



CAMPAIGNING TO KEEP
WATER AS A PUBLIC TRUST

Turning Up the Tap

How the Private Water Industry Wants to Boost Profits – at the Expense of Taxpayers

Every spring, executives from the largest water companies in the nation descend on Washington to suggest ways that Congress can make life easier for them and the private water industry. With fully 80 percent of water in the U.S. delivered by publicly owned systems, the stakes of these annual “Congressional Fly-Ins” are huge.

The way corporate executives see things, they’re being shortchanged hundreds of billions of dollars a year because “subsidies” to public providers give them an unfair advantage in the marketplace. To level the playing field, lobbyists are shopping around Capitol Hill a wish list of “reforms” with a goal nothing short of dismantling public water systems. Translation: Turn water into a commodity to be sold for profit – like cheeseburgers, video games and SUVs.

For the public, the stakes are even higher. Most Americans prefer to receive their drinking water from government agencies, which are accountable to voters, not from corporations, which are accountable to stockholders. If the private water industry gets its way, public accountability will go down the drain.

Eminent Domain

In the words of the National Association of Water Companies, the industry wants the federal tax code changed to “discourage hostile takeovers of privately owned water utilities.”

What the NAWC is actually talking about is the routine government practice of eminent domain, which corporations want to block by banning agencies from using tax-exempt financing to take over water companies that are “successful in meeting the needs of the community.” Tax-exempt bonds could only be used if residents support eminent domain actions through a referendum, or if the private utility has failed to meet drinking water standards.

Naturally, the Association of Metropolitan Water Agencies opposes this drastic, secretive proposal, which has received very little attention, even in industry publications.

Tort Reform

In one of the NAWC’s top three initiatives, the water industry wants protection from lawsuits filed by people sickened by drinking water that is ostensibly in compliance with quality standards.

The proposal comes in response to mass civil lawsuits against a number of California and New Jersey water suppliers (public agencies and private companies) for allegedly delivering contaminated water. One lawsuit involves more than 300 plaintiffs; another has nearly 200.

The industry’s argument is that if sympathetic juries find in favor of plaintiffs, the entire drinking water regulatory regime will be threatened, in which case everyone would suffer.

The industry is also worried because some of the claims seek damages for contaminants that could not be detected – and therefore not treated – at the time people were sickened.

Legislation to amend the Safe Drinking Water Act would grant immunity for water companies that are in compliance with EPA drinking water regulations; cover unregulated contaminants by requiring proof of negligence; and give deference to compliance determinations by state agencies. The industry also wants protection from “frivolous” lawsuits.

Infrastructure Financing

In another of the NAWC’s top three initiatives, the industry wants public providers and private companies to be on equal footing regarding access to federal funding, particularly by cutting grants to local governments, which the NAWC claims “reduce incentives for industry efficiencies and creativity.”

This issue has drawn hostile invective from the NAWC toward what it views as complacent, undeserving public providers: “We do not need the federal government to subsidize the water industry indefinitely with a massive, inefficient federal grant program, as some advocate.”

Additionally, the NAWC says that in order to avoid “abuse” and assure the “most efficient use” of taxpayer dollars, the program should allow government funding only after all other sources have been exhausted; make all utilities eligible regardless of ownership; and to encourage “public-private partnerships.”

Revolving Funds

The industry wants states to be required to issue low-interest loans from the Drinking Water State Revolving Fund based on infrastructure needs that include the needs of all utilities, regardless of ownership.

The industry claims that about 15 states that receive revolving funds have excluded private companies from eligibility. Additionally, the industry claims that in about 20 states where private companies are eligible for funds, no money has been given out. So far, the news is good for public providers. The EPA announced in 2001 that it will continue to fund states based on each state’s proportional share of total need, rejecting NAWC arguments that the formula should be changed to punish states that withhold funds from private companies.

Private Activity Bonds

Industry lobbyists came up with a title for this proposal they hope no one in Congress would dare vote against: the “Investing in America’s Water and Wastewater Infrastructure Act.”

The industry wants to remove the existing caps on Private Activity Bonds for water and wastewater infrastructure and repairs.

According to the NAWC, Congress has limited, under “arbitrary” caps, the use of tax-exempt financing by private companies that are “working for the public good.” These caps, the NAWC says, have “the unfortunate effect of limiting the use of private sector approaches for providing vital services, such as water services.”

Industry claims that allowing companies to borrow as much money as they want through bonds would cost taxpayers “very little,” while generating “huge sums of private capital.”

Procurement Practices

The industry wants the EPA to “educate” local governments about “creative procurement practices” to bid out contracts quicker by adopting “compressed procedures.” Under such a system, designers, builders and operators would work together under one contract, as opposed to the prevailing model of bidding out these contracts separately.

Like the eminent domain issue (see front page), this is a bizarre proposal that has received very little attention, even in the industry press.

Contributions in Aid of Construction

This industry proposal, nobly titled the “Lower Regulatory Burden for Homeowners Act,” is another of the NAWC’s top three initiatives. How badly does the industry want it? Lobbyists were able to find sponsors for the bill six days after a recent Congressional Fly-In.

The proposal sounds obscure but it’s a biggie. The industry wants the federal tax code changed to exclude customer connection fees from corporate income, by including them in a non-taxable category called “contributions in aid of construction.” To the industry’s dismay, the IRS has rejected the NAWC’s argument that Congress intended to make customer connection fees non-taxable.