurity risks and how they will be addressed		
Ensure all IT systems have up-to-date antivirus and anti-malware software		
Install security patches on all IT systems on a monthly basis		
Implement secure remote access practices		
Segregate networks and control access to networks based on job function		
Monitor networks for suspicious activity and be prepared to respond if detected		
Establish strong password policies		
Consider "application whitelisting" on critical systems (allow execution of approved files only)		
Improve physical security for IT equipment		
Segregate business enterprise and process control systems, and require separate credentials for access		
Establish secure policies for mobile devices		
Develop a contingency and disaster recovery plan for critical IT systems		
Develop and exercise SOPs for manual operation of utility processes if control systems are compromised		
Implement redundancies in your system to limit service outages		
Conduct cybersecurity training for utility staff and contractors		



# IMPLEMENTING A CYBERSECURITY PROGRAM AT YOUR WATER OR WASTEWATER UTILITY

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# Steps for Responding to a Suspected Cyber Incident at a Water or Wastewater Utility

#### Response

- 1. Disconnect compromised computers from the network. Do not turn off or reboot systems.
- 2. Assess the scope of the compromise, and isolate all affected IT systems.
- 3. Open a ticket with your antivirus software or security service vendor.
- 4. Assess any potential damage, including impacts to treatment processes or service disruptions.
- 5. Initiate manual operation of equipment if control systems have been compromised.
- 6. Distribute any advisories or alerts to customers as needed, including customers whose records may have been compromised.
- 7. Identify methods to scan all IT assets to eradicate malicious code. Assess and implement recovery procedures.

#### Reporting

- 1. Report the incident to local law enforcement and the primary oversight agency (typically, the state).
- 2. Contact the DHS Cybersecurity and Infrastructure Security Agency (CISA) at <u>https://www.cisa.gov/</u> <u>reporting-cyber-incidents</u>. CISA can assist your utility with identifying and restoring affected systems, coordinating federal assistance, and improving security.
- 3. Submit an incident report through WaterISAC (analyst@waterisac.org; 866-H2O-ISAC).

# **Important Contact Information**

Role	Point of Contact	Phone Number	Email
IT service vendor			
Local law enforcement			
State agency			
Cybersecurity and Infrastructure Security Agency (CISA)			https://www.cisa.gov/reporting- cyber-incidents
WaterISAC		866-H2O-ISAC	analyst@waterisac.org

# **For More Information**

For more information on available cybersecurity guidance and resources:

- WaterISAC 15 Cybersecurity Fundamentals for Water and Wastewater Utilities
- DHS Cybersecurity and Infrastructure Security Agency
- American Water Works Association (AWWA) Resources on Cybersecurity
- EPA Cybersecurity Incident Action Checklist

#### **SPEAKER BIOS**

#### **Commander Tara Frost**

Commander Tara Frost is a United States Public Health Service Commissioned Corps (USPHS) officer assigned to the Environmental Protection Agency. Tara received a Bachelor of Science in Environmental Science from Texas A & M University – Commerce and a Master of Science in Environmental Science from the University of North Texas. Prior assignments include Total Maximum Daily Load Coordinator for Florida and Enforcement Officer for the Clean Water Act. She has over 15 years of federal water regulatory experience. Her current role is as Water Sector Security and Resilience Liaison where she prepares for and responds to All Hazards events for the drinking water and wastewater sector in the 8 southern states.

Some of her response experience includes Emergency Support Function #3 and #8 deployments for Hurricanes Matthew, Harvey, Irma, Dorian, Super Typhoon Yutu, COVID-19 Repatriation, and Operations Allies Welcome.

She is a hiker, diver, gardener, sailor and traveler. Tara has volunteered over 1,000 hours as a SCUBA diver for various organization and supports coral restoration in her free time.

#### **Stanton Gatewood**

Stanton Gatewood is the U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency Region 4 Cyber Security Coordinator for the State of Georgia.

Gatewood is the former Chief Information Security Officer for the State of Georgia, Board of Regents of the University System of Georgia and the University of Georgia. He has more than 35 years of experience in cyber security program management and strategic planning, executive leadership, including the U.S. military, state and federal governments, higher education, and several top 10 global corporations.

Gatewood has also served as the Vice President for Information Technology and the Chief Information Officer for Albany State University.

Stanton has built two centers of excellence, (1) cryptography and (2) awareness & training. He is a recent nominee to the National Cyber Security Hall of Fame.

#### Patrice S. Ruffin

Patrice S. Ruffin, AICP, was appointed as Brookhaven Assistant City Manager in August 2021. For over 15 years, Ms. Ruffin has had the unique opportunity to work in local government as an urban planner, particularly with newly incorporated municipalities. She began her career as a planner with the cities of Riviera Beach, Florida and Roswell, Georgia, both of which gave her an excellent perspective and understanding of planning fundamentals. Utilizing these skills, Ms. Ruffin was able to quickly advance her career by securing senior level positions as a contractor with the City of Sandy Springs, Georgia. During her time with the City of Brookhaven, Ms. Ruffin has also served in the Community Development Department as Deputy Director and then Director. Her strong educational and professional foundation in the field of urban planning, along with the geographical setting of the metro Atlanta region has placed her in a sphere of influence and opportunity to have a voice of advocacy for sound and equitable planning. In 2020, she was recognized by Engineering Georgia magazine as one of the *Top 100 Influential Women in Georgia Engineering* as a professional dedicated to sustained improvements to the state in the areas of planning, design, construction, governance, education, and public service.

Ms. Ruffin has earned a juris doctor degree from Georgia State University College of Law as well as bachelor's and master's degrees in urban and regional planning from Alabama A&M University. She is also active in several professional organizations, including the American Planning Association.



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