

The AGC Utility Infrastructure Division

Introduction:

Welcome to AGC's Utility Infrastructure Division, formerly known as the Municipal and Utilities Division. Our Division provides management and market services to contractors engaged in utility construction – including water and wastewater facilities and pipelines, energy generation and transmission, and telecommunications infrastructure. The Division also serves contractors engaged in other underground utility work as well as specialty work such as excavation, tunneling, boring, and site preparation. The Division serves as liaison to, and monitor for, other water, wastewater, and utility owner and user groups in the public and private sectors.

Division Structure:

Like other Divisions in AGC, the Utility Infrastructure Division is lead by a Chair and Vice Chair. They are selected by a Nominating Committee that consists of the past three Division Chairs. The Chair and Vice Chair serve on the AGC Executive Board as representatives of the Division. The Chair sets the Division's goals & priorities for the year and runs Division and Division Leadership meetings. The Division Leadership is comprised of the Division's most active members, many of whom have served as Division Chair, and a few who have served as President of AGC. The Leadership meets twice a year, once before the AGC National Convention, and again before the Joint Highway and Utility Contractors Conference.

Division Meetings and Activities:

AGC National Convention – March

AGC Joint Highway and Utility Contractors Conference – November

CGA Committee Meetings – Three to Five meetings annually depending on the committee

EJCDC Meetings – Winter, Summer, Fall

The Pipeline - The AGC Utility Contractor's Newsletter:

- Monthly
- 4,000+ Subscribers
- Covers legislative and regulatory affairs affecting utility contractors and excavators, educational and networking opportunities, issue alerts calling members to action, and AGC advocacy efforts on behalf of contractors engaged in utility construction

Coalitions:

AGC represents its members through many active coalitions in Washington, D.C. Coalitions relevant to the Division include:

- **Water Infrastructure Network (WIN).** AGC represents the construction industry in WIN, a broad-based coalition of local elected officials, drinking water and wastewater service

providers, labor organizations, state environmental and health administrators, engineers and environmentalists dedicated to preserving and protecting the health, environmental and economic gains that America's drinking water and wastewater infrastructure provides. AGC serves on the WIN Executive Committee.

- **Sustainable Water Infrastructure Coalition (SWIC).** AGC is among the construction industry representatives in SWIC, a broad-based coalition of private water companies, engineering associations, labor organizations, water and wastewater equipment manufacturers, and environmentalists dedicated to creating opportunities for private investment in water infrastructure and public-private partnerships for the water industry. AGC serves on the SWIC Steering Committee.
- **Common Ground Alliance (CGA).** AGC represents the construction industry in the CGA, a nonprofit group promoting underground construction safety and facility damage prevention among all stakeholders to the one-call process. AGC was the first construction industry sponsor of the CGA, and a founding member. AGC was also proud to be the first National Launch Partner for 811, the nationwide 3-digit dialing for one-call, an effort guided by the CGA. AGC serves on several of CGA's committees, including: Best Practices, Stakeholder Advocacy, Data, and Education. AGC also has a seat on the CGA Board of Directors. For more details on the workings of the CGA, see the *Underground Facility Safety and the Common Ground Alliance* section.
- **Engineers Joint Contract Documents Committee (EJCDC).** EJCDC is a joint venture of the three major organizations of professional engineers - ACEC, ASCE, and NSPE. Since 1975, EJCDC has developed and updated standard-form contract documents for projects in the public works arena involving engineered design and construction. AGC was a sponsor of the organization from 2003-2012. Now, members of the Division serve as liaison to EJCDC, advising them of the contractors' perspective on their contract terms. For more information on the EJCDC, see the *Standard Contract Documents* section.
- **Municipal Bonds for America (MBFA).** MBFA is a coalition developed to educate members of Congress and the public about the use and success of municipal bonds, and also to safeguard the tax exempt status these bonds enjoy. Policymakers from both parties have called for the modification or abolition of this tax exempt status. AGC was the first (and currently only) construction industry representative to join the MBFA.

Legislative Initiatives:

Overall Strategy

AGC has embraced a multi-faceted 'all-of-the-above' approach to funding the water/wastewater infrastructure markets.

Support Short- and Long-Term Funding for Water and Wastewater Infrastructure Construction

Background:

- There is a persistent, downward trend in federal investment in water infrastructure. When adjusted for inflation, total federal commitment to funding has declined nearly 70 percent since the inception of the Environmental Protection Agency's (EPA) State Revolving Fund (SRF) program in 1987. This is particularly troubling as EPA's estimates show that investment of between \$400 and \$600 billion is needed over the next 20 years just to keep pace, resulting in an annual investment shortfall of more than \$20 billion a year.
- When the federal government began mandating quality standards for drinking water and wastewater discharge through legislation like the Clean Water Act and Safe Drinking Water Act, it also recognized that forcing local governments to spend billions of dollars to upgrade facilities and equipment to comply with these regulatory requirements was impractical. The EPA's SRF program is the vehicle the government uses to avoid foisting the burden of maintaining national water standards onto local ratepayers alone. When the federal government shirks its responsibility to help with financing improvements to local water systems, federal water quality standards become unfunded mandates with state and local governments stuck holding the bag. As the economic downturn continues to pressure State and local governments, federal water infrastructure financing assistance is even more critical.

AGC Message:

- **Halt the Assault on Water Infrastructure Appropriations.** Fiscal Year 2011 saw cuts to EPA which totaled \$1.6 billion, with \$997 million coming from the Clean Water SRF and Drinking Water SRF; nearly two-thirds of cuts to an agency balanced on the back of a single construction program. Fiscal Year 2012 cut the programs even further. The Administration's FY13 Budget request proposed cutting a further \$100 million from the program. The House considered FY13 cuts to EPA that total \$1.5 billion, again with \$967 million coming from the SRFs.
- **Create a Sustainable Mechanism for Long-term Funding of Water Infrastructure.** With the volatility inherent in the annual appropriations process, a sustainable, long-term funding mechanism is needed to provide market certainty for construction firms and local water authorities. New long-term funding mechanism should be multi-year and supplementary to the current SRF process. This long-term mechanism should also embrace the "user pays" concept that other infrastructure funding mechanisms have implemented with success to create a budget-neutral, user-fee financed, clean water trust fund.
- **Support Creative & Alternative Approaches to Water Infrastructure Finance.** As traditional methods of funding fall out of favor, it is important to seek fresh and creative

approaches. One creative mechanism is the highly successful Build America Bonds (BAB) program in the Recovery Act. BABs are taxable bonds for which the U.S. Treasury Department pays a 35 percent direct subsidy to the issuer to offset borrowing costs. The program financed nearly \$38 billion in water and sewer infrastructure projects over the two years it was active. Another mechanism is a national water infrastructure bank that adopts a sensible project value minimum dollar amount and reconciles the qualifications for “national or regional significance.” These creative and alternative mechanisms should supplement – rather than replace – the traditional financing mechanisms already proven to work.

- **Secure Access to Private Investment in Water Infrastructure.** There is considerable private capital that could and would be invested in water infrastructure if the proper mechanisms were available. Public-private partnerships for water infrastructure construction should be encouraged to help shift the risk of water projects from the public sector to the private sector. One example of how this can be accomplished is removing water and wastewater infrastructure from the under the private activity bond volume cap to help secure this avenue of innovative project finance.

Specific Initiatives

Create a Water Trust Fund

Water/Wastewater is the last major infrastructure category without some form of dedicated revenue stream in the form of a trust fund – the highway trust fund, inland waterways trust fund, harbor maintenance trust fund, aviation trust fund, etc. Each of these trust funds have their own revenue source in the form of user fees – the gas tax, barge taxes, harbor fees, airline ticket fees, etc. Our proposal is to create a water trust fund, with its own set of user fees as revenue sources. Whereas most other forms of infrastructure have a narrower set of users, making their user fees more targeted, water and wastewater are used by almost everyone and they already pay for these services. Based on a GAO report, these revenue sources can be a number of products that either need to be cleaned out of the wastewater stream [like flushables (toilet paper, hair care products, soaps, feminine products, cooking oils etc.), pesticides, fertilizers, and pharmaceuticals] or disproportionately rely on the drinking water stream, like bottled water and other beverages or foodstuffs. This revenue would then be granted to the SRFs by existing formulas, for use in revolving loans to municipalities. Most versions of this legislation that have been introduced raise around \$9-10 billion a year. Our primary champion on this legislation has been Rep. Earl Blumenauer, a democrat from Portland, OR.

Reauthorize the Clean Water and Drinking Water SRFs

Typically in Congress, individual programs receive money through a two step process. First is authorization, granted through legislation from an authorizing committee. This legislation includes funding recommendations and caps, and also usually includes policy changes to the program. The second step is appropriation, which is granted through legislation that originates from the appropriations subcommittee of jurisdiction. Ostensibly, a program without authorization is not supposed to receive an appropriation. The Clean Water SRF (CWSRF) and

Drinking Water SRF (DWSRF) are both operating under expired authorizations, but thankfully continue to receive annual appropriations. Several bills that would authorize one or both of the SRFs have advanced through various levels of the House and Senate. In the House, CWSRF and DWSRF jurisdiction is split between two different committees (Transportation and Infrastructure for the CWSRF and Energy and Commerce for the DWSRF), and thus are two separate bills. In the Senate both are under the jurisdiction of a single committee (Environment and Public Works). Reauthorization bills have passed the House, generally in an overwhelming fashion. The Senate has passed the bill out of Committee in the past, but has not voted on it on the floor.

Remove Water and Sewer from the Private Activity Bond Volume Cap

Private activity bonds are bonds designed to fund a public good with private capital. If they are used for certain purposes they are tax-exempt. One of these categories of tax-exempt private activity bonds is water and sewer. Each state has an annual cap, set by Congress, on the volume of these exempt facility bonds that they can issue. This results in water and sewer projects competing with all other projects that you can issue an exempt facility bond for, like public housing or student loans, which tend to have higher visibility. AGC is pushing legislation that would remove water and sewer from under this volume cap. This is projected to result in \$2-5 billion in additional private investment in water infrastructure per year. These projects would most likely take the form of public-private partnerships in the Design-Build-Finance-Operate arrangement.

The Water Infrastructure Finance and Innovation Act (WIFIA)

In looking for innovative ways to fund water infrastructure, some members of Congress looked to the surface transportation sector's increasingly popular TIFIA program. The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for qualified projects of regional and national significance. The TIFIA credit program is designed to fill market gaps and leverage substantial private co-investment by providing supplemental and subordinate capital. Each dollar of Federal funds can provide up to \$10 in TIFIA credit assistance and support up to \$30 in transportation infrastructure investment. During the negotiations over the most recent transportation reauthorization legislation, important leaders from both side of the aisle often remarked about the success of TIFIA and used it as an example of a program that should receive increased funding. Capitalizing on that popularity and looking to replicate that success for water/wastewater infrastructure, several groups began discussing what a TIFIA for water (or WIFIA) would look like. However, there is disagreement within the water community about how best to structure such a program. One side believes in preserving the vision of TIFIA, using the WIFIA for large projects of national or regional significance that are too big for the SRFs to handle. This version would have a project minimum of \$20 million and would function in parallel with the SRF program. The US EPA would be responsible for administering this program, evaluating applications and ultimately choosing which projects get funded. The other side believes in using a WIFIA as a supplement to the existing SRF program. The WIFIA would take the annual seed money, leverage it in the market, and then loan that money to the states for them to re-loan out to municipalities as part of the existing SRF process. States would continue to be in the driver's seat for picking projects and

administering the program. Many in the second camp believe that establishing a second funding apparatus outside the SRFs could potentially lead to the death of the SRF model. Another problem not yet addressed by either side would be how this program would be funded. Both proposals assume general fund dollars, essentially putting the WIFIA in competition with the SRFs for the same shrinking pot of annual appropriation dollars.

Underground Damage Prevention and the Common Ground Alliance:

AGC has long been involved in the Common Ground Alliance and active on the issue of underground damage prevention. The Common Ground Alliance (CGA) is a member-driven association dedicated to ensuring public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices. Officially formed in 2000, the CGA represents a continuation of the damage prevention efforts embodied by the Common Ground Study. Sponsored by the U.S. Department of Transportation and completed in 1999, this Study represents the collaborative work of 160 industry professionals, including several AGC participants, who identified best practices relating to damage prevention. Now, CGA has evolved into a group of over 1,400 individual members, 180 member organizations, and 44 sponsors (including AGC) that is the leading organization in an effort to reduce damages to all underground facilities in North America through shared responsibility among all stakeholders.

The CGA provides a forum where stakeholders can share information and perspectives and work together on all aspects of damage prevention issues. Bringing all stakeholder groups and perspectives together allows the achievement of results that would otherwise be impossible. The CGA is working with industry stakeholders and regulators to produce stronger, more effective results through partnership, collaboration, and the pursuit of common goals in damage prevention.

In 2007, CGA successfully spearheaded an effort in Congress to create a national 3-digit 'call before you dig' number - 811. AGC was a national partner in this effort and the subsequent launch. Now excavators anywhere can dial 811 to be connected to the local One-Call Center of jurisdiction.

Committees

AGC serves on several of the committees that CGA administers:

- **CGA Board of Directors.** Not a committee, but the governing body that the CGA staff and each of the committees ultimately report to. AGC has a permanent seat on the Board.
- **Best Practices Committee.** The BP committee writes and approves the collective Best Practices of the CGA. They can be found here: http://www.commongroundalliance.com/Template.cfm?Section=Best_Practices. The BPs are written through the consensus process, requiring unanimous consent to

approve a new practice or change to existing ones. Proposed BPs must also have been implemented by some entity and have a record of success before being considered, the committee cannot engage in thought-experiments about what *should* be.

- **Stakeholder Advocacy Committee.** The CGA's newest committee, it focuses on how and where CGA helps state and local efforts to update damage prevention laws. CGA does not and will not actively lobby for specific changes to law. By request or coalitions working on this issue, CGA can send information, offer to connect groups to other stakeholders within its network, and provide educational materials. All efforts are rooted firmly in the Best Practices.
- **Educational Programs Committee.** Much of CGA's educational efforts – in the form of awareness campaigns, PSAs, videos, and events – are designed and managed through this committee. Most efforts surround promotion of the 811 message.
- **Data Reporting and Evaluation Committee.** CGA created a tool whereby people could voluntarily and anonymously report damages and their causes – called the Damage Information Reporting Tool (DIRT). This committee oversees the DIRT itself and then uses the data to produce an annual DIRT Report that makes recommendations based on the trends in the data.

Standard Contract Documents:

AGC is a part of two groups offering standard form contract documents to construction contractors engaged in the utility construction market.

ConsensusDocs

ConsensusDocs publishes a comprehensive catalog of 100+ documents that cover all types of contract document needs. ConsensusDocs are the only standard contracts developed by a diverse coalition of 38 leading associations with members from all stakeholders in the design and the construction industry – including owners, contractors, subcontractors, designers and sureties. ConsensusDocs contracts incorporate best practices and fairly allocate risk to help reduce costly contingencies and adversarial negotiations, protecting the best interests of the project rather than a singular party, yielding better project results and fewer disputes. AGC members receive a 20% discount on all ConsensusDocs products – see how here: <http://www.agc.org/cs/contracts>. For more info on ConsensusDocs and to view their catalog, go here: <https://consensusdocs.org/>

While originally designed for vertical construction, ConsensusDocs has recently entered the horizontal market. Contract documents specifically for this market are currently under development. These documents are on track to be 'pre-approved' for use in Rural Utilities Service-funded contracts.

EJCDC

The Engineers Joint Contract Documents Committee produces documents designed for infrastructure projects. These documents are produced and voted for approval by the three main organizations that make of the sponsors of EJCDC - ACEC, ASCE, and NSPE. Their document writing process also solicits input from liaison organizations, like AGC. The AGC Contract Documents Committee, with input from the Utility Infrastructure Division, evaluates EJCDC documents for potential endorsement by AGC. For more info on the EJCDC and to view their catalog, visit <http://www.ejcdc.org/>

Glossary of Terms:

ACEC - American Council of Engineering Companies. An association of engineering and A/E firms. Company membership, rather than individual. Overlap in membership with ASCE and NSPE. Members of WIN Executive Committee and SWIC Steering Committee.

ACWA (sounds like Aqua) - Association of Clean Water Administrators. An association of state-level wastewater administrators. Together with ASDWA, they give the state-level perspective.

AMWA - American Metropolitan Water Agencies. An association of large metropolitan drinking water agencies.

APWA - American Public Works Association. An association of local public works department officials. Member of WIN Executive Committee.

ASCE - American Society of Civil Engineers. An association of professional engineers. Individual membership, heavier representation of academia. They release biannual Report Card on U.S. Infrastructure. Overlap in membership with ACEC and NSPE. Member of EJCDC. Member of WIN Executive Committee.

ASDWA - Association of State Drinking Water Administrators. An association of state-level drinking water administrators. Together with ACWA, they give the state-level perspective.

AWWA - American Water Works Association. Association of mostly drinking water agencies and private water-using companies. Large bottled beverage sector of membership. Member of the SWIC.

BAB - Build America Bonds. Type of bond active for two years following the American Reinvestment and Recovery Act. Provided a direct 35% federal subsidy for the bond, lowering its borrowing cost. During the two years the program was active, it funded \$38 billion in water and sewer construction. Program has currently expired.

CGA - Common Ground Alliance. See *Coalitions* and *Underground Damage Prevention and the Common Ground Alliance* sections above.

CIFA (sounds like SEE-fa) - Council of Infrastructure Financing Authorities. Typically thought of as representing the SRF authorities themselves, especially the finance aspects of running the systems.

ConsensusDocs - Coalition of organizations formed by AGC to write standard-form contract documents for the construction industry. See *Standard Contract Documents* section above.

CWSRF - Clean Water State Revolving Loan Funds. Mechanism through which the federal government directs funding to wastewater and stormwater construction. Created in 1987 through amendments to the Clean Water Act. Congress provides an annual capitalization grant to each state, by formula, which is then in turn loaned to municipalities based on the state's established project priority list. As the money is paid back, it revolves around the fund and is in turn loaned again to further projects.

DIRT - Damage Information Reporting Tool. See *Underground Damage Prevention and the Common Ground Alliance* section above.

DWSRF - Drinking Water State Revolving Loan Funds. Mechanism through which the federal government directs funding to drinking water construction. Created in 1994 through amendments to the Safe Drinking Water Act. Congress provides an annual capitalization grant to each state, by formula, which is then loaned to municipalities based on the state's established project priority list. As the money is paid back, it revolves around the fund and is in turn loaned again to further projects.

EJCDC - Engineers Joint Contract Documents Committee. See *Coalitions* and *Standard Contract Documents* sections above.

MBFA - Municipal Bonds for America. See *Coalitions* section above.

NACWA (sounds like NAH-qua) - National Association of Clean Water Agencies. Association of local government wastewater agencies. Membership tends to skew towards larger municipalities and cities. Formerly known as AMSA, the Association of Metropolitan Sewerage Agencies. Member of WIN Executive Committee.

NSPE - National Society of Professional Engineers. An association of professional engineers. Grants the "P.E." credential. Member of the EJCDC.

PAB - Private Activity Bond. A form of tax-exempt financing where a private entity and public entity come together to fund a public good. Typically funds a public-private partnership, Design-Build-Finance-Operate and/or Design-Build-Finance-Operate-Maintain relationship.

PHMSA (sounds like FIM-sa) - Pipeline and Hazardous Material Safety Administration. Agency of the federal government, housed in the Department of Transportation, responsible for pipeline safety and buried facility damage prevention.

RUS - Rural Utilities Service. A branch of the US Department of Agriculture's Rural Development Program. Administers a water and waste disposal loan and grant program for assistance to communities of less than 10,000 people.

SRF - State Revolving Loan Fund. See CWSRF and DWSRF.

SWIC - Sustainable Water Infrastructure Coalition. See *Coalitions* section above.

WEF - Water Environment Federation. An association for water quality professionals. Focused on technical training and education.

WIFIA - Water Infrastructure Finance and Innovation Act. See *Legislative Initiatives* section above.

WIN - Water Infrastructure Network. See *Coalitions* section above.

WWEMA (sounds like WEE-ma) - Water and Wastewater Equipment Manufacturers Association. Association for the manufacturers of equipment installed in water and wastewater facilities. Member of WIN. Member of SWIC.