

TESTIMONY OF
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ON BEHALF OF THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES (NACWA)

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“Clean Water Infrastructure Financing: State and Local Perspectives and Recent Developments”

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INTRODUCTION

Good morning, Chairmen Graves and Rouzer, Ranking Members Larsen and Napolitano, and to all the members of the Subcommittee. Thank you for the opportunity to testify on behalf of the National Association of Clean Water Agencies, or NACWA. It is an honor to be here with you.

My name is Todd Swingle, and I am the CEO and Executive Director of the Toho Water Authority (Toho) in Kissimmee, Florida. Toho operates 17 water treatment facilities and nine wastewater treatment facilities, treating and distributing over 50 million gallons of potable water and reclaiming approximately 35 million gallons of wastewater each day for the 430,000 residents and visitors that we serve throughout the region.

I am also a Board member of NACWA, the nation’s leading organization of publicly owned clean water utilities. Toho’s 500 plus employees, like the workforces of NACWA member utilities from Coast-to-Coast, are on the front lines each day providing essential services. Our utilities are anchor institutions within our communities and for over 50 years since the enactment of the

Clean Water Act (CWA), NACWA's members have made incredible progress in cleaning up the Nation's vital water resources, supporting economic prosperity in our communities, and improving the quality of life of all Americans in line with the CWA's "cooperative federalism" framework.

Communities across the country face a growing array of complex water quality challenges including increasingly stringent CWA compliance obligations. As we strive to deliver on the public health and environmental protection outcomes that our communities expect and deserve, the Clean Water State Revolving Fund (CWSRF), integrated water resource planning flexibility and the remaining topics of my testimony are critical throughout the Nation.

CLEAN WATER STATE REVOLVING FUND (CWSRF) AND INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA)

Since the establishment of the CWSRF under the 1987 CWA amendments, Congress has appropriated over \$50 billion in federal investment collectively to the state CWSRFs, who in turn have provided over \$160 billion to local communities. These low-interest loans, and in some cases grants through additional subsidization provisions, provided under the CWSRF have remained the primary federal clean water financing tool that public clean water utilities have used to help their local communities more affordably meet their CWA compliance obligations and upgrade their aging treatment plants and critical infrastructure. The low interest rates offered by the CWSRF can be particularly helpful, especially during times such as these when interest rates for other borrowing options are elevated.

In Florida and across the country, SRF investments have helped fund projects to treat wastewater to higher standards, improve energy efficiency and lower emissions, capture and reuse biogas, reduce nitrogen and phosphorus loading, and address wet weather and resiliency challenges, among many other types of projects.

The historic water infrastructure investments further provided under the Infrastructure Investment and Jobs Act (IIJA), also referred to as the Bipartisan Infrastructure Law (BIL), are the most critical investments for clean water since the Construction Grants Program helped build the network of wastewater treatment agencies after passage of the CWA in 1972. The IIJA or BIL's \$11.7 billion over five years to the CWSRF in direct mandatory appropriations will be instrumental in helping many communities upgrade their clean water infrastructure and treatment systems.

However, these five-year investments were intended to be a one-time infusion into the CWSRF *in addition to the ongoing annual appropriations*. It is imperative that Congress continue providing the highest level of annual CWSRF appropriations and, as provided under the authorizing portions of the IIJA, fully maximize these historic investments and ensure the long-term viability of this bipartisan program.

Likewise, the return of Community Project Funding, also known as earmarks, provide an alternative option for communities to address critical infrastructure projects. The Nation's growing water infrastructure needs are already resulting in a rapidly widening funding gap. Growing a portfolio of accessible funding approaches is critical to communities and the Nation in delivering on our promise of public health and a clean water environment.

With all due respect to the Committee, the current investments in the CWSRF proposed in the House's FY2024 budget are not adequate to achieve these goals. It is imperative that Congress fully appropriate the CWSRF at the amounts authorized under the IJA and fund earmarks from a source other than the CWSRF.

CWSRF investments are vital for helping both urban and rural communities more affordably meet 21st century clean water challenges to maintain and update their clean water infrastructure; expand treatment systems and technologies to address new pollutant standards and to remove per- and polyfluoroalkyl substances (PFAS); advance reuse initiatives; manage population growth, industrial and agricultural expansion and land development pressures; and help utilities improve resilience to storms and other natural impacts, among others.

PFAS AND EMERGING CONTAMINANTS

At the top of this list of challenges, public clean water utilities are extremely concerned about the potential health and environmental risks associated with exposure to PFAS. PFAS remediation must be paid for by the polluters – those who manufactured and profited from this ubiquitous chemical. The innocent water or wastewater treatment utility ratepayers who had no part in creating or profiting from PFAS must not in any way be left holding the bill to deal with PFAS. There is a role for utilities to appropriately play in the removal of PFAS under the CWA based on a science-based regulatory processes, but it is the actual polluters who alone must be held liable.

An important provision in the IIJA was the specific allocation of an additional \$1 billion in mandatory federal funding through the CWSRF for utilities to address Emerging Contaminants, including PFAS. However, with these dollars flowing through the SRF, a program designed for the purpose of capital infrastructure investments, clean water utilities have mostly been unable to utilize these resources for the types of efforts that they are currently undertaking to address PFAS – such as monitoring, assessments, and pretreatment efforts with industrial users they serve. Essentially, the types of proactive efforts not commonly supported by the CWSRF because they are not deemed to be “infrastructure” projects.

Unfortunately, there are currently no available technologies that effectively and affordably destroy PFAS in clean water or biosolids at the scale managed by public clean water utilities. Additionally, state SRFs have the authority to request full transfer of CWSRF funds designated for Emerging Contaminants to be applied to accounts for drinking water, which several states have already opted to do.

It is important that Congress provide a legislative fix to allow clean water utilities more flexible access to this IIJA funding to do critical PFAS monitoring and assessment work so local communities can understand the key sources of PFAS loading to their water systems, identify opportunities for controls, and prioritize opportunities for investment to reduce PFAS.

AFFORDABILITY

Another important provision in the IIJA, and one that NACWA helped champion, is a requirement that 49 percent of the mandatory dollars under the legislation flowing to the SRF programs must be allocated by the states as additional subsidization – meaning that these funds

are essentially forgivable loans (or grant equivalents). This provision is particularly important for getting federal help to target areas facing serious need or financial hardship and to disadvantaged communities that might not have the capacity for loan financing.

Because the SRFs are run through the states – each of which has its own rules for applying additional subsidization – EPA has provided recommendations for how states should consider targeting such funds to reach potentially eligible areas and communities. Strengths of this guidance include encouraging states to look beyond singular metrics of disadvantage and consider various metrics like unemployment, comparison of water and sewer rates compared to lowest quintile income, and ensuring funds reach urban areas of poverty as well as rural and small communities.

While EPA has laid out this guidance, the task of implementation falls to the states. Given the significant influx of funding, NACWA strongly believes that states must be innovative in how they apply this additional subsidy, and we stand ready to further serve as a resource in how states update their definitions. To date, we have heard that numerous states have updated their definitions of disadvantaged communities to be more inclusive. We recommend that Congress continue to monitor how additional subsidies are applied and remain open to providing further direction to the programs as implementation advances. This will help ensure that the IJA resources help those urban and rural communities more affordably and directly access much-needed infrastructure funding.

Congress should also provide oversight for how EPA addresses affordability issues. Earlier this year, EPA finalized its revised Financial Capability Assessment (FCA) Guidance, which

is used by EPA and the states to determine how much a community can afford to pay to meet increasing compliance requirements under the CWA.

For several years prior, NACWA, in partnership with the other major water sector organizations, and key municipal groups, jointly worked with EPA under both the Obama and Trump Administrations to advocate for a new approach that specifically looked at the impacts that the cost of compliance with expanding CWA mandates would have on low-income households within an impacted community, as opposed to broader service area metrics that often mask the actual impact on individual households in the lower quartile of the service areas income bracket.

Unfortunately, the new FCA Guidance failed to fully embrace this low-income approach, meaning that the true impacts on these rural and urban households may not be fully considered and could leave them paying a disproportionate amount of their income on water and sewer bills.

This is a key opportunity for Congress to support true water affordability by providing oversight of how EPA addresses affordability issues and by ensuring its affordability guidance truly aims to help actual low-income households in urban and rural areas.

INTEGRATED PLANNING

Furthering the acceptance of Integrated Planning by state and federal regulatory/permitting and enforcement agencies is another way that regulators can help communities stretch limited infrastructure investment dollars. Integrated Planning can help large and small communities better manage costs and prioritize their growing list of clean water

investments and obligations more affordably over time to best serve their ratepayers. NACWA greatly appreciates the bipartisan leadership of this Committee in getting Integrated Planning codified into the Clean Water Act in 2018. We look forward to further working with Congress and EPA to help state regulators in particular enhance this critical tool and incorporate Integrated Planning approaches into permitting and enforcement, and help communities best develop their Integrated Planning framework and work with their regulators on approval.

REGULATORY CERTAINTY

Finally, it is imperative that sensible, targeted reforms to the CWA are enacted to ensure that clean water utilities have the regulatory certainty needed to effectively and affordably plan and invest in long-term capital infrastructure projects and meet their compliance obligations.

Without regulatory certainty, as well as improved transparency and due process, greater scientific integrity, and protection for utilities against the increasing number of unwarranted CWA citizen suits, investments such as those made through the CWSRF will not have the full positive impact intended to affordably provide local communities with the highest levels of water quality improvement. NACWA has previously testified before this Committee about these issues and looks forward to working with the Committee on this important topic.

CONCLUSION

Growing the water infrastructure funding portfolio, including the foundational CWSRF, and addressing the other challenges I have mentioned are critical as utilities strive to continue providing essential public clean water services to their communities. NACWA appreciates the ongoing engagement by the Committee with the public clean water sector on these critical

issues. Thank you again for the opportunity to testify before you today and I would be happy to answer any questions the Committee may have.