

**IMPLEMENTATION OF THE DRINKING WATER
AND WASTEWATER INFRASTRUCTURE ACT:
STAKEHOLDERS' NEEDS AND EXPERIENCES**

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES,
WATER, AND WILDLIFE

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

APRIL 5, 2022

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IMPLEMENTATION OF THE DRINKING WATER AND WASTEWATER INFRASTRUCTURE ACT: STAKEHOLDERS' NEEDS AND EXPERIENCES

TUESDAY, APRIL 5, 2022

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON FISHERIES, WATER, AND WILDLIFE,
Washington, DC.

The Committee, met, pursuant to notice, at 10:06 a.m. in room 406, Dirksen Senate Office Building, Hon. Tammy Duckworth (Chairman of the Subcommittee) presiding.

Present: Senators Duckworth, Lummis, Carper, Whitehouse, Kelly, Inhofe, and Ernst.

Also present: Senator Booker.

OPENING STATEMENT OF HON. TAMMY DUCKWORTH, U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DUCKWORTH. Thank you all for being here for today's hearing with the Senate Committee on Environment and Public Works, Subcommittee on Fisheries, Water, and Wildlife. This hearing will examine one of the most pressing issues for communities in Illinois and throughout the Nation, water infrastructure.

Last year, the Senate passed the bipartisan infrastructure law which included the Drinking Water and Wastewater Infrastructure Act, also known as DWWIA, a bill that Chairman Carper, Ranking Member Capito, Senator Lummis, and myself worked on to make a reality.

DWWIA provides historic investments and programmatic changes to help States, communities, and schools fix and upgrade aging water systems to improve water quality while fostering economic growth and jobs throughout the country. In fact, DWWIA is the most significant Federal investment in water infrastructure in history, and I am thrilled to see that President Biden's budget requested the full Federal funding of all DWWIA programs.

While this bill is an incredible first step toward clean water for all, our jobs are not done. Now, we must do the work to ensure that these programmatic changes are carried out and these critical funds get to the communities that need it the most. There has been a historic lack of investment in water infrastructure but especially so for disadvantaged, small, rural, and tribal communities that each have individual challenges when it comes to water infrastructure.

Our lack of attention to these communities is not acceptable. We must break down barriers for funding to ensure every American

has access to clean water no matter their zip code, the color of their skin, or the size of their wallet. DWWIA's goal is to help do just that.

The bill reauthorizes and enhances the State Revolving Funds, or the SRFs, which are the most efficient tools we have to provide States with Federal investments that empower local leaders to modernize water systems, implement lead reduction projects, and rebuild stormwater overflow. By lowering non-Federal cost shares, increasing the use of grants, and allowing for debt forgiveness, we will help communities access Federal dollars that typically struggle to qualify for traditional loans.

Years of lack of investment and oversight have led towns all across America to slide into disrepair. We have worked within our States to give these communities a chance at a normal life and funding opportunities like the programs in DWWIA could provide this chance.

The bill also works to get shovels into the ground and support quality jobs by reauthorizing and streamlining financing programs like WIFIA and SRFs. However, with significant funding comes significant responsibility. The States will have to prepare for these programmatic changes and Federal dollars, and that is no small feat.

One of the significant water infrastructure projects that the States will have to plan for is the national health crisis of lead pipes. As the Senator with the most known lead service lines of any State, and with lead poisoning disproportionately impacting communities of color and low income communities, this cause is very near to my heart.

The bipartisan infrastructure law provides over \$15 billion for President Biden's National Comprehensive Lead Service Line Replacement Initiative, and DWWIA provides an additional authorization for more than \$700 million for lead reduction programs like my Voluntary Lead Testing and Removal in Schools and Child Care Facilities Program. Yes, this national lead removal initiative will be a lot of work, but it will be worth it to protect our future generations.

With the EPA's recent SRF implementation guidance, I am excited to see that they are following through on Congress's intent to make disadvantaged, small, rural, and tribal communities a priority of this water infrastructure funding, and we will continue our oversight to ensure that the States deliver on this vision.

Today, we have an excellent lineup of witnesses to provide first-hand knowledge of how these programs work for their communities, any improvements needed, and how the changes that DWWIA provided will help them in the future.

From permanent brain damage to overflowing sewage to costly service interruptions, our constituents are now experiencing the harms that result from allowing our drinking water and wastewater systems to age into a state of disrepair. And now is the time to fix this in an efficient and equitable manner.

As Subcommittee Chair, I look forward to today's discussion on best practices to ensure the success of this Committee's long term goal of providing families in Illinois and across our Nation clean, safe, reliable water.

Thank you to Chairman Carper, Ranking Member Capito, and Subcommittee Ranking Member Lummis for making this a priority for the Committee because it is absolutely a priority for me.

I would now like to turn it over to Subcommittee Ranking Member Lummis for her opening statement.

**OPENING STATEMENT OF HON. CYNTHIA M. LUMMIS,
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator LUMMIS. Thank you, Madam Chairman. It is so nice to spend time with you again like we did in the House and be back with you on this Subcommittee.

Thanks also to our witnesses for being here. I very much look forward to your testimony and your answers to our questions.

At the beginning of this Congress last year, I was honored to work with Senators Carper, Capito, Duckworth, and others to craft the Drinking Water and Wastewater Infrastructure Act. I am proud that that product was bipartisan and created a responsible and measured investment in our Nation's water infrastructure.

That bill passed this Committee unanimously and later the full Senate by a vote of 89 to 2. It was then signed into law as part of the Infrastructure and Jobs Act. Providing clean and reliable water in this country is clearly an issue that unites both sides.

As important as it is for Congress to write and pass legislation, we also have the important job of then following up with oversight to ensure the executive branch fulfills its duty of faithfully executing the law. That is why we are here today. Going forward, we need to ensure the EPA follows both the letter and spirit of the law as Congress intended.

On March 8th of this year, the EPA issued implementation guidance for infrastructure bill funds appropriated to the State Revolving Funds. My comments and questions today will focus primarily on that memorandum.

So, a few key points. The State Revolving Funds, under the Clean Water Act, are a reflection of federalism. While Congress sets the eligible recipients' projects in broad parameters, States were and are intended to be in the driver's seat. Over time, Federal requirements have grown more and more expansive. Some call that creeping conditionalism.

The March 8th memorandum worryingly appears to continue this trend. For one example, EPA's language around States' intended use plans is concerning as neither the Clean Water Act nor the Safe Drinking Water Act give EPA authority over the development of State priority lists. The bottom line is that the EPA should not be substituting its own priorities, no matter how noble, over that of the States.

Rural and disadvantaged communities experience different challenges than larger or more urban water systems. Lack of economies of scale, however significant they may be, lower income levels and higher poverty rates all contribute to added challenges for these communities.

In my State of Wyoming, 97 percent of the water systems are small, serving populations of fewer than 10,000 people. Nationwide, that rate is 91 percent. Ensuring the EPA provides clear, defined

program requirements well in advance will help these States and communities access Infrastructure Act funds as Congress intended.

I believe it is the ultimate goal and shared goal to ensure communities that need the resources are the most prioritized. Public health and safety are enhanced when this is done in a most economical and cost efficient manner.

In closing, I am proud of the work of the Subcommittee. I am proud of what it has done on a bipartisan basis. And I look forward to continuing our important oversight work on EPA and hopefully others within our jurisdiction as well.

Thank you, Madam Chairman. I yield back.

Senator DUCKWORTH. Thank you, Senator Lummis.

Now I would like to turn it over to our very special guest, Senator Booker, who has come today to introduce our first witness, the Mayor of the city of Newark, New Jersey, Hon. Ras Baraka.

Thank you, Senator Booker, for coming to our Subcommittee hearing today. You may now introduce the witness.

Senator BOOKER. First and foremost, I want to thank the Chairwoman for the invitation. And I want to thank the Chairwoman and the Ranking Member for your extraordinary work in this area. You all have been the bipartisan Cagney and Lacey. By the way, a lot of your young staffers are looking at me with a blank stare like, who is Cagney and Lacey?

[Laughter.]

Senator BOOKER. But you two have really brought together, in a bipartisan way, critically needed infrastructure. Your leadership is extraordinary.

I see Chairman Inhofe and want to thank him for his friendship and partnership on many important things over the years. It is good to see him here.

This is a real pleasure for me. I have been looking forward to this moment all week where I get a chance to introduce somebody I have known for more than two decades. Ras Baraka is a special kind of leader. He is an activist, an artist, he is one of the more respected leaders in our country when it comes to local leadership.

And for a guy that lives still in the central ward of the city of Newark, he is my Mayor. His leadership has been exemplary in a lot of areas that really should be noted. But of specific interest to this Committee, the Mayor has given a master class in how to take on the crisis of lead in pipes. It is just extraordinary how he is a standout. The head of the EPA came to Newark really with a sense of awe about what the Mayor completed under his leadership in partnership with others.

As you are going to hear a lot of detail, Newark's Lead Service Line Replacement Program, one of Newark's largest infrastructure projects to date, has successfully replaced over 23,000 lead service lines. The successful completion of this ambitious, 3 year project to replace thousands of lead service lines, at no cost to residents, is an example, not just a testimony really to the Mayor's leadership, but is an example of how local, State, and Federal officials can come together, develop a comprehensive plan, and address an issue of serious environmental injustice and how they, through their work, have created a blueprint for communities working on similar infrastructure projects across the Nation.

With the passage of our Bipartisan Infrastructure Bill, more of these projects are going to be possible. I believe the wisdom garnered and demonstrated by Mayor Baraka is a great way for us to look to what the future could be.

It is especially important, though, I want to call out the leadership of Essex County Executive Joseph DiVincenzo. He has had a willingness to use the county's AAA bond rating to secure a \$120 million bond that allowed the city to move extraordinarily quickly.

During this time, a few years ago, I was happy that my team was able to work with a lot of the leadership of this Committee and pass legislation that would allow States to access additional Federal funds so that more communities around the Nation could upgrade their drinking water systems.

I know that the city of Newark will be able to continue to lead the Nation in modernizing their water infrastructure with substantial and continued Federal support like we are seeing. And the flexibility that you wisely put in the bill will really allow us to make sure the investments are made, that American jobs are created, and the infrastructure is ultimately completed.

We know that this is a national crisis that did not come about last year, or 10 years ago, or 20 years ago. We have literally had millions of children being poisoned over decades in our country and have failed to step up to this national threat.

As you indicated, Chairwoman, in your opening remarks, lead is a savage potential killer. It does permanent damage to kids' brains. And you and I, Chairwoman, I am sure, have had the experience of sitting with parents with their children's brains being addled by lead knowing this severe violence has been done to their children and the urgencies that have been exposed as a result of our inaction.

This is a great story for the Senate to act now. We now have one of the best of the best in America for talking about how we can do this. Because if there is anything that Ras Baraka has shown, it is that time is of the essence. There is a fierce urgency of the now.

Money has been allocated. But my biggest concern now is the estimates in cities across this country, some of them with reports of 10-plus years to get those lead service lines replaced. That is unacceptable. We have got to find a way to learn from what Newark, New Jersey, has done and expedite this so that our children are free from this toxic poison.

Again, a real cheer and gratitude for the leadership of this Committee on both sides of the aisle, and a lot of gratitude for you allowing me to come here and introduce someone whom I know, love, and really respect, Ras Baraka.

Senator DUCKWORTH. Thank you, Senator Booker. That is high praise indeed.

Now, I will turn it over to Senator Inhofe, who will introduce our next witness, Susan Bodine.

Senator INHOFE. Not to be outdone by Senator Booker—
[Laughter.]

Senator INHOFE [continuing]. Let me assure you that I have known the individual I am about to introduce more than two decades now. In fact, I saw her in Oklahoma just last week.

Susan Bodine served as the Chief Counsel on this Committee when I was the Chairman; that was in 2015 and 2016. She helped us enact the 2015 Highway Bill, the 2016 Water Resources Bill, the Frank Lautenberg Reform Bill, and 65 other bipartisan laws coming from this Committee in only 2 years. I do not think anyone else can outdo that.

On top of getting all this stuff done, it was enjoyable. You can see why when you meet Susan Bodine. She has been a joy to be around for a long period of time. She has a longer history with me than just what I have described. During the Bush administration, she was EPA's Assistant Administrator over the Superfund Program. We were very busy at that time, you will remember. She went above and beyond, directing the EPA to not only visit the infamous Tar Creek Superfund site, which I wish we could all forget, in northeastern Oklahoma. She also worked to clean up the water and the land. She also worked with me to write new legislation that helped the residents there.

Susan, I can't thank you enough for your years of work in the House and in the Senate and at the EPA during the Bush and Trump administrations where you made sure EPA was serving, and I underline that, serving instead of ruling over Oklahoma and Oklahoma taxpayers. Great job, and I look forward to your presentation.

Senator DUCKWORTH. Thank you, Senator Inhofe.

If the witnesses would like to take their seats. Thank you.

I would like to introduce our next witness, Mr. Josh Schimmel. Mr. Schimmel is a Board Member of the National Association of Clean Water Agencies, or NACWA. He is also the Executive Director of the Springfield Water and Sewer Commission, a regional provider of retail and wholesale water and sewer services to the city of Springfield and surrounding communities.

The Commission serves a population of approximately 250,000 people in the Lower Pioneer Valley of western Massachusetts. Mr. Schimmel and his leadership team manage more than 225 employees while providing approximately 30 million gallons per day of drinking water and treating 40 million gallons a day of wastewater from the communities they serve.

Thank you for being here, Mr. Schimmel.

Last but not least, I would like to turn it over to Senator Lummis to introduce our fourth and final witness.

Senator LUMMIS. Thank you, Madam Chairman.

I am really happy to introduce to our Subcommittee Mr. Mark Pepper, Executive Director of the Wyoming Association of Rural Water Systems, the largest utility membership in all of Wyoming. In our first hearing on the Drinking Water and Wastewater Act last year, I showed a picture of some of the emergency repair work that his association circuit riders were doing during a winter blizzard. So he is not entirely new to this Committee.

Like me, he grew up in Cheyenne. In fact, I was in high school with his brother. As we often say, Wyoming is just a small town with long streets.

Mark has over four decades of finance and administration experience, 33 years in senior management, and 8 years in public accounting. He has been involved in surface and groundwater issues

in Colorado, Nevada, Texas, and Wyoming during his career. He served three terms on the board of directors of his local water and sewer utility, chairs the Casper Area Economic Development Joint Powers Board, and has been appointed by the Governor to serve on numerous other commissions and task forces.

Beyond his incredible wealth of knowledge, Mark is just a good and kind man. And we are lucky to have him testifying here today.

Madam Chairman, when I was State Treasurer, I served on the State Loan and Investment Board. We were the board in Wyoming that approved Safe Drinking Water Act SRF moneys and Clean Water Act SRF moneys. So I have seen these funds at work. I have been the one who was on the board that not only granted these SRF funds out but saw them revolve back and work for a variety of communities in our State.

I think this is a great program. It works so well in our small communities in Wyoming. And the great thing is, this is a program that works well in large communities like you and Senator Booker have in your States as well.

I am just delighted we are having this hearing. Thank you for chairing our Subcommittee. I yield back.

Senator DUCKWORTH. Thank you, Senator Lummis.

I will now turn it over to the witnesses to present their testimony.

Mayor Baraka, you are now recognized for your opening statement.

**STATEMENT OF HON. RAS J. BARAKA,
MAYOR, CITY OF NEWARK, NEW JERSEY**

Mr. BARAKA. Thank you.

Chairwoman Duckworth, Ranking Member Lummis, and members of this esteemed Subcommittee, thank you for convening this important hearing on the Implementation of the Drinking Water and Wastewater Infrastructure Act: Stakeholders' Needs and Experiences.

I would like to give a special thank you to Senate Committee on Environment and Public Works Chairman Carper and Ranking Member Capito for their leadership on some of our Nation's most important issues.

On behalf of the city of Newark, thank you for the opportunity to provide testimony here today. I am here today for the 10 million American households that connect to water through lead pipes and service lines and the children, toddlers, and teenagers in 400,000 schools and childcare facilities who are at risk of exposure to lead in their water, many of whom live in places similar to Newark and whose city's public water pipes were installed in the mid-20th century with an estimated life span of 75 to 100 years.

While we are rapidly approaching those expiration dates, today we can be thankful to President Biden, Vice President Harris, our Senate and congressional leaders, and to Chairwoman Duckworth who secured her entire bipartisan Drinking Water and Wastewater Infrastructure Act in the Bipartisan Infrastructure Bill. This bill is an essential tool for providing safe drinking water to everyone in America and is essential to addressing the financial devastation of COVID-19 that laid bare the longstanding and dangerous deficiencies in our utility infrastructure.

Chairwoman Duckworth eloquently stated, “Every American has a right to clean water, no matter their zip code, the color of their skin, or the size of their incomes.” The difficulty of contaminated drinking water, like many health issues, disproportionately affects black and brown people in cities across America, but is broadly found in suburbs and rural communities similarly.

Environmental justice communities which have historically been overburdened by pollution will only continue to face increased financial costs. I wholeheartedly agree with the Chairwoman, and am here today to discuss our experience as a means to support the protection and health of our Nation’s future.

Newark’s Lead Service Line Project is unprecedented in terms of the scope and speed that has protected the health and wellness of the residents of Newark as well as portions of neighboring cities that we service. I am happy to attest that Newark’s Lead Service Line Replacement Program, one of our city’s largest infrastructure projects, has successfully replaced over 23,000 lead lines in less than 3 years when experts told us it would 10 years.

This project helped protect the health and wellness of our residents and provided 500 good paying, local jobs. Workers on the project worked tirelessly to get this accomplished, even through the pandemic, to help safely complete the project.

We identified affirmative action goals to establish fair access to employment opportunities and created a program designed to reflect the demographics of our city. In doing so, the program not only was of economic benefit to the city of Newark, but also to the State of New Jersey.

Our city replaced all the lead service lines at no cost in capital outlay, taxes, or water hikes to our residents or customers in surrounding towns. This was critically important to ensure that everyone in our city had access to clean water. It is my hope that through the implementation of the Drinking Water and Wastewater Infrastructure Act we can increase grants and State Revolving Fund loans for communities.

There are several components of our project that I would like to share today that I hope can assist our communities. As soon as our city realized we had a problem, we acted immediately and initiated a program to distribute over 40,000 National Sanitation Foundation certified water filters and over 110,000 replacement cartridges. We used vast communication models to reach our residents to ensure that those who needed it most were getting the information and had access to vital resources.

Our program website is a repository of information for customers to obtain information about the entire program. Educational materials were distributed in English, Spanish, and Portuguese by city staff and local community groups.

Since lead service lines are the property of the homeowner, the city had to work with our State legislature who created a law that allowed us to use public funds on private property for replacing lead service lines. This was essential to the project’s success.

In addition, at the local level, the municipal council passed an ordinance that gave the city the right of entry to private property to replace all lead lines. This was critical because nearly 80 percent of Newark residents rent, and tracking down property owners for

access to their property would have been time consuming and costly.

This lead service line project could not have been possible without the incredible staff of the Department of Water and Sewer under the leadership of Director Kareem Adeem and our entire staff at City Hall. Every level of government came together from our City Council, County Executive Joe DiVincenzo, Governor Phil Murphy, and Federal representatives. They were with us every step of the way.

Special thanks to Senator Booker, who immediately pushed EPA to commit more Federal dollars to help with our response. More importantly, the true MVPs of this process were our residents, as they were our biggest cheerleaders and support system through this entire project. It is my hope that communities make their residents a part of their replacement projects as we did in Newark as it only enhances and adds value to the project as well as the community as a whole.

In closing, I hope our story is a good example for our governments that full lead line replacement does not have to be an eternal infrastructure nightmare. With Federal funding and imposed deadlines, and other governmental cooperation, we have the power to fix it for the health and safety of our current and future generations. For what we do now will be our legacy.

Thank you again, Chairwoman Duckworth, Ranking Member Lummis, and members of this esteemed Subcommittee for allowing my testimony today and for your leadership and commitment to our Nation's future.

Godspeed. Forward ever. Backward never.

[The prepared statement of Mr. Baraka follows:]



STATEMENT OF
THE HONORABLE RAS J. BARAKA
MAYOR OF NEWARK, NEW JERSEY

BEFORE THE SENATE COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS
SUBCOMMITTEE ON FISHERIES, WATER AND
WILDLIFE

*“Implementation of the Drinking Water and Wastewater
Infrastructure Act: Stakeholders’ needs and experiences.”*

APRIL 5, 2022

Chairwoman Duckworth, Ranking Member Lummis and members of this esteemed subcommittee, thank you for convening this important hearing on the implementation of the *Drinking Water and Wastewater Infrastructure Act: Stakeholders' needs and experiences*. I would like to give a special thank you to Senate Committee on Environment and Public Works Chairman Carper and Ranking Member Capito for their leadership on our nation's most important issues. On behalf of the City of Newark, thank you for the opportunity to provide testimony to the Senate on Environment and Public Works Committee's Subcommittee on Fisheries, Water and Wildlife on this important matter that I hope will assist our nation's cities and towns. The difficulty of contaminated drinking water, like many health issues, disproportionately affects Black and brown people in cities across America but is broadly found in suburbs and rural communities similarly. It is, therefore, a crisis of significant magnitude. I am happy to attest that Newark's Lead Service Line (LSL) replacement program, one of our city's largest infrastructure projects, has successfully replaced over 23,000 lead lines in less than three years when experts said it would take 10 years. This project helped protect the health and wellness of our residents and provided 500 good-paying local jobs. Workers on the project worked tirelessly to get this accomplished (even through the pandemic) to help complete the project safely.

Transparency and accountability are imperative in the pursuit of diversity, equity and inclusion. In executing the LSL Replacement Program, we identified affirmative action goals to establish fair access to employment opportunities and created a program designed to reflect the demographics of the city. In doing so, the program not only was of economic benefit to the City of Newark, but also the State of New Jersey.

While our lead service line work has completed, I am here today for the 10 million American households that connect to water through lead pipes and service lines—and the children, toddlers, and teenagers in 400,000 schools and childcare facilities who are at risk of exposure to lead in their water. Many of whom live in places similar to Newark and whose cities' public water pipes were installed in the mid-20th century with an estimated lifespan of 75 to 100 years. While we are rapidly approaching those expiration dates, today, we can be thankful to President Biden, Vice President Harris, our Senate and Congressional leadership and to Chairwoman Duckworth who secured her entire bipartisan Drinking Water and Wastewater Infrastructure Act (DWWIA) in the Bipartisan Infrastructure Deal. This was done to ensure her home state Illinois as well as our nation's crumbling water infrastructure could finally receive the significant improvements they need. This bill is an essential tool in providing safe drinking water to everyone in America and is essential to addressing the financial devastation of COVID-19 that laid to bare the long-standing and dangerous deficiencies in our utility infrastructure. This will address the billions in lost revenue for local governments that is handicapping the ability to maintain services and make the massive infrastructure improvements that are needed. Chairwoman Duckworth eloquently stated and I quote: *"Every American has a right to clean water—no matter their zip code, the color of their skin or the size of their income."* Environmental justice communities, which have historically been overburdened by pollution, will only continue to face increased financial costs. That is why it is important to prioritize this funding for disadvantaged communities. I wholeheartedly agree with the Chairwoman and am here today to discuss our experience as a means to support the protection and health of our nation's future.

Testimony of Mayor Ras J. Baraka, as prepared.

Newark's Lead Service Line project is unprecedented in terms of the scope and speed and has protected the health and wellness of the 300,000 customers in the five geopolitical wards that makeup Newark as well as portions of neighboring cities that we service. Maintaining and repairing service lines is usually the responsibility of the homeowner and average replacement could cost anywhere from \$5,000 to \$6,500. Our city replaced all the lead lines at no cost in capital outlay, taxes, or water rate hikes to our residents or customers in surrounding towns. This was critically important to ensure that everyone in our city has access to clean water. It is my hope that through the Implementation of the Drinking Water and Wastewater Infrastructure Act, we can increase grants and State Revolving Fund (SRF) loans for communities.

The State Revolving Fund (SRF) offers affordable loan options to cities and towns to improve water supply infrastructure and drinking water safety; and to help them to comply with federal and state water quality requirements that deal with wastewater treatment plants and collection systems, while addressing issues such as watershed management priorities, stormwater management, and green infrastructure. The SRF helped our project tremendously.

Our aggressive program was one reason the EPA awarded the City a \$7.5 million grant under the new Water Infrastructure Improvements for the Nation (WIIN) Act, to help strip older schools of any remaining fixtures or tubing that contain any amounts of lead and fund our existing education and outreach programs. That money will help the City to continue to strive toward the goal of complete eradication of lead in our drinking water.

There are several components of our project that I would like to share that I hope can assist other communities. When we saw our lead levels spike in 2017, we hired CDM Smith, one of the world's most respected environmental companies, which whom in the 1970s created the EPA's first blueprints and standards for the development and maintenance of water pollution control plants back in the 1970s.

CDM Smith helped us analyze our water sample data and the EPA simultaneously analyzed a harvested lead pipe from our system to microscopically determine how the corrosion control failed to properly coat the pipes causing the material to deteriorate.

Because of these actions, we were able to quickly and accurately pinpoint the reason for our exceedances and implement corrective action that would be effective and scientifically sound. When the science showed our corrosion control had faltered, we were able to adjust the water chemistry and added a new corrosion control system.

As soon as our city realized we had a problem, we initiated a program to distribute over 40,000 National Sanitation Foundation (NSF) Certified water filters and more than 110,000 replacement cartridges. Filters and cartridges were provided to Newark residents who lived in single-family and multi-family homes that are supplied from the Pequannock Water System and those that have lead service lines or interior copper piping with lead solder. Our Department of Water and Sewer Utilities set up distribution centers throughout the city, hand delivered filters to residents' homes, and spent over 25,000 hours going door-to-door in an effort to reach Newark families as well as ensure community engagement, outreach and education of our residents about lead in water was

Testimony of Mayor Ras J. Baraka, as prepared.

at the forefront of this process. In addition, the City of Newark's Department of Health and Community Wellness provided free lead testing for all residents.

Our program website is a repository of information for customers to obtain information about the program including registration paperwork and contract assignments, most recent lead tap sample results, and water filter distribution and replacement. Education materials were distributed in English, Spanish and Portuguese to improve communication at local events and to homes. We collaborated with local community and environmental groups including Clean Water Action, United Way and many others to go door-to-door with the education materials. We made robocalls and utilized doorhangers to promote the program; signed-up residents; and instructed residents on the proper use of the point of use filters. Lawn signs, bus and billboard ads and message boards were intentionally placed throughout the city to ensure that the residents who needed it most were getting the information and access to these vital resources.

Our approach was strategic. Since lead service lines are the property of the homeowner, the City had to work with our State Legislature who created a law that allowed us to use public funds on private property for replacing lead service lines. This was essential to the project's success. In addition, at the local level, Newark's Municipal Council passed an ordinance that gave the City the 'right of entry' to private property to replace lead lines. This was critical because nearly 80 percent of Newark residents rent and tracking down property owners for access to their property would have been time-consuming and costly. This helped decrease costs and made the project more efficient.

We made sure that all houses built prior to 1990 with a two-inch or less service line were test pitted and communities with higher density of housing and high lead levels were targeted first. We utilized a block-by-block approach that maximized efficiency and decreased disruptions to the community. This approach allowed us to replace up to 120 pipes a day as 25 crews worked around the city even through the pandemic. In terms of program management and data tracking, we used innovative technology and tools to plan, communicate, track and report replacements. This improved efficiency, accuracy and lowered costs tremendously.

Our City's LSL Replacement Program ensured that no lead service line would be left behind while creating a legacy for future generations. The lead line replacement portion of our project is complete citywide but full completion also includes final restoration and paving of roadways. Approximately 180-miles of streets were impacted and paving is coordinated through GIS mapping as we work with the Department of Engineering, Essex County, and other utility work as part of a comprehensive paving strategy.

The complete removal with a follow-up lead water sample six months afterwards and upon request provides insurance to our residents that their water is safe to drink.

None of this would have been possible without our incredible partners. Thank you to our Federal Representatives, who were with us every step of the way and especially Senator Booker who immediately pushed EPA to commit more federal resources to help residents, city, and state respond. He also introduced the Water Infrastructure Funding Transfer Bill in May 2019. This measure gave states much needed flexibility to fund infrastructure projects.

Testimony of Mayor Ras J. Baraka, as prepared.

From the support of our Governor Phil Murphy and his Administration, who in partnership with our State Legislature has made clean water a top priority for our state and our state's Department of Environmental Protection worked with us through testing and compliance of EPA guidelines throughout this process.

I would like to especially thank Essex County Executive Joseph DiVincenzo and his willingness to use the county's AAA bond rating for the City to comfortably secure a \$120 million bond, allowing us to accelerate the work in a way that set national precedent.

The unwavering leadership of our Department of Water and Sewer Utilities Director Kareem Adeem during this whole process must be highlighted and is a true model for communities to closely watch. His leadership has been an incredible force, pushing his staff and our contractors to complete this project as quickly and efficiently as possible, and doing so with the least amount of inconvenience to our residents and for that, we are all grateful. This lead service line project could not have been possible without the incredible staff of the Department of Water and Sewer Utilities and our entire staff at Newark City Hall.

As stated, this truly collaborative effort could not have been possible without every level of government and our city's corporations and non-profit organizations, but most importantly our residents, who were with us every step of the way. They are the true MVPs of this process and were our biggest cheerleaders and support system through this entire project. It is my hope that communities make their residents a part of their replacement projects as we did, as it only enhances and adds value to the project as well as the community as a whole.

In closing, as Mayor of the great City of Newark, I hope our story is a good example for other governments that full lead line replacement does not have to be an eternal infrastructure nightmare. With federal funding and imposed deadlines, and other governmental cooperation, we have the power to fix it, for the health and safety of our current and future generations. For what we do now will be our legacy.

Thank you again Chairwoman Duckworth, Ranking Member Lummis and members of this esteemed subcommittee for allowing my testimony today and for your leadership and commitment to our nation's future. Godspeed.

Forward ever, backwards never!



Ras J. Baraka
Mayor

Testimony of Mayor Ras J. Baraka, as prepared.

Senator DUCKWORTH. Thank you, Mr. Mayor.
Now, Mr. Schimmel, you are recognized for your opening statement.

**STATEMENT OF JOSHUA SCHIMMEL, BOARD MEMBER,
NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES**

Mr. SCHIMMEL. Good morning, Chairwoman Duckworth, Ranking Member Lummis, and the distinguished members of the Subcommittee on Fisheries, Water, and Wildlife. I appreciate the opportunity to address the Committee here today.

My name is Josh Schimmel. I am the Executive Director of the Springfield Water and Sewer Commission in Springfield, Massachusetts. I also serve as a member of the Executive Board of the National Association of Clean Water Agencies for whom I appear before you today.

For over 50 years, NACWA has represented public wastewater and stormwater agencies nationwide. Our national network of 330 public agency members serves the majority of the Nation's sewered population and is on the front lines of public health and environmental protection.

The need for water and sanitation is as essential as it is timeless. At a recent forum meeting, our utility leadership team was contemplating what projects needed to be cut in order to keep rate increases affordable. Our elder statesman of the board stopped the conversation and read the following excerpt: "An abundant supply of good, wholesome water is the most important requisite of municipal life, and from it flows the most marked advantages to the community. We are in the habit of taking the water supply as a matter of course, and so long as we have had no experience from the failure of it, we assume that it will continue to flow on forever."

He then informed us all that the quote came from the meeting minutes of our own board meeting from 1892. With this anecdote, the Board of Commissioners affirmed that we could not afford to delay investment any longer. They recognized the risk associated with not renewing our infrastructure was actually too costly compared to the actual value provided by replacing it.

The historic water infrastructure investments in DWWIA and the Bipartisan Infrastructure Law offer much needed respite to local governments working to juggle capital funding needs and ongoing operations and maintenance while keeping customer rates manageable. Clean water utilities are eager to leverage these Federal investments as BIL implementation gets underway.

I want to flag a few areas in particular that we strongly supported in the legislation and that we are keeping an eye on as areas of opportunity or which may need further congressional attention in the years ahead. An important provision in BIL that has gained a lot of attention is how 49 percent of the dollars flowing out of the traditional SRF programs must be allocated by the States as additional subsidy, meaning rather than low interest loans, they are forgivable loans or straight up grants.

Federal water investment since the 1980s has been overwhelmingly loans, so this is an important pivot. Any community would likely prefer a grant to a loan, but this provision will be particularly important for getting Federal help to highly disadvantaged

communities that might not have the capacity for loan financing and to target areas facing acute needs or financial hardship.

Because the SRFs are run through the States, each of which has its own protocols for how it applies additional subsidy, EPA has outlined recommendations for how States should consider targeting the subsidy to reach disadvantaged areas and communities that may not have benefited from SRFs in the past. Strengths of this guidance include encouraging States to look beyond singular metrics of disadvantage and to consider various metrics like unemployment, how water and sewer rates compare to the lowest quintile income, and ensuring funds reach urban areas of poverty as well as rural and small communities.

While EPA has laid out guidance, much will fall to the States to implement. Given the significant influx of funding, we strongly believe that States must be innovative in how they apply additional subsidy, not just do business as usual. We recommend that Congress continue to monitor how additional subsidy is applied to remain open to potentially providing further direction to the programs as implementation advances.

DWWIA set aside of funding for increased technical assistance will also help ensure that these funds are applied equitably and broadly. Another important provision in the bill is the specific allocation of Federal funds for the emergent contaminants, including PFAS. Clean water utilities are concerned about the looming costs and regulations that they may face to manage or dispose of contaminants like PFAS which water utilities passively receive and do not create or profit from. So the funding for utilities specifically to help address new contaminants like PFAS is very welcome.

Some of the most immediate costs clean water utilities are seeing to proactively try to understand and limit PFAS in their systems include monitoring, assessments, and pretreatment programs, working with industry to reduce concentrated PFAS discharges into our systems. However, these important steps are not necessarily eligible uses of these funds since the SRF is focused on capital investments. Congressional clarity may be needed in the near future to ensure these funds can be put to use effectively.

Last, as a community that is about to benefit from WIFIA, I want to applaud DWWIA's reauthorization of WIFIA and provisions to make the program more accessible to applicants. This past fall, we were awarded a \$250 million WIFIA loan for our Springfield Water and Wastewater Infrastructure Renewal Program. Our project will cost \$550 million, and WIFIA will finance nearly half of that figure. The remaining projects will be funded by a combination of \$200 million in loans from the Massachusetts SRF and utility funds.

The combination of WIFIA and SRF loans will accelerate capital investment and save the Springfield Water and Sewer Commission approximately \$80 million in financing costs, which enables the Commission to continue to support residents in need through its customer assistance programs. Project construction and operations are expected to create more than 1,700 jobs.

We are extremely proud of the way this package has come together to benefit the Springfield region. DWWIA and BIL alone will not close the infrastructure investment gap entirely, but take

a critical step in the right direction toward helping all communities have access to financial and technical resources to provide clean, safe water.

DWWIA set forth stepwise increases in core water program funding, which we applaud the Committee for their full appropriation moving forward, so that this investment sets a new baseline for strong Federal partnership on water. As we knew in 1892, and remains true today, water is the backbone of healthy communities and economic opportunity.

In closing, utility executives like myself face environmental, financial, and technical challenges every day. Implementing this historic funding will take a huge lift at all levels of government, and with this 5 year funding period, we have the opportunity to make sure we get it right.

Thank you for your time, and I look forward to any questions.
[The prepared statement of Mr. Schimmel follows:]

Testimony of

Josh Schimmel

Board Member, National Association of Clean Water Agencies (NACWA)
Executive Director, Springfield Water and Sewer Commission

Before the U.S. Senate Committee on Environment and Public Works Subcommittee on
Fisheries, Water, and Wildlife

**Implementation of the Drinking Water and Wastewater Infrastructure Act (DWWIA):
Stakeholders' needs and experiences**

Good morning, Chairwoman Duckworth, Ranking Member Lummis, and distinguished members of the Subcommittee on Fisheries, Water, and Wildlife. I appreciate the opportunity to address the Committee today.

My name is Josh Schimmel. I am the Executive Director of Springfield Water and Sewer Commission, in Springfield, Massachusetts. I also serve as a member of the executive board of the National Association of Clean Water Agencies – for whom I appear before you today.

For over 50 years, NACWA has represented public wastewater and stormwater agencies nationwide. Our national network of 330 public agency members serve the majority of the nation's sewered population and are on the frontlines of public health and environmental protection.

Every day, our country relies on the largely unseen workforce of utility professionals to manage our complex water infrastructure network and provide us seamless clean water service. Americans today seldom think about the infrastructure systems that bring water to homes, and safely return water to the environment – but everyone should.

The need for water and sanitation is as essential as it is timeless. At a recent Board meeting our utility leadership team was contemplating what projects needed to be cut in order keep rate increases affordable. Our elder statesman of the Board stopped the conversation and read the following excerpt:

"An abundant supply of good, wholesome water is the most important requisite of municipal life, and from it flow the most marked advantaged to the community.

"We are in the habit of taking the water supply as a matter of course, and so long as we have had no experience from failure of it, we assume that it will continue to flow on forever."

He then informed us all that the quote came from the meeting minutes of our own Board meeting from 1892. With this anecdote the Board of Water Commissioners affirmed that we could not afford to delay investment any longer. They recognized that risk associated with not

renewing our infrastructure was actually too costly compared to the actual value provided by replacing it. While technological advances in engineering have modernized our systems in ways Commissioners in 1892 could never have imagined, the need to continually invest in our critical infrastructure remains unchanged.

In this country, water and sewer investment have been overwhelmingly borne by local customers for the past several decades. Local communities cover the vast majority of capital investment, operations and maintenance for clean and safe water. Not surprisingly, the costs of providing clean and safe water and rates have been growing for years, a significant hardship for many in our community.

The historic water infrastructure investments in DWWIA and the Bipartisan Infrastructure Law (BIL) offer much needed respite to local governments working to juggle capital funding needs and ongoing operations and maintenance while keeping customer rates manageable.

Clean water utilities are eager to leverage these federal investments as BIL implementation gets underway. We have been engaged with providing EPA recommendations as they work on program rollout to help ensure its success.

I want to flag a few areas in particular that we strongly supported in the legislation and that we are keeping an eye on as areas of opportunity or which may need further Congressional attention in the years ahead.

An important provision in BIL that has gained a lot of attention is how 49 percent of the dollars flowing out to the traditional SRF programs must be allocated by the states as additional subsidy –meaning that rather than low-interest loans, they are forgivable loans or straight up grants. Federal water investment since the 1980s has been overwhelmingly loans, so this is an important pivot. Any community would likely prefer a grant to a loan, but this provision will be particularly important for getting federal help to highly disadvantaged communities that might not have the capacity for loan financing, and to target areas facing acute needs or financial hardship.

Because the SRFs are run through the states, each of which has its own protocols for how it applies additional subsidy, EPA has outlined recommendations for how states should consider targeting the subsidy to reach disadvantaged areas and communities that may not have benefitted from SRFs in the past. Strengths of this guidance including encouraging states to look beyond singular metrics of disadvantage and consider various metrics like unemployment, how water and sewer rates compare to lowest quintile income, and ensuring funds reach urban areas of poverty as well as rural and small communities.

While EPA has laid out guidance, much will fall to the states to implement. Given the significant influx of funding, we strongly believe that states must be innovative in how they apply additional subsidy, not just do “business as usual”. We recommend that Congress continue to monitor how additional subsidy is applied and remain open to potentially providing further direction to the

programs as implementation advances. This will help ensure that BIL addresses pervasive issues of equity and access to infrastructure funding. DWWIA's set-aside of funding for increased technical assistance will also help ensure that these funds are applied equitably and broadly. Utilities like my own with significant experience in securing SRF funds have been discussing ways in which the process could be made easier for less resourced communities.

Another important provision in BIL is the specific allocation of federal funds for Emerging Contaminants, including PFAS. Emerging contaminants are a growing concern in Massachusetts and are driving substantial investment in many communities.

Clean water utilities are concerned about the looming costs and regulations they may face to manage or dispose of contaminants like PFAS – which water utilities passively receive and did not create or profit from. So the funding for utilities specifically to help address new contaminants like PFAS is very welcome.

Some of the most immediate costs clean water utilities are seeing to proactively try to understand and limit PFAS in their systems include monitoring, assessments, and pretreatment programs – working with industries to reduce concentrated PFAS discharges into our systems. However, these important steps are not necessarily eligible uses for these funds since the SRF is focused on capital investments.

We have been working to identify potential uses that align with the CWSRF and providing EPA recommendations. However, Congressional clarity may be needed in the near future to ensure these funds can be put to use effectively.

Lastly, as a community that is about to benefit from WIFIA, I want to applaud DWWIA's reauthorization of WIFIA and provisions to make the program more accessible to applicants. This past fall we were awarded a \$250M WIFIA loan for our Springfield Water and Wastewater Infrastructure Renewal Program. Our project will cost \$550 million and WIFIA will finance nearly half of that figure. The remaining project costs will be funded by a combination of \$200 million in loans from the Massachusetts CWSRF and utility funds. The combination of the WIFIA and SRF loans will accelerate capital investment and save the Springfield Water and Sewer Commission approximately \$80 million in financing costs, which enables the Commission to continue to support residents in need through its customer assistance programs. Project construction and operation are expected to create more than 1,700 jobs.

We are extremely proud of the way this package has come together to benefit the Springfield region. The funds we'll save through this more affordable financing option underscore how federal investment can stretch customer dollars further and help communities make investments and upgrades faster.

Water infrastructure challenges differ between communities, but the need for reliable and *accessible* infrastructure funding is universal.

DWWIA and BIL alone will not close the infrastructure investment gap entirely, but they take a critical step in the right direction toward helping all communities have access to financial and technical resources to provide clean, safe water. DWWIA set forth stepwise increases in core water program funding which we applaud the Committee for and urge their full appropriation moving forward so that this investment sets a new baseline for a strong federal partnership on water. As we knew in 1892 and remains true today, water is the backbone of healthy communities and economic opportunity.

In closing, utility executives like myself face environmental, financial, and technical challenges every day. I want to underscore that communities across the country cannot tackle these challenges and meet their infrastructure needs alone. Implementing this historic funding will take a huge lift at all levels of government, and with this five-year funding period we have the opportunity to make sure we get it right – and make adjustments along the way if needed. We support continued oversight to ensure these dollars are reaching the communities with the most need and are working as smoothly as possible to advance infrastructure investment in communities like mine around the U.S.

Thank you for your time and I look forward to any questions.

Senator LUMMIS [presiding]. Thank you, Mr. Schimmel.
 Ms. Bodine, we will now turn to you for your opening statement.
 By the way, Chairman Duckworth has just gone to vote. We have
 been called to vote, so she and I are going to tag team for a while.
 Ms. Bodine, thank you.

**STATEMENT OF SUSAN BODINE,
 PARTNER, EARTH AND WATER LAW, LLC**

Ms. BODINE. Thank you.

I want to thank Chairman Duckworth and Ranking Member Lummis and members of the Subcommittee for the invitation to speak today.

I also want to thank Senator Inhofe for his very kind introduction. It was truly an honor and a privilege to serve this Committee as its Chief Counsel.

I want to focus my testimony today on some of the challenges that are opportunities, obviously, and challenges presented by the Drinking Water and Wastewater Provisions of the Bipartisan Infrastructure bill. First, let me say that I strongly support all the Drinking Water and Wastewater provisions in that legislation. When I first looked through it, I was like, wow, I recognize every one of these issues. These are issues that have been around for a long time and represent enormous challenges for local communities. And this really is an historic opportunity.

But given the amount of funding that we are talking about here, there are going to be implementation challenges. That is particularly true because the Clean Water Act and the Safe Drinking Water Act regulations say that States have to attach the funding to a loan, or in this case, assistance agreement, within a year after receiving it. It is going to be very difficult to meet that deadline, for States to do that, particularly getting money out to the disadvantaged communities, which of course Congress, which of course all of you, made such a huge priority in this Drinking Water and Wastewater legislation. Forty-nine percent of the funding for the biggest pots of money is set aside for disadvantaged communities.

Now, appropriations language makes the appropriations available until expended. So the appropriation money doesn't expire. But what it means is that if a State fails to meet the other deadline of attaching to the money, then EPA has the ability to reallocate it.

So what I am worried about is that the result could be that as a result of the deadline, you might get a reallocation of funding away from States with more disadvantaged communities because of the lack of capacity to get through the loan process and to States that perhaps have more sophisticated communities who know how to get funding from the SRFs. I am just highlighting that. I know that wasn't anybody's intent. But the consequences of the deadlines could result in that.

I have to say some of the small communities are probably going to have difficulty meeting some of the conditions that are attached to the SRF loans. It is not just lack of sophistication that is going to cause some of these delays. I have to say that I was concerned when I read the March 8th implementation guidance. And that is

because there is a lot of language in there about what EPA expects the States to do. That includes revising the State intended use plans; it includes revising State definitions of what is a disadvantaged community.

Now, when Congress set up the State Revolving Loan Fund Programs in the Clean Water Act and the Drinking Water Act, they definitely made them State run programs and definitely made them State priorities. Then there is language in the Clean Water Act that explicitly says priorities are solely the province of the State. The Safe Drinking Water Act was modeled after the Clean Water Act.

So this language in the implementation guidance may be confusing to States. There shouldn't be any suggestion that the EPA could condition receipt of the funding on meeting its expectations, because they are not in the law.

I also want to just note that there was a different program in the Safe Drinking Water Act, the Small Disadvantaged Communities Program, which actually was intended to be EPA run, because the pot of money was smaller. It was intended to hit the most needy communities, and let EPA find those communities and allocate the money and direct grants to those. Instead, EPA has implemented that through an allocation formula. So it takes the money and just spreads it very thin so it doesn't really actually do what it was intended to do.

I want to quickly summarize some areas that both EPA might want to consider changing, and Congress might want to consider changing. First, EPA should avoid any suggestion that they are going to attach strings to the money that isn't part of the statute. Second, EPA should probably consider whether or not some technology uses are eligible. Yes, it is an infrastructure, I mean, the SRF and the Clean Water and Drinking Water SRFs are capitalization.

But the implementation guidance says for the lead service line funding, that monitoring as part of the lead service line project is eligible, but it doesn't clearly say that that would include monitoring beforehand. And certainly not compliance monitoring but specifically monitoring for some of these lead issues has been a challenge. The city of Newark is a tremendous success story, but it did start with a lawsuit against the city from NRDC over monitoring and monitoring for lead.

So this is a big challenge for cities. There are technologies available to help with that, and it would provide protection before all the lead service lines are going to be replaced. We have heard 10 years from Senator Booker. It will take a very long time. And in the interim, there are things that can be done to protect public health.

Then Congress, again, not to belabor it, but you may want to consider some of these deadlines about when the money would get reallocated away, when it would go away. So again, that is something to look at. With lead service lines, it is going out by an allocation formula. Congress may want to say when the inventories are done there should maybe be a different allocation formula. Right now, it is going to everybody. It is eligible for doing the inventory, so that is a good thing. But once the inventories are done, it is

going to be clear that some States have a bigger problem than others for lead service lines.

Finally, if EPA doesn't think that some of these monitoring issues can be addressed under the legislation, then Congress might want to think about making some changes also.

I know I am way over my time, so I am going to stop and take questions. Thank you.

[The prepared statement of Ms. Bodine follows:]

TESTIMONY OF SUSAN PARKER BODINE
PARTNER, EARTH & WATER LAW
BEFORE THE SUBCOMMITTEE ON FISHERIES, WATER, AND WILDLIFE
OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
HEARING ON IMPLEMENTATION OF DRINKING WATER AND WASTEWATER
PROVISIONS OF THE INFRASTRUCTURE ACT
APRIL 5, 2022

Chair Duckworth, Chairman Carper, Ranking Member Lummis, Ranking Member Capito, and members of the Subcommittee, thank you for the invitation to testify today on the implementation of the drinking water and clean water provisions of the Infrastructure Investment and Jobs Act (P.L. 117-58). I am currently a partner with the firm Earth & Water Law. I have worked on EPA's drinking water and clean water programs while serving on the staff of this Committee. I also worked on EPA's clean water programs while working on the staff of the House Transportation and Infrastructure Committee.

My goal today is to help the Subcommittee understand allocation and project selection for the \$43 billion in funds appropriated in the Infrastructure Bill to the Clean Water and Drinking Water State Revolving Loan Funds (SRFs) as well as the \$5 billion in funds appropriated in the Infrastructure Bill to the Safe Drinking Water Act (SDWA) Small and Disadvantaged Communities grant program. I also will discuss some of challenges states and funding recipients will face. Finally, I will make some recommendations to both Congress and EPA.

For background and context, appended to this testimony is an overview of the Clean Water and Drinking Water SRFs and a summary of the funding provided in the Infrastructure Bill.

Implementation of the historic amount of funding provided in the Infrastructure Bill will present a challenge to states and communities. In addition, as I explain below, EPA's approach to the implementation of the Infrastructure Bill funding is somewhat schizophrenic. For funding that is appropriated to the Clean Water and Drinking Water State Revolving Fund (SRF) programs EPA appears to be trying to direct the priorities and projects even though Congress granted that authority to states when it authorized the SRFs. Yet, for funding that is appropriated to the Safe Drinking Water Act's Small and Disadvantaged Communities grant program, EPA has refused to take on the responsibility to direct the funding to where it is needed most, instead distributing funds through an allocation process.

These observations are based on the implementation guidance for Infrastructure Bill funds appropriated to the SRFs that EPA released on March 8, 2022,¹ as well as EPA's 2021 guidance on the use of funds appropriated under the Safe Drinking Water Act's Small and Disadvantaged Communities grant program.²

Timing of Expenditures

EPA's implementation guidance says that "States must make commitments (i.e., they must sign assistance agreements, such as loans, with eligible recipients) within one year after the receipt of each capitalization grant payment from EPA. States must make effort to draw down (expend) funds within two years of capitalization grant award." These are the general rules that apply to SRF funds and the Clean Water Act (CWA) and in the SDWA regulations. However, these

¹ https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf

² https://www.epa.gov/system/files/documents/2021-08/updated_sudc_implementation_document_508-compliant.pdf

general statutory and regulatory requirements for expenditure of SRF funds will be difficult to meet given the increased amount of funding. Narrow time limits may undermine Congress' intent that states allocate funding to where it is most needed. In fact, it likely will undermine efforts to help the very small, disadvantaged communities that Congress intended to target for assistance. This is particularly true if EPA takes back funds from a state with many small communities and then gives it to a state with large cities that are prepared to quickly enter into SRF assistance agreements.

Priorities and Projects Selected

For the SRF funds (which comprise \$43 billion of the amount appropriated under the Infrastructure Bill) EPA's guidance acknowledges that Congress established the SRF programs as state run programs and both priorities and projects are selected by states. Despite that acknowledgment of the statutory structure, however, EPA's guidance appears to attempt to direct state priorities and projects.

For example, EPA is suggesting that states change their Intended Use Plans that identify projects that states will fund using the Infrastructure Bill monies. EPA appears to want the opportunity to review state priorities against EPA's own priorities. Yet, both the CWA and the SDWA leave the development of state priority lists and Intended Use Plans to the states.

EPA's implementation guidance requires states to develop new Intended Use Plans to identify projects eligible for funding under the Infrastructure Bill. That requirement is not in the Infrastructure Bill and it does not appear to be necessary unless the state's plan does not include

enough projects eligible for the increased amount of funding. Adopting an intended use plan is a public process. If the existing plan is sufficient then it appears that EPA's requirement will only delay the distribution of funds to communities. This delay could be very harmful to states and communities because a state must sign assistance agreements within one year of receiving funds from EPA and the SRF money must be used within two years.

If states must update their Intended Use Plans to expand the list of projects identified, EPA should review the plans against the statutory and regulatory requirements only, not administration priorities.

Identification of Disadvantaged Communities

EPA's implementation guidance also says that EPA expects states to revise and submit to EPA for review their affordability criteria established under the CWA and their definition of disadvantaged community under the SDWA. EPA's stated goal is for the Infrastructure Bill funding to be used to meeting the administration's objective established on January 21, 2021, in Executive Order 14008 of sending 40% of federal funding to disadvantaged communities. The Infrastructure Bill already requires as much as 49% of SRF funds to be used in disadvantaged communities. However, the Infrastructure Bill does not use or reference the administration's definition of disadvantaged communities, which may be evolving. Both the CWA and the SDWA make affordability a state decision. This is appropriate given the very different demographic profiles that exist in different states and in rural and urban areas.

Neither the CWA nor the SDWA gives EPA the authority to approve or disapprove the state's criteria. EPA's role is limited to providing information that may assist a state. Appendix E of EPA's Infrastructure Bill implementation guidance provides such additional information. However, it goes further and states that: "The information in this memo is one step in an ongoing EPA effort to analyze criteria and adjust them as needed to ensure that the definitions used are compliant with the CWA and SDWA as well as meet the community affordability needs within states." *That is not EPA's role.* They have no authority to decide for a state what its community affordability needs are.

Despite this fact, the guidance also sets out the expectation that states "evaluate and revise, as needed, the DWSRF disadvantaged community definition and CWSRF affordability criteria." EPA cannot mandate a revision and any attempt to do so would simply delay the ability of states to get funding out to communities.

Lead Service Line Funds

Congress chose to appropriate \$15 billion for lead service line replacement to the Drinking Water SRF program. That means that the funding will be allocated based on the formula established based on drinking water needs generally, not the presence of lead service lines. This may result in a misallocation of funds. Currently, the Lead and Copper Rule requires water systems to inventory their lead service lines by October 2024. After public water systems complete their inventories of lead service lines Congress may wish to direct EPA to allocate these funds based on those inventories even if the reallocation would apply to only the last two years of Infrastructure Bill funding.

The Infrastructure Bill also requires a utility to replace both publicly owned and privately owned lead service lines. This condition helps protect public health. However, a community may need to change its laws to allow a water utility to carry out work on private property. EPA and Congress should take that potential delay into account.

EPA's implementation guidance explains how EPA interprets the statutory requirement that the lead service line funding in the Infrastructure Bill be used for lead service line replacement projects and "associated activities directly connected to the identification, planning, design, and replacement of lead service lines." According to EPA, non-routine lead sampling (not for compliance purposes) as part of a lead service line removal project is eligible for funding.

While \$15 billion over 5 years a very large sum, this Committee knows that it will take a very long time to replace all lead service lines in this country. Public health can be protected in the interim by carefully monitoring the drinking water and ensuring that appropriate pH levels are maintained and corrosion control treatment is deployed where needed. However, we all have seen the consequences when communities fail to get the chemistry right and lead in pipes leaches into drinking water. EPA should consider whether investment in non-routine monitoring technologies, before as well as during lead service line replacement, should be considered directly connected to the identification of lead service lines and planning for replacement. Such technology can help identify priorities and protect public health before replacement is achieved.

Allocation of SDWA Small and Disadvantaged Community Funds

The Infrastructure Bill appropriates \$5 billion for the SDWA Small and Disadvantaged Community grant program that was enacted in 2016 as part of the Water Infrastructure Improvements for the Nation (WIIN) Act, for the purpose of addressing emerging contaminants in those communities.

The Small and Disadvantaged Community grant program in section 1459A of the SDWA was drafted as direct EPA grants for small and disadvantaged communities, with a priority for communities lacking basic infrastructure. This section of the SDWA authorizes grants to states only where a state will carry out a project on behalf of an underserved community or on behalf of a disadvantaged or small community to address an imminent and substantial endangerment. Rather than follow the authorization that was developed by this Committee, EPA chose to send all funds appropriated for this program to states under an allocation formula.

That decision avoids a workload for EPA but it undermines the intent of the program, which was to focus funds on the neediest communities. It also fails to implement the statutory priority for underserved communities and dilutes the impact of the funding. Given its focus on environmental justice, EPA should reconsider whether it is appropriate to invest its FTE resources to ensure that funds are directed to these communities.

Technical Assistance

The Infrastructure Bill appropriately sets aside some of the funding for technical assistance, including assistance to small communities to help them gain access to funding. These provisions will be very important to ensure that funding reaches needy communities.

Cross-Cutting Federal Requirements

Some of the cross-cutting federal requirements may make it difficult for smaller communities to access funding under the Infrastructure Bill. This may be particularly true of the application of the Brooks Act to Clean Water SRF capitalization grants. Under the Brooks Act an entity carrying out a project paid for with federal funds must select engineering design services from the three most highly qualified firms. That means funds from the capitalization grants cannot be used for design-build projects. This requirement may not be appropriate for small projects that need not be divided between design contractor and construction contracts. In fact, large design firms do not typically even bid on projects in small towns. It also undermines the goal of promoting local hiring.

The Infrastructure Bill added a requirement that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” OMB has not yet provided guidance to agencies on how this requirement or waivers of this requirement will be implemented. This delay may exacerbate the timing issues identified above.

In its implementation guidance EPA appears to suggest that additional cross-cutting requirements should be added. Davis-Bacon already applies to projects financed with SRF funding. However, EPA’s guidance goes further and suggests that states should require funding recipients to employ union workers under project labor agreements. That is not a requirement

under the Infrastructure Bill, the CWA, or the SDWA and EPA should refrain from telling states they should make it a condition of receipt of SRF funds.

Recommendations

For EPA

- EPA should refrain from attempting to condition the receipt of Infrastructure Bill funding on requirements that are not found in that law or the underlying CWA or SDWA. EPA review of priorities and policies that are committed by law to the discretion of a state will only delay the delivery of benefits from this legislation. And there is no requirement to tell communities to use project labor agreements.
- EPA should consider whether investment in technology to monitor lead in drinking water, not for compliance but for the interim protection of public health and identifying priorities, should be considered eligible for lead service line funding.
- EPA should carry out Congressional intent and carry out the SDWA Small and Disadvantaged Communities grant program as direct EPA grants.

For Congress

- Congress should consider whether states and communities will need additional time to deploy the historic amount of funding provided in the Infrastructure Bill. It may not be possible for states to enter into agreements for the use of all of the funds within 12 months after those funds are received from EPA.

- Congress should consider directing EPA to establish a separate allocation formula for lead service line funding, after inventories are developed by communities.
- If EPA believes that the Infrastructure Bill does not authorize use of some of the lead service line funding to invest in technology that can provide interim public health protection before lead lines are replaced, Congress should consider modifying the eligibilities in future appropriations bills.
- Congress should conduct oversight to ensure the SDWA Small and Disadvantaged Communities grant program is implemented as intended.
- Congress should consider amending section 602(b)(14) of the CWA to set a project cost threshold before the Brooks Act condition takes effect.

Appendix AAn Overview of the State Revolving Loan FundsClean Water SRF

In 1972, Congress established a construction grants program to help communities meet the new mandate to upgrade treatment facilities. Congress provided \$43 billion in federal grants to municipalities between 1972 to 1984. In 1987, Congress authorized the Clean Water SRF program to replace the construction grants program. Initially, federal assistance was available only for publicly owned treatment works. However, Congress has expanded eligible projects over time. For the construction of treatment works, the loan recipient must be a public entity. Recipients of funding for nonpoint source, decentralized wastewater treatment, National Estuary Program, and stormwater projects may be private or nonprofit entities as well.

The theory behind the Clean Water SRF program was to eventually get EPA out of the business of providing infrastructure funding assistance by using federal dollars to capitalize state-managed revolving loan funds that would exist in perpetuity. The expectation was that federal capitalization grants would end and funding for water infrastructure would continue as loans are repaid and the funds revolve. That point of view is still held by the Office of Management and Budget, which perennially seeks to reduce SRF appropriations. The reality, however, is that the need for capital investment in infrastructure is so large that it cannot be paid for with on-going revenues; it must be debt financed. Not all communities have access to the municipal bond market. As a result, the demand for infrastructure funding exceeds the funds available for loans in the Clean Water SRFs, leaving a gap. Accordingly, Clean Water SRF capitalization grants have continued.

The Clean Water SRF program is an example of cooperative federalism. Congress established the eligible recipients and eligible projects and set some parameters to ensure that the funds existed in perpetuity. Otherwise, the SRFs are intended to be run by states, with limited federal oversight.

For example, the CWA requires states to develop Intended Use Plans annually, after public comment, to identify projects to be funded each year. That plan describes the intended uses of the state's Clean Water SRF, including a list of those projects for construction of publicly owned treatment works on the State's priority list and a list of nonpoint source and National Estuary Program activities, short and long-term goals and objectives, and information of activities to be supported, financial terms, and communities served. A state does not need to fund project in rank order. However, while a project must be on the IUP, a state is free to change the priority of projects within the IUP. EPA reviews the plan only for compliance with the statute and regulations. EPA reviews the plan only for compliance with the statute and regulations. EPA cannot second-guess a state's priorities. As stated in section 216 of the CWA, "the determination of the priority to be given each category of projects for construction of publicly owned treatment works within each State shall be made *solely* by that State."

Under the CWA, additional subsidies are based on a state's affordability criteria that identifies municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity if additional subsidization is not provided. A state's criteria must be based on income and unemployment data, population trends, and other data determined relevant

by the State, including whether the project or activity is to be carried out in an economically distressed area.

Over time, Congress has added more strings and conditions to the SRFs, while also expanding the eligibilities. For example, initially only the capitalization grants were considered federal funds subject to cross-cutting federal requirements. Funds in the SRF from the 20 percent state matching funds, interest revenue, and loan repayments were not federal dollars. Eventually, however, appropriations bills imposed a requirement that all SRF loan recipients pay Davis-Bacon prevailing wage rates. Appropriations bills also required a percentage of the Clean Water SRF capitalization grants to be used to provide additional subsidies.

In 2014, the Water Resources Reform and Development Act of 2014 (WRRDA 2014) amended the Clean Water SRF program to make a number of requirements applicable to all funds from an SRF, not just the capitalization grants. The expanded cross-cutting federal requirements included Davis Bacon, NEPA, and American iron and steel content. In addition, for the capitalization grants only, WRRDA 2014 added a requirement that loan recipients comply with the Brooks Act, which means that engineering design services must be selected from the three most highly qualified engineering design firms. That means funds from the capitalization grants cannot be used for design-build projects. WRRDA 2014 also authorized additional subsidies (grants) from the Clean Water SRF, based on affordability criteria established by the state.

Despite the expansion of federal requirements, state decision-making related to priorities and selection of projects funded remains a bedrock principle behind the Clean Water SRF.

Drinking Water SRF

Congress authorized the Drinking Water SRF program in 1996 and modeled it after the Clean Water SRF. Before that date, EPA had no program for providing funding assistance for drinking water infrastructure. Given that many water systems that serve the public are privately owned, private as well as publicly owned systems are eligible for funding from the Drinking Water SRF. Many drinking water systems are very small so Congress also authorized states to use part of their SRF capitalization grant (now 35%) to provide additional subsidies for disadvantaged communities, as defined by the states. Like the Clean Water SRFs, appropriations bills require Drinking Water SRF funding recipients to pay prevailing rates under Davis-Bacon. As amended in the 2018 America's Water Infrastructure Act, projects receiving funding from the Drinking Water SRF also must use American iron and steel through 2023.

Under the SDWA, the state also prepares its Intended Use Plan annually and that plan is a list of the projects to be funded in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served, the criteria and methods established for the distribution of funds, and a description of the financial status of the State loan fund and the short-term and long-term goals of the SRF. For the SDWA, Congress requires a state's Intended Use Plan to "provide, to the maximum extent practicable, that priority for the use of funds be given to projects that-

- (i) address the most serious risk to human health;
- (ii) are necessary to ensure compliance with the requirements of this subchapter (including requirements for filtration); and
- (iii) assist systems most in need on a per household basis according to State affordability criteria."

EPA reviews the plan only for compliance with the statute and regulations.

Under the SDWA, affordability criteria also are established by states. A state's criteria are not subject to EPA review. The SDWA explicitly states that: "With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State." The SDWA defines disadvantaged community as "the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located."

Appendix B

Appropriations in the Infrastructure Bill and Special Rules

General SRF Programs

The Infrastructure Bill appropriated \$11.7 billion for each of the general Clean Water SRF program and the general Drinking Water SRF program. For each SRF program, the funds are distributed to states as follows: \$1.9 billion in FY 2022, \$2.2 billion in FY 2023, \$2.4 billion in FY 2024, \$2.6 billion in 2025, and \$2.6 billion in FY 2026. These funds are in addition to the funding received through regular appropriations, which added \$1.64 billion to the Clean Water SRF and \$1.12 billion to the Drinking Water SRF in FY 2022. The President's FY 2023 budget request seeks the same amounts for the respective SRFs for FY 2023.

For the funding provided by the Infrastructure Bill to both SRFs, in FY 2022 and FY 2023 only, the state match is reduced to 10%. After that it reverts to the normal 20%.

For both SRFs, 49% of the capitalization grant from the Infrastructure Bill must be used for additional subsidies in the form of grants or 100% principal forgiveness. The underlying statutes provide the rules for additional subsidization. For the Clean Water SRF, eligibility is based on the state's affordability criteria. For the Drinking Water SRF, eligibility is based on the state definition of disadvantaged community.

Clean Water Emerging Contaminants

The Infrastructure Bill appropriated \$1 billion to the Clean Water SRF for projects to address emerging contaminants, such as PFAS. These funds are distributed as follows: \$100 million in FY 2022, \$225 million in FY 2023, \$225 million in FY 2024, \$225 million in 2025, and \$225 million in FY 2026.

For this funding there is no state match and 100% must be used for additional subsidies in the form of grants or principal forgiveness. There is no specific authorization in Clean Water SRF program for emerging contaminants so that term is not defined.

Drinking Water Emerging Contaminants

The Infrastructure Bill appropriated \$4 billion to the Drinking Water SRF for projects to address emerging contaminants, with a focus on PFAS. In each of fiscal years 2022 to 2026 \$800 million of these funds will be distributed to states. For this funding there is no state match and 100% must be used for additional subsidies in the form of grants or principal forgiveness. Under the SDWA, at least 25 percent of the funds provided for emerging contaminants under the

Drinking Water SRF program must be used to help disadvantaged communities or public water systems serving fewer than 25,000 persons.

Lead Service Line Replacement

The Infrastructure Bill appropriated \$15 billion to the Drinking Water SRF for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. In each of fiscal years 2022 to 2026 \$3 billion of these funds will be distributed to states.

For this funding there is no state match and 100% must be used for additional subsidies in the form of grants or principal forgiveness.

Small and Disadvantaged Communities Emerging Contaminants

The Infrastructure Bill appropriated \$5 billion over 5 years for grants to small and disadvantaged communities, \$1 billion of which is to be distributed each year. The bill also waives the 45% match requirement for these funds. Disadvantaged communities are identified based on the state definition. Small communities are those with a population of less than 10,000 individuals. Section 1459A also requires that priority be given to underserved communities. However, the appropriations language removes that priority for this pot of funding. In addition, EPA has changed the program from a direct grant program to a state implemented program with the states receiving funding based on an allocation formula. EPA merely requires that states provide some funding go to underserved communities, rather than giving those communities a priority.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

January 11, 2022

MEMORANDUM

SUBJECT: Additional Allotments for FY2021 for the *Assistance to Small and Disadvantaged Communities* Grants, Authorized under Section 1459A of the Safe Drinking Water Act, as amended by Section 2104 of the Water Infrastructure Improvements for the Nation Act

FROM: Anita M. Thompkins, Director
Drinking Water Protection Division

TO: Water Division Directors
Regions 1-10

Attached are the fiscal year (FY) 2021 *Assistance to Small and Disadvantaged Communities* grant allotments that includes rollover funds from the previous grant cycle. Rollover funds were allotted using the same allocation formula as used for the FY2021 Initial State Allotments.

As a reminder, for FY 2021 funding the 45 percent non-federal cost share or match is not required. The U.S. Environmental Protection Agency (EPA) is applying a waiver to all grant applicants of the statutory 45 percent cost share for FY 2021 only, due to the financial constraints caused by the COVID-19 pandemic across the country. Waiver of the 45 percent cost share is at the discretion of EPA.

- Applications are currently being accepted on <https://www.grants.gov>.
- The deadline for participating states and territories to submit their final application package to <https://www.grants.gov> is June 30, 2022.
- In the absence of an application from the state by the deadline for participating, the state allotment will no longer be available after the application deadline. Instead, the allotted amount will be forfeited and combined with the total funding available under future grant cycles.

If you have any questions about the allotment calculations, please call me, or have your staff contact Yvonne Gonzalez at (202) 564-2912 or gonzalez.yvonne@epa.gov.

Final GRANT FORMULA ALLOTMENTS**December 10, 2021****Based on Appropriations of \$25,880,000 and \$9,449,000 of funding not awarded in the previous grant cycle**

	Initial FY21 Allotment	Rollover funds Allotment	Total Available
Alabama	\$341,000	\$138,000	\$479,000
Alaska	\$543,000	\$221,000	\$764,000
Arizona	\$473,000	\$192,000	\$665,000
Arkansas	\$341,000	\$139,000	\$480,000
California	\$1,519,000	\$617,000	\$2,136,000
Colorado	\$443,000	\$180,000	\$623,000
Connecticut	\$259,000	\$105,000	\$364,000
Delaware	\$164,000	\$67,000	\$231,000
District of Columbia	\$137,000	\$55,000	\$192,000
Florida	\$897,000	\$365,000	\$1,262,000
Georgia	\$653,000	\$265,000	\$918,000
Hawaii	\$158,000	\$64,000	\$222,000
Idaho	\$299,000	\$122,000	\$421,000
Illinois	\$636,000	\$259,000	\$895,000
Indiana	\$390,000	\$159,000	\$549,000
Iowa	\$330,000	\$134,000	\$464,000
Kansas	\$370,000	\$150,000	\$520,000
Kentucky	\$324,000	\$132,000	\$456,000
Louisiana	\$597,000	\$243,000	\$840,000
Maine	\$217,000	\$88,000	\$305,000
Maryland	\$283,000	\$115,000	\$398,000
Massachusetts	\$310,000	\$126,000	\$436,000
Michigan	\$582,000	\$237,000	\$819,000
Minnesota	\$359,000	\$146,000	\$505,000
Mississippi	\$385,000	\$157,000	\$542,000
Missouri	\$492,000	\$200,000	\$692,000
Montana	\$294,000	\$120,000	\$414,000
Nebraska	\$263,000	\$107,000	\$370,000
Nevada	\$280,000	\$114,000	\$394,000
New Hampshire	\$258,000	\$105,000	\$363,000
New Jersey	\$352,000	\$143,000	\$495,000
New Mexico	\$386,000	\$157,000	\$543,000
New York	\$942,000	\$383,000	\$1,325,000
North Carolina	\$637,000	\$259,000	\$896,000
North Dakota	\$199,000	\$81,000	\$280,000
Ohio	\$568,000	\$231,000	\$799,000
Oklahoma	\$477,000	\$194,000	\$671,000
Oregon	\$380,000	\$154,000	\$534,000
Pennsylvania	\$755,000	\$307,000	\$1,062,000
Rhode Island	\$155,000	\$63,000	\$218,000
South Carolina	\$346,000	\$140,000	\$486,000
South Dakota	\$239,000	\$97,000	\$336,000

	Initial FY21 Allotment	Rollover funds Allotment	Total Available
Tennessee	\$371,000	\$151,000	\$522,000
Texas	\$1,697,000	\$690,000	\$2,387,000
Utah	\$289,000	\$118,000	\$407,000
Vermont	\$193,000	\$79,000	\$272,000
Virginia	\$449,000	\$183,000	\$632,000
Washington	\$539,000	\$219,000	\$758,000
West Virginia	\$297,000	\$121,000	\$418,000
Wisconsin	\$401,000	\$163,000	\$564,000
Wyoming	\$221,000	\$90,000	\$311,000
American Samoa	\$128,000	\$52,000	\$180,000
Guam	\$121,000	\$49,000	\$170,000
Northern Mariana Islands	\$126,000	\$51,000	\$177,000
Puerto Rico	\$248,000	\$101,000	\$349,000
Virgin Islands	\$126,000	\$51,000	\$177,000
NATIONAL TOTALS:	\$23,239,000	\$9,449,000	\$32,688,000



Bipartisan Infrastructure Law:

Environmental Protection Agency

2022 State Revolving Fund (SRF) Estimated Allotments to States, Tribes, and Territories by Program

	Total	DWSRF	DWSRF Lead Service Line Replacement	DWSRF Emerging Contaminants	CWSRF	CWSRF Emerging Contaminants
Alabama	\$137,030,000	\$38,705,000	\$60,953,000	\$16,254,000	\$20,065,000	\$1,053,000
Alaska	\$65,074,000	\$17,955,000	\$28,275,000	\$7,540,000	\$10,740,000	\$564,000
Arizona	\$109,458,000	\$32,291,000	\$50,851,000	\$13,560,000	\$12,120,000	\$636,000
Arkansas	\$93,252,000	\$27,013,000	\$42,540,000	\$11,344,000	\$11,739,000	\$616,000
California	\$609,441,000	\$158,400,000	\$249,447,000	\$66,518,000	\$128,339,000	\$6,737,000
Colorado	\$121,347,000	\$35,476,000	\$55,866,000	\$14,898,000	\$14,354,000	\$753,000
Connecticut	\$76,907,000	\$17,955,000	\$28,275,000	\$7,540,000	\$21,983,000	\$1,154,000
Delaware	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
District of Columbia	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
Florida	\$275,420,000	\$70,680,000	\$111,306,000	\$29,682,000	\$60,572,000	\$3,180,000
Georgia	\$158,645,000	\$42,312,000	\$66,632,000	\$17,768,000	\$30,340,000	\$1,593,000
Hawaii	\$68,398,000	\$17,955,000	\$28,275,000	\$7,540,000	\$13,898,000	\$730,000
Idaho	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
Illinois	\$288,290,000	\$67,743,000	\$106,681,000	\$28,448,000	\$81,158,000	\$4,260,000
Indiana	\$127,705,000	\$27,445,000	\$43,219,000	\$11,525,000	\$43,246,000	\$2,270,000
Iowa	\$110,745,000	\$28,445,000	\$44,794,000	\$11,945,000	\$24,286,000	\$1,275,000
Kansas	\$79,430,000	\$20,831,000	\$32,804,000	\$8,748,000	\$16,197,000	\$850,000
Kentucky	\$112,643,000	\$29,587,000	\$46,593,000	\$12,425,000	\$22,839,000	\$1,199,000
Louisiana	\$101,243,000	\$26,874,000	\$42,321,000	\$11,286,000	\$19,727,000	\$1,035,000
Maine	\$68,390,000	\$17,955,000	\$28,275,000	\$7,540,000	\$13,891,000	\$729,000
Maryland	\$144,181,000	\$32,892,000	\$51,797,000	\$13,813,000	\$43,401,000	\$2,278,000
Massachusetts	\$188,890,000	\$41,662,000	\$65,609,000	\$17,496,000	\$60,925,000	\$3,198,000
Michigan	\$213,201,000	\$44,075,000	\$69,409,000	\$18,509,000	\$77,158,000	\$4,050,000
Minnesota	\$116,792,000	\$27,408,000	\$43,161,000	\$11,510,000	\$32,982,000	\$1,731,000
Mississippi	\$74,899,000	\$19,328,000	\$30,438,000	\$8,117,000	\$16,167,000	\$849,000
Missouri	\$147,152,000	\$31,654,000	\$49,848,000	\$13,293,000	\$49,746,000	\$2,611,000
Montana	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
Nebraska	\$63,430,000	\$17,955,000	\$28,275,000	\$7,540,000	\$9,178,000	\$482,000
Nevada	\$71,601,000	\$20,813,000	\$32,777,000	\$8,740,000	\$8,809,000	\$462,000

New Hampshire	\$72,644,000	\$17,955,000	\$28,275,000	\$7,540,000	\$17,933,000	\$941,000
New Jersey	\$168,949,000	\$30,644,000	\$48,257,000	\$12,869,000	\$73,330,000	\$3,849,000
New Mexico	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
New York	\$428,072,000	\$73,327,000	\$115,475,000	\$30,793,000	\$198,074,000	\$10,403,000
North Carolina	\$199,211,000	\$55,139,000	\$86,831,000	\$23,155,000	\$32,386,000	\$1,700,000
North Dakota	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
Ohio	\$241,554,000	\$45,156,000	\$71,111,000	\$18,963,000	\$101,021,000	\$5,303,000
Oklahoma	\$91,488,000	\$25,455,000	\$40,085,000	\$10,689,000	\$14,498,000	\$761,000
Oregon	\$92,079,000	\$23,623,000	\$37,201,000	\$9,920,000	\$20,271,000	\$1,064,000
Pennsylvania	\$240,381,000	\$55,287,000	\$87,065,000	\$23,217,000	\$71,081,000	\$3,731,000
Puerto Rico	\$78,404,000	\$17,955,000	\$28,275,000	\$7,540,000	\$23,405,000	\$1,229,000
Rhode Island	\$66,451,000	\$17,955,000	\$28,275,000	\$7,540,000	\$12,049,000	\$632,000
South Carolina	\$88,984,000	\$23,253,000	\$36,618,000	\$9,765,000	\$18,383,000	\$965,000
South Dakota	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
Tennessee	\$120,833,000	\$31,187,000	\$49,113,000	\$13,097,000	\$26,068,000	\$1,368,000
Texas	\$507,672,000	\$140,697,000	\$221,567,000	\$59,085,000	\$82,018,000	\$4,305,000
Utah	\$63,721,000	\$17,955,000	\$28,275,000	\$7,540,000	\$9,455,000	\$496,000
Vermont	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
Virginia	\$126,383,000	\$29,295,000	\$46,134,000	\$12,302,000	\$36,724,000	\$1,928,000
Washington	\$152,969,000	\$40,112,000	\$63,168,000	\$16,845,000	\$31,206,000	\$1,638,000
West Virginia	\$83,211,000	\$17,955,000	\$28,275,000	\$7,540,000	\$27,973,000	\$1,468,000
Wisconsin	\$142,703,000	\$30,602,000	\$48,191,000	\$12,851,000	\$48,513,000	\$2,546,000
Wyoming	\$63,041,000	\$17,955,000	\$28,275,000	\$7,540,000	\$8,809,000	\$462,000
States Total	\$7,156,642,000	\$1,768,556,000	\$2,785,087,000	\$742,690,000	\$1,767,529,000	\$92,780,000
American Samoa	\$30,885,000	\$6,764,000	\$10,652,000	\$2,840,000	\$10,098,000	\$531,000
Guam	\$26,522,000	\$6,288,000	\$9,902,000	\$2,641,000	\$7,307,000	\$384,000
Northern Marianas	\$20,794,000	\$5,294,000	\$8,337,000	\$2,223,000	\$4,693,000	\$247,000
Virgin Islands	\$31,883,000	\$8,586,000	\$13,522,000	\$3,606,000	\$5,861,000	\$308,000
Territories Total	\$110,084,000	\$26,932,000	\$42,413,000	\$11,310,000	\$27,959,000	\$1,470,000
Tribes	\$154,080,000	\$38,040,000	\$60,000,000	\$16,000,000	\$38,040,000	\$2,000,000
Grand Total	\$7,420,806,000	\$1,833,528,000	\$2,887,500,000	\$770,000,000	\$1,833,528,000	\$96,250,000

This table summarizes the first-year allotment of the nearly \$43.5 billion in total SRF funding that will be provided to states, tribes, and territories over the next five years through the Bipartisan Infrastructure Law.

**Senate Committee on Environment and Public Works
Subcommittee on Fisheries, Water, and Wildlife
Hearing Entitled, “Implementation of the Drinking Water and Wastewater Infrastructure
Act: Stakeholders’ Needs and Experiences”
April 5, 2022
Questions for the Record for Susan Bodine**

Senator Inhofe:

1. Oklahoma has about 1,900 wastewater systems and 1,600 drinking water systems in a state with only 4 million people – and a greater than average proportion of houses that have on-site septic systems. Oklahoma has unique needs, and we have used the Clean Water and Drinking Water State Revolving Fund to implement non-traditional projects that improve water quality and improve surrounding economic development and recreational water opportunities. In your testimony, you note that in EPA’s March 8th Implementation Memo of State Revolving Fund funding, EPA is trying to influence state decision-making beyond what Congress has envisioned.
 - a. Ms. Bodine, do States continue to have the flexibility to determine their priorities and select their projects as Congress intended?

Response:

Yes. In authorizing the state revolving loan fund programs Congress recognized the differences among states and specifically left both the prioritization and the selection of projects to the states. EPA only has authority to ensure that the projects in a state’s intended use plan meet statutory and regulatory requirements. EPA does not have the authority to impose its own priorities on states.

- b. Should States be afraid of having to comply with EPA’s recommendations?

Response:

No. EPA cannot direct the use of SRF funds to match administration priorities and cannot withhold funding from a state that chooses to select projects based on its own priorities.

2. Since 2001, Oklahoma has been one of 28 states with ‘Right-to-Work’ laws. In your testimony, you stated that EPA’s March 8th Implementation Memo encourages State Revolving Fund funding recipients to adopt collective bargaining agreements and project labor agreements. We’ve seen this Administration, time and time again, force a pro-union narrative on States.
 - a. Ms. Bodine, do States need to comply with this project labor agreement encouragement from EPA?

Response:

No. While Congress has required payment of Davis-Bacon prevailing wage rates when carrying out projects funded by the SRFs, nothing in either the Clean Water Act or the Safe Drinking Water Act requires use of union labor. EPA cannot withhold SRF funding from states that do not use project labor agreements.

Senator LUMMIS. Thank you. I let you run long because your institutional memory is so valuable to this Committee. So thank you. It is great to have you here and to have you help us recall what some of the original intents were behind these programs from your experience. Thank you.

Now I welcome Mr. Pepper.

You are recognized for your opening statement.

Then I will turn the gavel back to Chairman Duckworth, who has returned from her first vote.

**STATEMENT OF MARK PEPPER, EXECUTIVE DIRECTOR,
WYOMING ASSOCIATION OF RURAL WATER SYSTEMS**

Mr. PEPPER. Thank you.

Good morning, Chairwoman Duckworth, Ranking Member Lummis, and members of the Subcommittee. Thank you for the opportunity to appear virtually.

I was in DC most of last week with small water systems including the Town of Ten Sleep, Wyoming, who took home the Silver Medal at the Great American Water Taste Test.

And congratulations, Madam Chair, the Lake Egypt Water District from Illinois was crowned the Gold Medal winner of the contest.

It is an honor to testify today on behalf of small and rural communities like Ten Sleep and Lake Egypt Water District. I am Mark Pepper, Executive Director of the Wyoming Association of Rural Water Systems, a non-profit association of 255 small water systems in the State. I am also testifying on behalf of the National Rural Water Association which has a membership of over 30,000 small and rural water systems.

On behalf of small and rural communities, we appreciate the U.S. Congress for the enactment of the Bipartisan Infrastructure Investment and Jobs Act or the Infrastructure Bill. This legislation and its approximately \$50 billion in water infrastructure funding will be remembered as one of the most significant public drinking water and wastewater initiatives, especially in rural America.

Congress included numerous beneficial provisions for rural and disadvantaged communities in the Infrastructure Bill, including access to new funding that will help them overcome their challenges and the lack of technical capacity such as the expansion in technical assistance, subsidized funding, or grants targeted at the communities with greatest need which are often rural and small.

As with any large piece of legislation, it would appear there are a number "who for what art thou" language provisions along with "mays" and "shalls," and the Administrator will issue rules and guidance that we will all need to work through as we endeavor to assist water systems in utilizing this funding. In Wyoming, much of the water and wastewater infrastructure is 40 to 60 years old and needs replacement and upgrade. This includes drinking water lines, sewer collection systems, water storage tanks, pumps and treatment systems, IT and physical safeguards.

Additionally, our current drought is forcing many communities to find new water sources and driving up consumers' water bills. In Wyoming, our Department of Environmental Quality administers both Drinking Water and Clean Water SRFs. However, the process

remains cumbersome for most rural and small communities to complete without the assistance of consulting engineers or technical assistance providers in getting on the department's intended use plan.

The infrastructure law will infuse three times the traditional amount of State revolving funding in fiscal year 2022, in addition to the traditionally appropriated amount included in the fiscal year 2022 Omnibus Appropriations Act. When contemplating the massive amount of new funding being pumped into the existing system over the next 5 years, I am reminded of the line from the movie Jaws, "We're going to need a bigger boat."

We also understand the important need to eliminate the lead water lines for our utility systems and customer service lines. This will be a daunting task to perform the inventory projects so water systems will have the information necessary to then address potential replacement projects.

To that end, our Association, as well as many other State rural water associations, have partnered with 120Water. 120Water is a company that has developed predictive modeling and data base search tools to help all systems in compiling the data needed for the initial inventory.

The revised Lead Copper Rule requires this inventory be completed by October 2024. Once the inventory is completed, systems should have the data necessary to apply for funding. This partnership, along with the availability of the increased technical assistance resources, will go a long way to achieving this goal.

Many rural and small community local government leaders will need to be educated on the new funding opportunity as well as the needs of their particular water infrastructure in order to craft a project and submit it for funding. A project development circuit rider could be used to go to council meeting to council meeting in small communities to provide technical assistance for project planning and application.

In closing, Madam Chairwoman, small and rural communities thank you for the opportunity to appear before the Subcommittee today, express our strong support of the Infrastructure Bill, and acknowledge the numerous opportunities this Committee has provided rural America to testify and be included in the crafting of Federal water and environmental legislation. I look forward to your questions.

[The prepared statement of Mr. Pepper follows:]



Testimony of
Mark Pepper, Executive Director
The Wyoming Association of Rural Water Systems
And on behalf of
The National Rural Water Association
Before the
Subcommittee on Fisheries, Water, and Wildlife
Senate Committee on Environment and Public Works
Subject
Implementation of the Drinking Water and Wastewater Infrastructure Act
April 5, 2022

Good morning, Chairwoman Duckworth, Ranking Senator Lummis, and Members of the Subcommittee. Thank you for the opportunity to appear virtually. I was in DC most of last week with small water systems including the Town of Ten Sleep, Wyoming, who took home the Silver Medal at the Great American Water Taste Test. And Congratulations Madam Chair, the Lake Egypt Water District from Illinois was crowned the Gold Medal winner of the contest. It is an honor to testify today on behalf of small and rural communities like Ten Sleep and Lake Egypt Water District. I am Mark Pepper, the executive director of the Wyoming Association of Rural Water Systems - a nonprofit association of 255 small water systems in the state. I am also testifying on behalf of the National Rural Water Association, which has a membership of over 30,000 small and rural water systems.

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guidance that we will all need to work through as we endeavor to assist water systems in utilizing this funding.

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In Wyoming, our Department of Environmental Quality administers both the drinking water and clean water SRF's. However, the process remains cumbersome for most rural and small communities to complete without the assistance of consulting engineers or technical assistance providers and get on the department's Intended Use Plan. The infrastructure law will infuse three times the traditional amount of state revolving funding in fiscal year 22 in addition to the traditionally appropriated amount included in the fiscal year 22 Omnibus Appropriations Act. When contemplating the massive amount of new funding being pumped into the existing system over the next five years, I am reminded of the line from the movie Jaws, *"We're gonna need a bigger boat."*

The U.S. EPA has announced they will be making 50 million dollars in technical assistance available this year to meet this challenge. We are grateful that Congress allowed states to use up to two percent of the funding for technical assistance in the Act, which can also be used to meet the challenge.

We also understand the important need to eliminate lead water lines from our utility systems and customer service lines. This will be a daunting task to perform the inventory projects so water systems will have the information necessary to then address potential replacement projects. To that end, our association as well as many other state rural water associations have partnered with 120Water. 120Water is a company that has developed predictive modeling and database search tools to help all systems in compiling the data needed for the initial inventory. The revised Lead Copper Rule requires this inventory be completed by October, 2024. Once the inventory is completed, systems should have the data necessary to apply for funding. This partnership along with the availability of increased technical assistance resources will go a long way to achieving this goal.

Many rural and small community local government leaders will need to be educated on the new funding opportunity as well as the needs of their particular water infrastructure in order to craft a project and submit it for funding. A "project development" Circuit Rider could be used to go "council meeting to council meeting" in small communities to provide technical assistance for project planning and application.

In closing, Madam Chairwoman, small and rural communities thank you for the opportunity to appear before the Subcommittee today, express our strong support of the Infrastructure Bill, and acknowledge the numerous opportunities this committee has provided rural America to testify and be included in the crafting of federal water and environmental legislation.

Additional comments for the record:

Our member communities have the fundamental public responsibility of complying with all applicable regulations and supplying the public with safe drinking water and sanitation every second of every day. However, most water supplies in the U.S. are small; 91% (45,273) of the country's 49,708 community drinking water supplies serve communities with fewer than 10,000 persons, and 81% (40,258) serve communities with fewer than 3,300 persons.

In Wyoming, 308 of the state's 317 community water systems serve communities with fewer than 10,000 persons. In Illinois, 1,536 of the state's 1,764 community water systems serve communities with fewer than 10,000 persons.

Small and rural communities have more difficulty affording public drinking water and wastewater service due to low population density and lack of economies of scale. This challenge is compounded by rural communities' lower average median household incomes and their higher poverty rates. Likewise, we have a much more challenging time complying with Safe Drinking Water Act and Clean Water Act regulations due to small communities' lack of technical resources. While we have fewer resources, we are regulated in the exact same manner as a large community. Many small communities have only one operator with multiple duties beyond water treatment. On the other hand, a large community may have a team of technical experts, including engineers, chemists, and highly trained operators - all as part of their full-time staff.

Small community water infrastructure projects can be more challenging to fund because they are smaller in scale – meaning numerous, very complicated applications have to be completed and approved instead of one large project. This is compounded by the reality that small communities lack the administrative expertise or additional time constraints to complete the necessary application process efficiently.

- Approximately 72 percent of clean water SRF funding is awarded to large communities (EPA's Clean Water State Revolving Fund Annual Review).
- Approximately 71 percent of drinking water SRF funding is awarded to large communities (EPA's Drinking Water State Revolving Fund National Information Management System).

For this technical assistance to be successful in small and rural communities, it needs to be provided on-site, directly to the community by someone they trust with the experience to ascertain what the community needs as far as a project and the ability to help them complete the initial funding application. The USDA Circuit Rider program should serve as the model to expand technical assistance to implement the Bipartisan Infrastructure Law. Circuit Riders are experienced technicians who travel directly to small communities to assist them one-on-one with each community's specific water issues. They are trusted because they are former small-town operators and only work on behalf of the town - free of charge and with no enforcement authority.

In addition to the lack of technical assistance, another challenge that small and rural communities face in implementing the Act are acute supply chain shortages. Currently, there is a shortage of engineers and contractors necessary to plan and begin new water projects in all communities. We are also experiencing supply chain shortages of essential water projects supplies like pipes, meters, valves and other components. We also see delays in the acquisition of water treatment

and disinfection chemicals - mainly caused by a shortage of hazardous materials' certified truckers. This is forcing some communities to run alarmingly low on the chlorine necessary to make sure drinking water is safe for the public.

Senator DUCKWORTH [presiding]. Thank you, Mr. Pepper.

Now we will turn to questions for the witnesses.

Chairman Carper is on his way. When he gets here, he will be recognized for his questions. But until then, I will begin with my first question.

Mayor Baraka, the city of Newark, New Jersey, has recently received national attention due to the success of your city's lead service line replacement program. I, too, want to take the time to highlight Newark's incredible work.

In less than 3 years, under your leadership, the city has replaced all 23,000 lead service lines at no charge to residents. That is truly amazing. With \$15 billion provided in the Bipartisan Infrastructure package in direct payments through the Drinking Water State Revolving Fund for lead service line replacement, all States will have access to funds to remove these dangerous lead pipes. But this will also require major planning for the States to implement this effort.

Mayor Baraka, you have already gone through this process. Can you elaborate on the city of Newark's lead service line replacement program and speak to the steps the city and Mayor's office took to execute this goal? And if you can talk a bit about the planning process, that would be very helpful.

Mr. BARAKA. Thank you, Senator.

First, we were dealing with three parts of implementation. One was the use of point of use filters that were distributed to residents. The other was the replacement of corrosion control to coat pipes. And the last but most important was the replacement of lead service lines. That was the three pronged strategy from the very beginning. Even before we got national attention, that was our strategy.

The problem is that that strategy would have taken us 10 years or more to get completed. We immediately used our GIS system that we had in place to identify lead service lines in the city that dated all the way back to 1900. We used that and compared it also to our consultant's information and homeowners' information that we put together.

We had a project management tool called e-Builder which allowed us to track every lead service line in the city and when they were replaced. And we allowed it to be forward facing so residents could see when lead service lines were actually being replaced and they could actually type in their own address and see if their lead service line was scheduled to be replaced and when it was scheduled to be replaced in fact.

When we thought we had an issue with the filter, we wanted to expedite the program. We got a \$120 million bond from the county which allowed us to expedite this. So the money up front, the capital outlay was probably the most important piece. And we developed a public works project, the city's largest public works project in the history of the city. We involved the residents in the planning of it through meetings, whether virtual and in person, virtual obviously when the pandemic came. We had this available to our residents in almost every language available to our residents.

We also established a works project so residents can begin to get trained so they can actually change their own lead service lines and put subcontracting opportunities in the language that allowed

for minority vendors to be a part of the replacement of these lines as well.

This went on for a considerable period of time. As COVID happened, it slowed down a little bit. But the last thing I want to say, which I think is important, when we first began this program, when it was voluntary, only 3 percent of our residents signed up to get their lead service lines replaced. They would have to have paid \$1,000 to assist in that.

When we made it mandatory and free, we passed local law and legislation to allow us to go on peoples' lines, onto peoples' property, we went from replacing 10 to 15 lead service lines a day to 100 lead service lines a day. So that was incredibly important for us to do.

Senator DUCKWORTH. Thank you.

I am going to suspend my questions and turn and recognize the EPW Chairman, Senator Carper, who has just joined us.

Senator Carper.

Senator CARPER. I don't recall the last time a Chairman or a Chairwoman suspended their questions so I could ask a question, but thank you for your kindness.

Welcome to all of you. Some of you have been with us before, and for others, it is your first time. I want to thank each of you.

I also want to thank our Chair and Ranking Member on this Subcommittee, Senator Lummis, for holding what I believe is an important hearing not just for those of us on this Committee, but for the folks that we are privileged to represent across the country. Having a full understanding of how the Bipartisan Infrastructure Law, which we helped write literally in this room, and how it is being implemented and used by communities is, I think, the critical next step in ensuring that these funds are used as we intended them to be used.

My first question will be for each of you.

Susan, I will start with you first. It is nice to see you again.

My first question: Are the funds that are provided in the Bipartisan Infrastructure Law sufficiently flexible to allow the backlog of infrastructure projects to be addressed in your State, particularly in small, rural, and disadvantaged populations? And are you facing any implementation challenges?

Ms. BODINE. Thank you, Senator Carper. It is great to see you.

The concern I have is we are seeing a historic level of funding which we have not had to manage before. Congress decided to focus and set aside 49 percent of the funding for the small, disadvantaged communities.

My concern is that those goals of reaching the money where it is needed the most is going to come up and hit a wall in terms of the obligation to get the money attached to an assistance agreement within a year that when they receive it from EPA. I think States, particularly for the small, disadvantaged communities, are going to have a really hard time doing it.

It is great that there is technical assistance money in the bill to do that, but that is going to be a tremendous challenge. It would be a tragedy if that deadline meant that the money did not get to where you intended it to go.

Senator CARPER. All right. Thank you.

Joshua, a great name from the Bible. Do you pronounce your last name Schimmel?

Mr. SCHIMMEL. Schimmel.

Senator CARPER. Very good. Would you respond to the same question, please?

Mr. SCHIMMEL. Sure. I would agree in the timing issue, but I would also say the technical assistance I think is extremely important, and the fact that the States have the ability now to utilize design eligibility so studies and design potentially at the State level would be part of the SRF program.

I think broad interpretation of how entities can utilize the SRF program and technical assistance to get projects off the launching pad, so to speak, so design, studies, sampling, those are really critically important to the practitioners who oftentimes, as Susan had said, lack some sophistication in their ability to apply for these types of loans and programs.

Senator CARPER. Thank you, sir.

I understand we have a Mayor here from the other Newark. In Delaware, we have a New Ark.

Mr. BARAKA. Right.

Senator CARPER. It used to be two words. People said why do you call it New Ark? Because it was two words. We have a mayor there. We're delighted to hear you. People ask me what I want to do next in my life and I say, I think I would like to be mayor of Newark or New Ark. I'm not sure which one.

Please go ahead, same question, please.

Mr. BARAKA. I think the technical assistance is critical to help people navigate how to not just apply and use this money properly. I think to have them do that up front and during the process is critically important.

But I think the major piece in this is cooperation between State, county, and local government. That is key. If we do not have that kind of cooperation, it doesn't matter, the technical assistance. You can have the best technical assistance in the world, but if there is no cooperation, then these things will be stalled and won't happen.

The thing about Newark is we were able to pull all of our partners together from the Federal level all the way down to the municipal level to work. And if there are some provisions that even force people to do that, it would even be better because none of this can happen without the cooperation and collaboration of all levels of government.

Senator CARPER. Thank you, Mayor.

I understand Mark Pepper is joining us from the Wyoming Association of Rural Water Systems.

We have a Wyoming, Delaware, too. I go there quite a bit. I like to tell our colleagues from Wyoming that I was just in Wyoming last weekend.

Mark, take it away; same question.

Mr. PEPPER. Thank you, Madam Chair, Chairman Carper.

I would reiterate the issues that we are going to probably have with timelines. I think there are some provisions, in talking with RDQ, they are looking at trying to write some emergency rules to help implement some of this.

So I think in TA, the technical assistance providers that we have used all along will be key in helping the State meet the needs and design those rules so that the money can get out to those systems that really need it the quickest. So I will reiterate what everyone else has said as well. Thank you.

Senator CARPER. Thank you.

Madam Chairman, I know my time has expired. I would like to ask one more question just of one member, that would be Mayor Baraka. May I do that?

Senator DUCKWORTH. Please do.

Senator CARPER. Thanks.

Mayor Baraka, I am not going to pick on you, but I would like to ask you another question.

EPA drinking water and wastewater programs, as you know, allow States to create their own affordability criteria to attempt to target funds to disadvantaged communities throughout their States. This critical flexibility allows States to meet the unique needs of their vulnerable populations because what works in Delaware may not be what is right for Illinois or Wyoming.

My question would be this. Would you please share with us how your State's affordability criteria has been used to address Newark's Lead Pipe Replacement Program, and are there any lessons you can share from your experience in meeting the needs of underserved communities? I like to say find out what works, and do more of that.

Mr. BARAKA. Thank you. I am used to getting picked on. I am a mayor.

[Laughter.]

Mr. BARAKA. The great thing about our program is that it was free to all of our residents. There was no cost to anyone, so no one had to pay to get their lead service line replaced, not in capital costs, not in taxes, not in raising the fees. None of that took place, so everyone equitably got their lead service lines replaced.

That was made possible because we changed the law on the State level that allowed us to use private dollars to replace public lines and because we had the up front cash capital outlay from the bond created by the county government on our behalf.

We also during the pandemic created a moratorium on turning peoples' water off in the middle of that. And we gave people what we called opportunities of deferred payment to pay over a time period their water bills during this time as well. And we were very flexible around that, and we continue to be as we move through this pandemic.

Senator CARPER. All right, thank you, sir.

I have other questions. I will submit those for the record if it is all right with the Chairman, unless you insist I ask another now. But only if you insist.

Senator DUCKWORTH. You are welcome to ask another now if you would like to.

Senator CARPER. Are you insisting?

Senator DUCKWORTH. I am insisting.

[Laughter.]

Senator CARPER. All right. Because she insists, my third question, I don't mean to appear greedy in asking questions, but Ms.

Bodine, Susan, and Mr. Pepper, this is regarding technical assistance funding, something that has been mentioned by several of you already.

Ms. Bodine and Mr. Pepper, the EPA's implementation memo to States recommends, as you know, that the State Revolving Funds use the full technical assistance set aside allocation. They use 2 percent carve outs from the annual SRF funding to provide capacity building assistance that can be used to help small, rural, tribal, and disadvantaged communities to identify needs, develop projects, and apply for funding.

Here is my question. Would you please share with us how technical assistance has been a beneficial tool for the communities with which you have worked, and are there additional ways that we can help small, rural, tribal, and disadvantaged communities gain access for EPA programs?

Ms. Bodine, would you like to go first?

Ms. BODINE. Yes. Thank you, Senator.

I think that the provisions in the Bipartisan Infrastructure Bill on the technical assistance are tremendously important. And I would ask Mr. Pepper to give the on the ground view of this. But I do believe you have provided flexibility in that technical assistance to allow the pots of money going to where it needs to go, whether it is circuit riders, whether it is the States who can contract the circuit riders and then EPA providing help as well.

To the part of your question about how does it help, there are situations where small systems don't have, they literally don't even have operators much less the sophistication about how to gain access to funding. And so the circuit rider program, the technical assistance on the ground have always just been tremendously important to protection of public health.

Senator CARPER. Thank you.

Before I overstay my welcome, let me ask Mr. Pepper to respond to the same question, remotely.

Mr. PEPPER. Thank you, Madam Chair, Chairman Carper.

The technical assistance, the circuit rider programs has been a cornerstone of the National Rural Water Association and all of the 50 State affiliates. All of our circuit riders are versed in application process, are versed in project management, project development.

And as Senator Lummis said, 97 percent of the systems in Wyoming serve under 10,000, while 92 percent of those serve under 500. So being able to have more technical assistance providers like that, and I typically have a list of four or five additional certified operators who would like to come to work for us that can then go out and meet with those small systems and just give them a helping hand in developing those projects, in developing the application process, and working with their engineers. It is just a lifeline that has been a cornerstone. I am glad to see that it was expanded. Thank you.

Senator CARPER. Thank you so much.

Madam Chairman, thank you very much for holding the hearing. To you, Senator Lummis, and our witnesses, thank you for being here.

Mayor of Newark, I extend a warm welcome to Newark. Sometime when you are on your way south on 95 and you are thinking, where should I stop for a break, come and see your sister town.

Mr. BARAKA. Thank you.

Senator CARPER. Great to see you guys.

Senator DUCKWORTH. Thank you, Chairman Carper.

Now joining us by Webex, Senator Whitehouse is recognized.

[Pause.]

Senator DUCKWORTH. Senator Kelly, you are recognized.

Senator KELLY. Thank you, Madam Chair.

Since this is our first Subcommittee hearing since the Infrastructure Bill was signed into law, let me just quickly say thank you to Senators Duckworth and Lummis for all of your work alongside Chairman Carper and Ranking Member Capito to get the Drinking and Wastewater Infrastructure bill across the finish line. Thank you for that. It is really a big deal in the State of Arizona.

Mr. Schimmel, I want to start with a question for you. In your testimony, you discuss the \$10 billion which was included in the infrastructure law to address PFAS contamination. This is a big challenge for the State of Arizona. Both the Phoenix and Tucson areas have growing PFAS plumes in our groundwater aquifers. And as we face worsening drought conditions along the Colorado River, groundwater will become a more important source of drinking water for many communities.

Yet, like you discussed in your testimony, I have heard uncertainty from water and wastewater utilities in Arizona about whether investment in monitoring or assessment of our aquifers is an eligible expense within the Clean Water SRF Program.

Mr. Schimmel, can you expand on your testimony to explain the types of investments that utilities like yours would like to make to address PFAS contamination including expenses which may not be eligible for Clean Water SRF funding in the Infrastructure Law?

Mr. SCHIMMEL. Sure, thank you. Fortunately, my community does not have a PFAS issue.

[Remarks off microphone.] I think that the importance of flexibility with all of this funding, whether it is technical assistance or through the design component of SRFs, is going to be critical in how communities put the structure to how they will address PFAS.

Certainly as the regulations roll out State by State, the sampling component of that will be adopted by water and wastewater utilities. I think there are a lot of issues with PFAS, not just in drinking water but on the wastewater and sludge disposal as well. So there is a lot of opportunity for innovation in all of this.

I do think that specifically there needs to be flexibility with the funding in terms of technical assistance and especially that design component for planning studies as well. That would be the concerns that I have in terms of PFAS and how it can be addressed as it continues to storm across the U.S. It is of great concern.

Senator KELLY. Can you give some examples of those opportunities in innovation?

Mr. SCHIMMEL. Sure. I think there are treatment innovations on the drinking water side. Large scale treatment, we really haven't really seen it up in the Northeast. For surface waters, where we have more surface water, I think there is going to have to be devel-

opment of the ability for PFAS treatment on a larger scale than we have seen for large municipalities.

On the wastewater side in sludge disposal, incineration, gasification, those issues, there is a lot of room for innovation on how to treat PFAS or remove PFAS from the water stream or the air stream.

But those are going to be extremely expensive. I would urge that as much focus as we have on PFAS, while it is certainly very important and prominent, we also cannot forget our meat and potatoes infrastructure, as well. There needs to be a balance amongst what we are looking at.

So again, I think there is a great deal of opportunity. Regulations have to allow us to seek out that opportunity and innovate on how we treat PFAS and how we remove it. That is the answer.

Senator KELLY. On the PFAS side, what do you think we can do here in Congress, or what do you need from the EPA to make the most of the funding that we have appropriated? Is there additional legislation that you think might be helpful?

Mr. SCHIMMEL. I think to some degree addressing PFAS as water providers and wastewater providers, it doesn't start with us. We receive it. It is not our PFAS. I think to the extent that we can start to remove PFAS from the train that we receive, it will be more helpful. It is much more practical to remove the source of the PFAS than gather it at a water system and try to remove it at that level. That is a very expensive proposition.

Senator KELLY. Thank you.

Thank you, Madam Chairwoman.

Senator DUCKWORTH. Thank you.

Now via Webex, Senator Whitehouse.

Senator WHITEHOUSE. Thanks very much. It is nice to see you chairing the hearing, Senator.

Mayor Baraka, have I pronounced your name correctly?

Mr. BARAKA. Yes, thank you, Senator.

Senator WHITEHOUSE. Great, thank you.

Fighting lead contamination takes me back a long way to when I was Attorney General and brought the first lawsuit against the lead paint industry for the public nuisance of what they were doing in Rhode Island and for the harms to children. So I am really interested in trying to figure out how you made this work.

It sounds like you replaced over 23,000 lead lines in less than 3 years. What did the structure of that look like? How did you make that happen? Did you have a special entity set up for it? How did you finance it? How did you manage it? What were the metrics?

Mr. BARAKA. Thank you for that, Senator. We had, again, a GIS system that allowed us to access records as old as 1900 to begin identifying lead service lines in the city. We compared that with CDM Smith, our consultant, who was also identifying lead service lines, and community based organizations and homeowners to identify where lead service lines were. That was No. 1.

We were able to get, use a bond from the county government of \$120 million that added onto the money that we were getting from the State and Federal sources which created about a \$170 million project in the city. We then had to change the State law to allow us to spend that money on private property, and we did that. Lo-

cally, we changed the law to allow us to go on peoples' property without permission of the homeowner.

Senator WHITEHOUSE. Was that through your public works department? Was that through your water department; was that through a new entity? How did you manage it?

Mr. BARAKA. We managed it through our water department and a project management system that we have called e-Builder that helped us track the progress of every lead service line and when it was replaced. You can actually type your address into that, and it will tell you when we were coming to replace your lead service line.

Senator WHITEHOUSE. I think that is really impressive. Has your success been studied or written up anywhere in any kind of a journal or academic paper?

Mr. BARAKA. There are countless articles in newspapers now. I know that CDM Smith, the consultant, wrote something. But there is nothing at this point that I would say in a national journal or academic journal, no.

Senator WHITEHOUSE. Well, thank you for what you have done. You have expanded the window of possibility I think by getting 23,000 lead lines done in 3 years. We will do our best to be as successful in Rhode Island.

Thanks very much.

Thank you, Chairwoman.

Senator DUCKWORTH. Thank you, Senator Whitehouse.

I am going to resume my questions.

One of the biggest motivators for me to draft DWWIA was to increase access to funding for communities who need it the most but often cannot access it. This has led to systematic inequity. In my State of Illinois, the community of Cahokia Heights has been experiencing horrifying sewer overflow issues for years and is in urgent need of repairs including replacing sewer pipes, pumps, and lift stations and drainage systems.

Communities like this likely will never qualify for traditional loans or be able to provide a large cost share. And there are almost no other options for them. How are struggling communities ever expected to prosper economically if they do not have functioning drinking water and wastewater infrastructure? You can't build a tax base if people don't want to move into your community.

DWWIA attempts to address these issues by creating a set aside in the Sewer Overflow and Stormwater Reuse Grant Program and increases the percent of both the Drinking Water and Clean Water SRFs that must go to disadvantaged communities for grants, no interest loans, and debt forgiveness. We have discussed some of them today already, not to mention over 40 percent of BIL's funding can be allocated to small, disadvantaged rural and tribal communities.

Mr. Schimmel, you have experience in working with all different types of water providers and community projects and communities in your role as Executive Director of the Springfield Water and Sewer Commission and as a board member of NACWA. Can you explain what you would say are the biggest impediments to disadvantaged water systems getting funding? And are there any changes in DWWIA that you think will help with some of these issues?

Mr. SCHIMMEL. Sure, thank you, Senator.

I think one of the largest challenges is the overall lack of experience of small and disadvantaged communities of having utility providers that have utilized these programs. I think that is a barrier.

I think the second largest challenge is really creating a rate structure that is affordable to those communities that supports the capital investment. We are looking at 50 years plus or minus of underinvestment in all of our water and wastewater systems. So that is a really big challenge because we do need to raise rates. In order to do the work, we need to raise the money.

So I think the three things that are really going to help are the grants program. That is going to give access to communities that can't raise the money on their own or when they are not willing to raise rates. So I think that is extremely important.

The technical assistance, again, that is going to help inexperienced borrowers get through the process, identify projects, and then utilize that help to put applications in to utilize the funding.

Then the design eligibility, I think a lot of projects stop because there is no funding for design. You can pick your project, you can build your project, but you can't get it off the launching pad if you can't design it. So that eligibility for design and studies as part of the SRF programs at the State level I think is critically important.

So those three things, the grants, the technical assistance, and the design eligibility in the SRF programs will really help lower the bar in terms of making it more accessible to those communities.

Senator DUCKWORTH. Thank you.

Mayor Baraka, I understand that almost 80 percent of Newark's residents are renters. You mentioned it in your opening statement. And it can often be very difficult to reach landlords and property owners in order to access their property to proceed with the lead service line removal. Additionally, there can sometimes be legal roadblocks when attempting to use public funds on private property.

I imagine numerous States, including my State of Illinois, will have this issue especially in urban areas and low income communities. Can you explain in greater detail; you touched on this a couple times on passing legislation and making it free. If you can expand a little bit more on how the city of Newark was able to overcome these problems, I think it would be very helpful. Thank you.

Mr. BARAKA. Thank you, Senator. As I spoke earlier about the need for cooperation between all entities of government, we had to communicate with our State legislature to get them to understand the severity of the issue and urgency of the problem. They helped us change the law that would allow us to use public money on private property. They changed the law in the middle of it which gave us the permission, when we got the bond, to use that bond to in fact change peoples' lead service lines. That was No. 1.

No. 2, as you stated, many of our landlords are not local. When we were first doing it, before we got the bond, less than 3 percent of folks signed up. We had to go door to door, knock on door to door and get the peoples' permission to come and change their lead service lines.

Even with the help of multiple community organizations, we were getting traction but not enough. It would have taken us a

longer, longer time to be able to get that done. So we passed a local ordinance using our public health emergency suggesting that we should be able to come on your property and change your lead service line without the permission of the homeowner. That expedited this tremendously. We went from changing 10 lead service lines a day to 100 lead service lines a day.

So those two laws were very critical in helping us get this done.

Senator DUCKWORTH. Thank you.

I now would like to now turn over both the gavel while I go vote on the second vote and also recognize the Ranking Member for her questions.

Senator LUMMIS [presiding]. Thank you, Madam Chairwoman.

My first question is for Ms. Bodine and Mr. Pepper.

What is the Brooks Act? How could it impact small or disadvantaged communities from using these Federal funds?

Ms. BODINE. Thank you, Senator, for that question.

So, the Brooks Act is Federal legislation that says if Federal dollars are being used for a project, then for the design elements, it has to be a separately competed project, and the community has to pick from the top three most expert companies.

So, you could say it is well intentioned so you don't go with low cost bidders on design. You could say, if you wanted to criticize it, you could say it is an example of an association essentially getting into Federal law to give them a competitive advantage for Federal dollars.

Whatever your view is, the reality on the ground is that it does create a tremendous barrier for small communities because these small projects, you don't even have the big national architecture and engineering design firms even bidding on them. It doesn't make sense for small projects.

I used to get lobbied on this when I worked in the House. We always raised the small community concern. It did get into the Clean Water Act in 2014 in the WRDA bill. And in my recommendations, I do recommend that Congress amend that to add a cost threshold. These big engineering firms, they are not going to bid on these small projects. It is not even an issue. Nonetheless, the legislation applies to them.

Senator LUMMIS. Mr. Pepper, do you have anything to add to that?

Mr. PEPPER. Yes, ma'am; thank you, Senator.

In Wyoming, the small communities typically have a consulting engineering firm that they have contracted with that acts in de facto as their engineering department. The engineers then work with the public works, put a project together, then it goes out to bid to the contractors who will be performing the actual work.

I think that this particular provision has created an under-utilization of the SRF in Wyoming for that reason. USDA and of course State moneys, SLIB and so forth, don't have that provision. And it allows the communities to utilize that consulting engineer that they have had on staff relatively for a number of years and understands their system. I see it as a potential impediment.

Senator LUMMIS. Thank you.

Interestingly, in Wyoming, there are only 12 towns whose population exceeds their elevation. Think about that one. Chew on that for a minute.

Ms. Bodine, what are some of the examples of creeping conditions in the March 8th guidance that cause concerns that jump out at you?

Ms. BODINE. Certainly. Thank you for that question. It is true that when these SRF programs were originally set up, it was a shift from grant programs to State run programs. It was initially very much State run and only the initial Federal capitalization grants were considered Federal dollars.

Now, over time, Congress has changed the law to apply things like Davis-Bacon and of course American Iron and Steel. The Infrastructure Bill also adds the Buy America, Build America, which we don't have guidance on yet, so it is unclear how that is going to apply.

Troublingly, EPA's implementation guidance adds to that. It is one thing that Congress put it in, but when EPA is saying things like, States should tell their communities that they should enter into project labor agreements, for example, there is nothing in the statute about project labor agreements at all. Yes, Davis-Bacon applies, but not to project labor agreements, and you have right to work States. It is not EPA's authority or role to do that.

Also, I know that we have heard testimony on both sides on the disadvantaged communities definitions and the intended use plans. But again, it is a State decision. I was really happy to hear Senator Carper say yes, it is very different in Delaware and Wyoming about what is a disadvantaged community. These really, truly have to be State decisions.

My biggest concern was the EPA didn't say "shall," didn't say they "must," but says they expect it and that they should do it. I am just worried that States will view that as a mandate.

Senator LUMMIS. If it is on a checklist, and there is a blank on the checklist that may trigger EPA to deny some sort of funding, so yes, a big concern. Thank you.

This is for all panelists. What should Congress be doing going forward to make sure these Federal dollars make the most impact in the communities that you work for or represent?

Mayor, would you care to take a stab at that one?

Mr. BARAKA. Sure. Thank you, Senator.

I think some of the things that are happening are exactly what needs to happen. The infrastructure bill is important to put resources in the hands of as many people as possible and to get directly to the cities. I would advocate that that money come directly to the cities. I think cities and mayors can use it very quickly. We can expedite it, and you see the impact that we have immediately if that in fact takes place.

And to make sure that some of this money is actually flexible, that folks can use it in the way that they think is necessary as it relates to the infrastructure in their community, particularly around lead service lines. It gives us the opportunity to use local laws and State laws as well to do this as quickly as we possibly can.

Senator LUMMIS. Mr. Schimmel, any comments on this?

Mr. SCHIMMEL. Thank you, Senator.

I agree with the Mayor. Continued funding is the single most important issue for all of us. I would also add that making sure that there is eligibility for independent utilities such as ours that are regional versus municipal. At points, we have not been eligible for certain funding that has come out because we are a regional entity and don't have a municipal governance.

Then continuing to incentivize the State SRF programs to innovate in order to gain new membership into the folks who are utilizing the SRF programs. Not enough folks utilize it. If there is any way that they can incentivize, to lower the bar or make it easier for communities to get their hands on the funding, I think that would be exceptionally important.

Senator LUMMIS. Thank you.

Ms. Bodine.

Ms. BODINE. This is an historic influx of funding. And yes, it is mostly being channeled through the State Revolving Loan Funds, which are set up for capital investment.

Now, we have heard some of the people here today talk about the ability for planning. Yes, it can be used for lead service line inventory. But one suggestion I would make is that you might want to expand the eligibilities to include some innovative monitoring to identify problems, whether it is PFAS, whether it is the lead, so that you are providing public health protection right now. Because, as Senator Booker said when he spoke, it is going to take 10 years or more, for example, to get rid of all the lead service lines. And you have people who are exposed in the interim, or we do not know if they are exposed or not.

So taking some small amount of that money, and obviously these are hugely expensive programs, you need the capital investment, but taking some money for some interim public health protection might be a good idea.

Senator LUMMIS. Thank you.

Mr. Pepper.

Mr. PEPPER. Thank you, Senator.

Continued funding, maximum flexibility with the end result in mind, getting from Point A to Point B, which is upgrading our infrastructure, getting rid of lead lines, addressing PFAS. But allowing maximum flexibility in how we go from Point A to Point B I think is probably the determinant we are going to have to have going forward.

Senator LUMMIS. Thank you.

I have the luxury of the fact that the Chairman wants to come back from her vote, and so I get to extend the time a little bit and will take advantage of it.

This also is for all the panelists. In the March 8th guidance, Justice40 is referenced multiple times throughout the document. But the EPA does not define explicitly to State SRF programs what exactly it is.

Justice40 is the President's plan to have 40 percent of the benefits from Federal investments in climate go to disadvantaged communities. We have heard concerns that Justice40 is going to lead to a standard, one size fits all definition of disadvantaged communities.

So to all the panelists, is a disadvantaged community in one State necessarily the same in another?

Mayor, would you like to take that one on?

Mr. BARAKA. Sure, absolutely.

First, I think that it is the right thing to do to identify disadvantaged communities who have not had the ability to respond to environmental issues and other issues that are no fault of their own except for their zip code.

Generally, there are things that are similar throughout the country no matter where you live. People are discriminated against for very specific reasons and are victims of environmental disasters for very specific reasons because they don't have enough money.

The disproportionately black and brown, they may be immigrants and move into these communities, and these things exist there. They are legacy kinds of environmental issues that exist in these communities and should be addressed in those communities, because they have been there forever, whether they are next to the water in a port or an airport. All of those things, because they are in big cities and rural areas, all those things need to be addressed.

There are some specific things that may be particular to other peoples' communities that are different in other States and cities, there are some disadvantages that people have particularly based on the region they live in. While those things should be considered, I think it is equally important to understand that there is a general sense of what being disadvantaged is, and we cannot have one or the other, but we should be dealing with "and."

Senator LUMMIS. Thank you.

Mr. Schimmel, any thoughts to add on that one?

Mr. SCHIMMEL. One size does not fit all. Absolutely we have urban areas, Springfield in particular, a disadvantaged community. But I would also look to some of the rural areas in western Massachusetts where it is a two person shop, and they do everything and don't have the time to fill out the loan paperwork and have never done anything even close to that.

So I think as long as there is not a one size fits all, I think there is a lot of different types of disadvantage, and I think the funding needs to be able to reach into those corners where it is obvious. But also, there are some areas where it is not so obvious, where there are other types of disadvantage.

I think it is important that there is flexibility in all of this and it is not scripted as a one size fits all.

Senator LUMMIS. Thank you.

Ms. Bodine, your State and mine have Indian reservations which would particularly come to the fore when you are thinking about disadvantage in some cases. Certainly, that is true in Wyoming on the Wind River Indian Reservation. Would you respond to this question?

Ms. BODINE. Certainly, and yes, the tribal areas present very unique challenges with respect to wastewater and drinking water. I speak that as the former head of EPA enforcement.

To your specific question, yes, there was an Executive Order with a goal of 40 percent of the funding going to disadvantaged communities. Congress, though, has said, you have said already 49 percent, not 40 percent, is to go to disadvantaged communities from

these various pots of money. So the issue is addressed; it is taken care of. There is nothing further, I don't believe, for EPA to do.

So my concern is there will be an attempt to overlay a Federal definition of disadvantaged community on top of what is in the statute. Because the definition both in the Infrastructure Bill, and in the underlying Clean Water Act, and the Safe Drinking Water Act is about eligibility for what is called in the statute additional subsidization.

So what are the communities that need this money? They need the extra subsidy. They aren't eligible for the loans because they will never be able to pay them back. Therefore, the SRFs won't give it to them.

It is those definitions about where is the money going to go, where it is needed, where are the needs the most, which is specific. Whereas the broader definition of the disadvantaged community, it could be much broader but it may not bring into account some of the financial affordability issues.

Again, you took care of it in the Infrastructure Bill with the 49 percent set aside. The underlying statute took care of it by setting up the definitions and the responsibilities for States to set their disadvantaged community criteria. So I don't think there is anything further to be done here, and the goal will be met.

Senator LUMMIS. Thank you.

Mr. Pepper.

Mr. PEPPER. Agreed, thank you, Senator. Reservations do pose a great opportunity. In Wyoming, as you know, Wind River has two tribes. We work very closely with both tribes. In fact, the president of our association is the utility manager for the Eastern Shoshone utility.

Yes, I think it should be left to States for the definition. I guess taking a wording from a prior career of mine, you say potato, I say potato, I think the definitional aspect should be left to the States.

Senator LUMMIS. Thank you all very much.

I will return the gavel to our Committee Chairwoman, Senator Duckworth.

Senator DUCKWORTH [presiding]. Thank you, Senator Lummis.

I just have one final question. It goes back to Mayor Baraka. I am a big proponent of promoting local hiring initiatives when awarding contracts. I think it should be a priority for all States, including my own State of Illinois, although there have been challenges.

Your city of Newark was able to turn this program into a local hiring initiative creating somewhere around 600 jobs, where at least 250 were local hires and 85 percent were previously unemployed residents, which is quite remarkable. This is admirable, and it is such an important part of executing these programs. It allows the Water Infrastructure Initiative to not only help the health and safety of the community but also uses this opportunity to benefit local work force and the economy.

Mayor Baraka, was this local work force hiring an intentional part of the implementation of Newark's lead program? And did you see this inclusion of local hires have a positive effect on your city?

Mr. BARAKA. It was deliberate and very intentional. Not only did we write it in the actual contracts, but we set up training programs

for residents so they would be prepared to receive these jobs. So we wrote into the contract that they had to hire local residents and the percentage of local residents they had to try to hire, and they did that.

We also put in the contract that some of the subcontractors also had to be local. We created a small, low interest loan, a forgivable loan, to small businesses so they would be able to pay money up front to be able to get the resources that they needed to actually compete for these jobs, for these contracts. And they did that.

As a result of that, many Newark residents were hired as well as Newark businesses began to subcontract on these projects and are now primaries on other projects that are happening across the State in replacing lead service lines.

Senator DUCKWORTH. That is a wonderful example. Thank you.

Before we close the hearing, I would like to recognize Senator Lummis for any final questions or comments.

Senator LUMMIS. Thank you, Madam Chairwoman.

I am going to borrow from our Committee Chair. He has this wonderful tradition of wrapping up hearings by asking our fine witnesses, what question do you wish you would have been asked that you haven't been asked? So if anyone cares to put in a closing word, now would be the time.

Good. This is such a significant program. I am so impressed with the way it operates and how flexible and responsive it has been. I hope it can continue to be that way because our communities are so different. And these funds just seem to get to the right places and solve real problems.

I really want to thank you, Madam Chairman, for having this hearing.

And thank you witnesses, very, very much for providing your expertise and good advice to this Committee.

Madam Chairwoman, I yield back.

Senator DUCKWORTH. Thank you.

I think Mr. Pepper had a comment on Webex.

Mr. PEPPER. Yes, thank you, Senator. I have always been shy.

[Laughter.]

Mr. PEPPER. I would just like to respond to a question on PFAS and emerging contaminants that Senator Kelly brought up. We have the Source Water Protection Planning Program within our associations. We deal with watershed planning protection plans as well. And I think there is funding that flows through the USDA, FSA for source water protection. There is also the NRCS that has funding and a requirement for source water protection.

I think as it relates to groundwater sources, both in Wyoming and in Arizona, Senator Kelly, I am an NAU graduate up the road in Flagstaff, we are ready and have been doing some of that all along. And as it relates to the emerging contaminants, that is a portion of the Source Water Protection Program, is looking at potential contaminants and mitigation efforts regarding that.

So I think the funding that is available within the Infrastructure Bill for emerging contaminants can probably be expanded and combined hopefully with some of the FSA and NRCS money and can help to address the PFAS issues quicker and with more breadth. Thank you.

Senator DUCKWORTH. Thank you.

Ms. Bodine.

Ms. BODINE. May I just follow up on what Mr. Pepper just said? When Senator Kelly was talking about emerging contaminants and PFAS, I went to the implementation guide to see the eligibilities just to refresh my recollection. The money is going through the SRFs. So it is capital investment for the new treatment technology, new treatment facilities, identifying new sources, consolidating. It does include planning and design.

But to the point I have made with respect to the lead, it doesn't include identifying the problem. So it is capital investment after you have already identified the problem, but it doesn't include the finding, doing maybe the more sophisticated, innovative technology to find the problems. That is just a consideration.

Clearly the real cost, the big cost is on the infrastructure investment. That is what the money is dedicated to because that is what the SRFs are intended for.

But again, when we are dealing with some of these newer issues, like the emerging contaminants or frankly the old issues where we have people being exposed to lead in drinking water for years and years and years, we may want to consider some expanded eligibilities, again not for the bulk of it but just for some of it.

Senator DUCKWORTH. Thank you.

In the Army we used to say, any alibis?

[Laughter.]

Senator DUCKWORTH. As there are no more questions, we will bring this hearing to an end. But before we adjourn, some house-keeping. I don't know if we received any submissions while I was gone but I would like to ask unanimous consent to submit for the record a variety of materials relating to today's hearing. Without objection.

[The referenced information was not received at time of print.]

Senator DUCKWORTH. Senators will be allowed to submit questions for the record through the close of business Tuesday, April 19th. We will compile those questions, send them to our witnesses, and ask our witnesses to reply by Tuesday, May 3rd.

I want to thank the witnesses and Senators for participating in this important hearing.

With that, the hearing is adjourned.

[Whereupon, at 11:49 a.m., the hearing was adjourned.]

