

April 26, 2023

To: Board of Directors: NEWWA, a Section of AWWA  
From: NEWWA Ad hoc Affiliation Committee  
Re: AWWA Affiliation Agreement Conflict

Dear NEWWA, a Section of AWWA Board:

This report provides a recap of the New England Water Works Association's Ad hoc Affiliation Committee ("NEWWA's committee") activities over the past 18 months and provides our recommendation as the committee concludes its efforts to resolve the conflict with the American Water Works Association (AWWA). With our recommendation, the work of the committee is concluded. The committee appreciates the opportunity to serve NEWWA and its members in this important process.

NEWWA's committee is comprised of seven current and past section board members, and our executive director:

- Chris Hodgson, AWWA Section Director 2019-2022
- Craig Douglas, AWWA Section Director 2022-2025
- Jim DeCelles, NEWWA President 2022-2023
- Steve Olson, NEWWA President-Elect 2022-2023
- Demetri Vidalis, NEWWA Vice President 2022-2023
- Erica Lotz, NEWWA Past President 2021-2022
- Lisa Gove, NEWWA Past President 2020-2021
- Kirsten King, NEWWA Executive Director 2019-Present

NEWWA's committee was formed in the fall of 2021 upon notification that AWWA had established its own Ad Hoc Committee (AWWA's committee) to investigate the perceived non-compliance of NEWWA's Affiliation Agreement. The action by AWWA to form their committee followed 3 years of discussions and correspondence between the organizations, all focused on AWWA's claims of non-compliance and NEWWA's demonstration of facts supporting our ongoing business activities. The claim of non-compliance centered on AWWA's contention that NEWWA, Inc.'s activity of accepting and retaining local "Inc.-only" memberships was a violation of the terms of their Affiliation Agreement with the New England Section (the "Section").

The NEWWA committee's initial objective was to participate in the investigations by AWWA's committee in the fall of 2021. Upon request, NEWWA's committee was granted the opportunity to present information to AWWA's committee, which was critical to their investigations. NEWWA's committee illustrated the details of the unique arrangement established in 1987 between NEWWA, Inc. and the Section. Importantly, we confirmed that there was never a merger between the two organizations. Legal counsel for both AWWA and NEWWA confirmed that the two organizations are affiliated, not merged. Despite consensus on that fact, AWWA continued to portray that the Section promotes and maintains local memberships, when in fact, it is NEWWA, Inc. which administers the local memberships. As such, the Section remains compliant with AWWA's rules for membership and dues payments. These facts remained critical to the communications with AWWA throughout the complaint investigation process.

AWWA's committee concluded their investigations in December 2021 and presented a 354-page report to the AWWA Board of Directors for further action. Despite NEWWA's input and presentations of facts regarding the organizational structure and activities of NEWWA, AWWA's report concluded that the Section was likely out of compliance with the Affiliation Agreement. On January 13, 2022, AWWA's board voted to accept the report as submitted and then authorized AWWA President Chi Ho Sham to form a Special Presidential Ad hoc Committee. President Sham's charge to that committee was to "work collaboratively with New England to find a solution that resolves AWWA's concerns and meets the New England Section's needs according to the terms of Paragraph 8 of the Affiliation Agreement."

Once the official "complaint" was issued, the task of NEWWA's committee was to work with AWWA's Special Presidential Ad hoc Committee to respond to the complaint and develop terms for resolution. NEWWA's committee developed and sent a comprehensive response to AWWA's complaint on February 9, 2022. That letter included extensive details on our organizational structure, and responded to numerous additional elements cited as potential violations of our agreement. Importantly, it presented critical background information derived from NEWWA, Inc. officers who participated in the initial 1987 affiliation.

Our investigation unveiled the basis for AWWA's confusion between the draft documents initially proposed for local "Inc.-only" memberships, with the actual final terms as approved by NEWWA, Inc., the Section, and the AWWA board. A key element was the discovery that those officers had removed their initial commitment for all new members to become Section members as of the date of affiliation. The removal of that commitment before the affiliation's ratification was done purposefully to eliminate local opposition to affiliating with AWWA and improve the likelihood of approval by the voting members. NEWWA's response to the complaint clearly illustrated that AWWA's conclusions for non-compliance were based on draft documents, and not consistent with the final conditions for affiliation as well as final documents, which were approved by all parties in 1987.

Despite the clarification provided to AWWA's Special Presidential Ad hoc Committee, the Paragraph 8 resolution process continued as prescribed throughout 2022 and into early 2023. On a parallel track, NEWWA's committee commenced communications and activities, working to develop a resolution with AWWA's Special Presidential Ad hoc Committee. Meetings were conducted and key communications developed as follows:

- February 9, 2022, NEWWA letter, response to "Complaint"
- March 10, 2022, Teams meeting with AWWA Special Presidential Ad hoc Committee
- March 25, 2022, Teams meeting with AWWA Special Presidential Ad hoc Committee
- June 19, 2022, in-person meeting in Boston with AWWA Special Presidential Ad hoc Committee
- August 15, 2022, Teams meeting and presentation to AWWA Board of Directors
- September 18, 2022, NEWWA letter, response to AWWA letter of August 16
- November 30, 2022, Teams meeting with AWWA Special Presidential Ad hoc Committee
- January 13, 2023, presentation to AWWA Board of Directors in person, Santa Fe, NM
- January 26, 2023, in-person meeting in Boston with AWWA Special Presidential Ad hoc Committee
- February 16, 2023, participation at AWWA Hearing in person, Denver, CO
- March 20, 2023, NEWWA response and counter-offer proposal to AWWA's conclusion of "willful and material breach" of the Affiliation Agreement
- April 4, 2023, received AWWA's rejection of NEWWA's counter-offer proposal
- April 6, 2023, conducted special NEWWA membership meeting and polling of members

Throughout the process, NEWWA maintained its key priorities for resolution that first, NEWWA, Inc. will remain as the historic legacy organization and will continue to offer local memberships for those who choose to not join AWWA. Second, that a solution be developed that will concurrently allow NEWWA to remain affiliated with AWWA. NEWWA provided proposals ranging from full legal and financial separation to a simpler plan for "grandfathering" the unique affiliated organizational structure of NEWWA, Inc. and the Section. As meetings and communications progressed, AWWA presented alternative proposals. In nearly all of the cases, AWWA's proposals conflicted with the stated goal for the NEWWA, Inc. memberships to continue. AWWA's requirement for NEWWA, Inc. to remove their memberships was consistently the basis for our decisions to decline acceptance.

The Paragraph 8 process brought NEWWA's committee to AWWA headquarters in Denver, Colorado, on February 16, 2023, for the "Hearing," our final opportunity to defend our organization's business activities. The Hearing was conducted by the AWWA Executive Committee who then deliberated to determine its conclusion as to NEWWA's alleged breach of the Affiliation Agreement. Both the AWWA Special Presidential Ad hoc Committee and NEWWA's committee presented their positions on the matter, followed by a "Q and A" session, then closing arguments from both teams. Despite the clear and irrefutable evidence presented by NEWWA's committee against AWWA's claims, their Executive Committee concluded that NEWWA had committed a "willful and material breach" of the Affiliation Agreement. That conclusion was subsequently approved by the full AWWA board at a

special meeting held on March 13, 2023. NEWWA received notice from the AWWA board of their action, which presented three “cures” as optional responses. AWWA’s three cures as presented were:

- Cure #1: Agree to combine NEWWA, Inc. and the Section into a single organization and be bound to the terms of the AWWA Affiliation Agreement.
  - This option was determined by NEWWA’s committee to not be in the best interest of the organization. It would result in a significant loss of local control of the legacy organization, NEWWA, Inc. It requires the immediate end to new NEWWA, Inc.-only memberships and conversion of existing Inc.-only members within 7 years to AWWA Section memberships. That requirement directly contradicts one of the tenants of the original 1987 affiliation that NEWWA, Inc. members would always be able to remain NEWWA, Inc. members.
  - Importantly, the AWWA Affiliation Agreement includes terms which allow its board to modify the agreement at any time and with no recourse for the Section to renegotiate. All sections are bound by any revised terms imposed by AWWA. This was rejected due to the potential transition of control of NEWWA, Inc. to AWWA with no recourse available.
- Cure #2: Agree to a complete separation of NEWWA, Inc. and the Section into two fully independent legal entities.
  - This option was also determined by our committee to not be in the best interest of the organization.
  - Although this option appears similar to a proposal made originally by NEWWA, this cure denies the continuation of our successful model for an overlapping board of directors. AWWA’s proposal includes the requirement for independent boards for each organization with no duplication of officers. This is another contradiction with our governing documents. Article IV, “Officers, Section 1” of the AWWA and Section-approved NEWWA, Inc. Constitution states: “The officers of NEWWA will be the officers of NEWWA, Inc. with the exception of the International Director.”
  - This plan also assigns NEWWA, Inc. staff to administer the Section for the first 3 years. However, if the Section elects to contract with NEWWA, Inc. for administrative services after the initial 3 years, NEWWA, Inc. would be required to agree to “equitably allocate conference and training revenues.” This was also rejected due to the arbitrary transfer of revenue earned by NEWWA, Inc. to the Section.
- Cure #3: Agree to waive affiliation rights by disclaiming and surrendering all rights to the New England Section.

Given that none of the cures presented by AWWA’s Board were beneficial or attractive to NEWWA, correspondence was developed and sent to the AWWA Executive Committee on March 20, 2023. That letter included an overview of our complete disagreement with the conclusions presented by the Executive Committee,

that NEWWA had willfully and materially breached the Affiliation Agreement. Key factors were communicated, demonstrating the lack of an objective decision by AWWA on the matter.

That communication included a counteroffer proposal, for acceptance of the plan which had been negotiated and agreed to by both committees during the in-person meeting in Boston on January 26, 2023. The agreement, termed the “Boston Plan,” was the result of good-faith negotiations with AWWA’s Special Presidential Ad hoc Committee with concessions made by both teams. Although the agreement was later denied by the AWWA team, it was presented by NEWWA as the most logical counteroffer, since it resolved the conflict and preserved the long-standing beneficial relationship between NEWWA, Inc. and the Section.

On April 4, 2023, NEWWA received a letter from AWWA President Joe Jacangelo rejecting the counter-offer proposal.

Upon confirmation of the AWWA board’s vote to support their Executive Committee’s conclusions of a willful and material breach, NEWWA’s committee recommended that a special meeting of the NEWWA Section members be conducted as part of the Spring Joint Regional Conference and Exhibition in Worcester, MA. Information was provided via a series of informational sessions regarding the status of the conflict before the meeting. The special meeting was held on April 6, 2023. At the meeting a poll was conducted, requesting members to provide their preference for one of two options:

- To accept the conditions for Cure # 2 (the “Two-Entity” cure), or
- Cure #3 (to Disaffiliate from AWWA).

Results of the poll were 92.5 percent in favor of a disaffiliation and 7.5 percent in favor of Cure #2.

After review by and guidance from legal counsel, consideration of the options by AWWA, consideration of the member polling results, and a complete review of our work, the NEWWA Ad hoc Affiliation Committee has developed a recommendation for the NEWWA Board of Directors.

We recommend that the Section exercise its option under Paragraph 9 of the AWWA Affiliation Agreement. Doing so terminates the Section’s affiliation with AWWA. Importantly it provides indemnification by each party against any “loss, damage or liability (including reasonable attorney’s fees) that the other party incurs as a result of the indemnifying party’s breach of this agreement.” This is consistent with Cure #3 proposed by AWWA.

The original intent for this committee was to develop, through negotiations, a fair resolution to the conflict with AWWA. The outcome of our efforts—to achieve a resolution—was not successful. Given the difficulty in negotiating with AWWA throughout the process, AWWA’s consistent presentation of arbitrary terms for resolution, AWWA’s lack of objectivity in the conclusions of the hearing despite key facts presented to the contrary, and AWWA’s direct denial of the agreement reached on January 26, 2023, the committee has concluded that continued affiliation with AWWA would not be beneficial to our Section members at this time. This



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conclusion is also reinforced by AWWA's terms for their Cures 1 and 2, deemed detrimental to NEWWA. It is our committee's opinion that members will be better served by the governance model which existed before 1987.

Throughout the process to address and resolve AWWA's complaint, NEWWA's committee followed the principles established by the original 1987 Affiliation Committee; to maintain the original NEWWA, Inc. organization as the independent, legacy organization, including offering and maintaining memberships. The action, as recommended here, is consistent with that priority.

If at some time in the future changes in leadership at AWWA occur, and if AWWA comes to recognize the value of diverse organizational structures outside of its standard affiliation template, consideration should be given for re-affiliation.

Respectfully submitted by the NEWWA Ad-hoc Affiliation Committee:

Chris Hodgson, Chair  
Jim DeCelles  
Craig Douglas  
Lisa Gove  
Kirsten King  
Erica Lotz  
Steve Olson  
Demetri Vidalis